

STATE OF TEXAS §

COUNTY OF HIDALGO §

**SECOND AMENDED INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO, TEXAS,
AND SOUTH TEXAS COLLEGE
FOR AMERICAN RESCUE PLAN ACT RECOVERY FUNDS**

THIS Second Amended Agreement is made effective as of the date of the last to execute this Interlocal Cooperation Agreement by the parties hereto being the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), and **SOUTH TEXAS COLLEGE**, hereinafter referred to as (“STC”), collectively referred to as “Parties” and pursuant to the provisions of the Texas Interlocal Cooperation Act (“Act”), Chapter 791, et seq., Texas Government Code, as follows:

WITNESSETH:

WHEREAS, STC, a public community college, is organized under the laws of the State of Texas for the purpose of educating and providing other services that benefit the community within and around Hidalgo County; and

WHEREAS, the County is defined as a “Local Government” under the Interlocal Cooperation Act, a political subdivision organized under the laws of the State of Texas; and

WHEREAS, pursuant to Texas Government Code Section 418.108, Hidalgo County Judge Richard Cortez issued a Declaration of Local Disaster for Public Health Emergency on March 17, 2020, due to the imminent threat arising from the Coronavirus (COVID-19); and

WHEREAS, on March 22, 2020, the Commissioners Court of Hidalgo County issued an Order of Continuance of Declaration of Local Disaster for Public Health Emergency; and

WHEREAS, on or about March 11, 2021, the Federal Government passed the American Rescue Plan Act (“ARPA”), including the Coronavirus State and Local Fiscal Recovery Fund (the “SLFRF”) which provides for direct payments to qualifying units of local governments to respond to the COVID-19 public health emergency and its economic impacts through eligible uses; and

WHEREAS, the County received a direct distribution of the SLFRF to be used for eligible expenditures that were directly related to and incurred as a result of the COVID-19 public health emergency; and

WHEREAS, pursuant to guidance provided by the United States Department of Treasury: (Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) version 4.2 issued August 15, 2022, The Interim Final Rule dated May 17, 2021, The Final Rule dated January 6, 2022, and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions, (which are attached hereto and incorporated by reference herein as **Exhibit “A”**), the SLFRF allows a recipient to transfer funds to another unit of government, **provided that the**

funds transferred are used for an eligible use as outlined in section 603 (c)(1) of the Social Security Act, and the Guidance; and

WHEREAS, the County desires to designate a portion of the funds received to be transferred to STC to address the ongoing pandemic by assisting STC in recruitment and retention of faculty and students, to provide for the educational training of nurses due to a nursing shortage, and the need for additional staffing to respond to the ongoing declared public health emergency in compliance with the terms and criteria of the SLFRF and as more fully described below; and

WHEREAS, amounts paid from the SLFRF are subject to restrictions outlined in the Guidance and as set forth in section 603(c) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act; and

WHEREAS, the SLFRF further requires that all recipients and beneficiaries comply with certain terms and conditions more particularly described below and in the Guidance attached as **Exhibit “A”** as well as any future guidance provided by the U.S. Department of Treasury; and

WHEREAS, County and STC desire to enter into this agreement for a public purpose and for the benefit of those residents of the County and the STC and to further detail each party’s duties and responsibilities; and

NOW THEREFORE, County and STC in consideration of the mutual covenants expressed hereinafter, agree as follows:

SECTION I RULES AND REGULATIONS

1.1 STC agrees to abide by the Guidance provided under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and as more particularly described in section 603(c) of the Social Security Act and any further guidance issued by the United States Department of Treasury. **See Exhibit “A”**

SECTION II DEBARMENT/SUSPENSION CERTIFICATION

2.1 STC certifies that STC is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://sam.gov>.

SECTION III TERMS AND CONDITIONS AND PROPOSED PLAN

3.1 STC represents that it has read and understood the terms and conditions of the SLFRF attached hereto as **Exhibit “A”** and as a condition of being a beneficiary of SLFRF, STC agrees to comply with all terms and conditions required of entities accepting funds through this agreement

and STC further warrants and represents to the County that the funds it will expend meet the criteria allowed under the SLFRF as outlined below:

The ARPA provides that payments from the SLFRF may only be used to fund eligible uses, and specifically in this instance funds are being transferred —

To establish the Healthcare Professionals Program to address the ongoing pandemic by assisting STC in recruitment and retention of faculty and students, to provide for the educational training of nurses due to a nursing shortage, and the need for additional staffing to respond to the ongoing declared public health emergency.

As related to the eligible use identified above, costs should be incurred and/or obligated on or after March 3, 2021, and should be expended upon completion of the Healthcare Professionals Program, and/or by December 31, 2024, whichever occurs first.

For purposes of the ARPA Funds, *incurred* means the unit of local government (beneficiary) has expended the funds to cover the costs of an eligible expense. Examples of eligible expenses and prohibited costs may be found in the Guidance version 4.2 dated August 15, 2022, in the Interim Final Rule dated May 17, 2021, and in the Final Rule dated January 6, 2022, provided in the attached **Exhibit “A”**, and in the additional SLFRF FAQ’s and guidance provided by the U.S. Department of Treasury (, May 27, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021, November 15, 2021, January 2022, April 27, 2022, and July 27, 2022 and any subsequent amendments thereafter) which are attached hereto and incorporated by reference herein as **Exhibit “B” (to include any future updated guidance from the U.S. Treasury)**.

3.2 County has designated funds in the amount of **\$3,000,000.00** to be allocated to STC, for eligible expenses for the Healthcare Professionals Program to assist in recruitment and retention of faculty and students, to provide for the educational training of nurses due to a nursing shortage, and the need for additional staffing to respond to the ongoing declared public health emergency. To that end, STC shall provide County with a proposed plan and budget of incurred and proposed expenses within the designated allocation to be made part of this Agreement as **Exhibit “C”**. The plan and budget are intended to demonstrate how STC plans to expend the designated funds. The designated funds will be transferred to STC for disbursement upon receipt of STC’s program plan and budget that meets the guidelines as outlined in the SLFRF.

3.3 STC represents and understands that the County made payment of the first installment of **\$500,000.00** of the SLFRF designated for the Healthcare Professionals Program noted in Paragraph (3.2) in February of 2022, to STC for necessary expenses incurred and associated with the development of the program in response to the COVID-19 public health emergency as set forth in the proposed Budget. Payment of the remaining funds in the amount of **\$2,500,000.00** will be made in three (3) installments: two (2) installments of **\$833,333.33**, and one (1) installment of **\$833,333.34**. Each installment will be paid on or before December 31st of each year.

3.4 In consideration of the STC’s representation that it will comply with the terms of the SLFRF and further agrees to comply with the terms of this Agreement, County agrees it will

transfer to STC the amount necessary to fund the Healthcare Professionals Program as indicated in the attached **Exhibit “C”**. By December 31, 2024, STC shall provide to County proof of disbursements in accordance with the Healthcare Professionals Program plan for review and auditing by County, if necessary, to ensure the expenditures incurred meet the criteria as set forth in the Healthcare Professionals Program and the SLFRF.

3.5 STC agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from their proposed Healthcare Professionals Program plan, and/or the requirements of this Agreement. Budget adjustments will be considered and may be submitted to Mr. Vidal Roman, Hidalgo County Budget Officer, with final approval of the Hidalgo County Commissioners Court.

3.6 County will not be liable for costs incurred by STC before commencement of this Agreement or after termination of this Agreement and will not be responsible for reimbursements pertaining to costs incurred that are not in compliance with this Agreement. STC further represents and understands that amounts transferred to STC will be released contingent upon submission of an eligible Healthcare Professionals Program plan with expenses incurred on or after March 3, 2021, which meet the criteria and Guidance provided by the U.S. Treasury and County. **See Exhibits “A” and “B”**.

3.7 Upon request, STC agrees to provide County with copies of all current and applicable payment and overtime policies, workers compensation policies, retirement rates, unemployment rates, and any other reimbursable benefit and rates of payment as necessary for performance under this Agreement.

3.8 STC agrees and represents that no other ARPA funds were used for this project, nor have or will be reimbursed by insurance, legal settlement, or any other funding (whether federal, state, or private in nature).

SECTION IV RECORDS AND REPORTS

4.1 STC agrees to establish and maintain all necessary records and reports that may be required as outlined by the SLFRF from County. STC understands that it is solely STC’s responsibility to keep all records and reports pertaining to SLFRF activity within their district in a manner acceptable to the U.S. Department of Treasury.

4.2 Per the ARPA Guidance, all government recipients are required to keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 603(c) of the Social Security Act.

4.3 STC agrees to establish and maintain all necessary records (electronic and otherwise), and any supporting documentation for a minimum of five (5) years after all funds have been expended or returned to Treasury, whichever is later, as outlined in paragraph 4.c. of the Award Terms and Conditions.

4.4 County may direct STC to retain documents for a longer period of time or to transfer certain records to County or federal custody when it is determined that the records possess a long term retention value.

4.5 Failure to maintain records and reports as required will result in forfeiture the funds transferred to STC from County. In the event the U.S. Department of Treasury disallows expenditures for premium pay submitted by STC due to STC's failure to retain and provide necessary records, STC understands that any monies reimbursed by County shall then be repaid to County by STC in accordance with §8.1.

SECTION V MONITORING VISITS

5.1 STC shall give The United States Treasury Department, the Special Inspector General of the U.S. Department of Treasury, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property, electronic or otherwise, belonging to or in use by STC pertaining to this Agreement as it pertains to the use of federal funds for premium pay.

SECTION VI AUDIT REQUIREMENTS

6.1 STC agrees to comply with the applicable requirements and standards as set forth in 2 CFR 200 Subpart F §§200.500 – 200.521 which are incorporated by reference herein.

SECTION VII SUSPENSION AND TERMINATION

7.1 STC understands that this Agreement may be suspended or terminated if STC materially fails to comply with the provisions of the Agreement or the prescribed terms and conditions as provided in the attached **Exhibits "A", "B", and "C"**.

7.2 If STC fails to fulfill in a timely and proper manner its obligations under this Agreement, or STC violates any of the agreements or stipulations of this Agreement, then the County shall provide STC written notification of such non-performance. STC will be given ten (10) business days to cure any non-performance. Failure to cure such non-performance will constitute a breach of this Agreement and may be the basis for immediate termination of the Agreement. **Should a breach by the STC of this Agreement relate to a violation of federal law or regulation that results in The United States Department of Treasury, General Accounting Office or other applicable overseeing Federal agency demanding reimbursement from the County or the STC or its successor, the County will terminate Agreement and seek reimbursement of all funds from STC.** STC shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by STC. County may take any and all appropriate action including injunctive relief against STC to prevent the continued failure of STC to comply with the SLFRF requirements and/or failure to reimburse the County for funds

disallowed by the U.S. Department of Treasury. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

7.3 In addition to the termination provisions stated above, either party may terminate this Agreement with or without cause upon thirty (30) days written notice to each other. Termination of the Agreement does not exempt STC's obligation to reimburse County for any incurred expenses disallowed by the U.S. Department of Treasury or any other overseeing federal agency.

SECTION VIII LIABILITY FOR DISALLOWED COSTS

8.1 STC understands and agrees that as a beneficiary under this Agreement it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of STC. STC further understands and agrees that reimbursement to County of such disallowed costs shall be paid by STC from funds that were not provided or otherwise made available to STC pursuant to this Agreement or any other federal award.

SECTION IX INDEMNITY CLAUSE

9.1 THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF THE PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES.

SECTION X CONFLICT OF INTEREST

10.1 STC covenants that none of its elected officials, officers, employees, consultants, or agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities covered by the SLFRF. STC agrees that all elected officials, officers, employees, consultants or agents shall comply fully with the requirements of Texas Local Government Code Chapter 171.

10.2 STC agrees that no person who is an elected official, officer, employee, consultant, or agent of STC's organization or the County's organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities for which STC is now seeking funds from the SLFRF.

10.3 STC is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

SECTION XI MISCELLANEOUS PROVISIONS

11.1 **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflicts exists.

11.2 **No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

11.3 **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and STC, and not otherwise.

11.4 **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

11.5 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile to the parties at the addresses set forth below, as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
 Attention: County Judge
 100 E. Cano, 2nd Floor
 Edinburg, TX 78539
 (956)318-2600

With copy to: Mr. Vidal Roman
 Hidalgo County Budget Officer

2818 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)292-7025
-And-

Ms. Linda Fong, CPFO
Hidalgo County Auditor
2808 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)318-2511

If to STC: Ricardo J. Solis
South Texas College, College President
3201 W. Pecan Blvd.
McAllen, Texas 78501
(956) 872-8366

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

11.6 **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

11.7 **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

11.8 **Assignment.** This Agreement shall not be assignable by STC.

11.9 **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

11.10 **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

11.11 **Non-Discrimination.** The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and STC policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. STC shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.

11.12 **Governmental Purpose.** To the extent applicable, each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

11.13 **Governing Provisions.** Parties shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.

11.14 **Legal Construction/Severability.** In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.15 **Immunity.** This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and STC's governmental immunity, and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of immunities from suit or from liability that the County or STC has by operation of law.

11.16 **Authority to Execute.** The execution and performance of this Agreement by County and STC have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and STC in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

SOUTH TEXAS COLLEGE

THE COUNTY OF HIDALGO

Ricardo J. Solis,
South Texas College President

Richard F. Cortez, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

Approved by Hidalgo County Commissioners Court on

_____.

APPROVED AS TO FORM FOR COUNTY:

Office of Hidalgo County Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
Jaclyn M. Erasmus, Assistant District Attorney

TABLE OF EXHIBITS

- EXHIBIT – A** **Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) version 4.2 issued August 15, 2022; The Interim Final Rule dated May 17, 2021; The Final Rule dated January 6, 2022; and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions– to include any future updated guidance**
- EXHIBIT – B** **Coronavirus State and Local Fiscal Recovery Funds FAQ’s issued on May 27, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021, November 15, 2021, January 2022, April 27, 2022, and July 27, 2022– to include any future updated guidance**
- EXHIBIT – C** **Healthcare Professionals Program Plan and Proposed Budget**