

STATE OF TEXAS §

COUNTY OF HIDALGO §

**FIRST AMENDED MEMORANDUM OF UNDERSTANDING  
TO DIRECT AMERICAN RESCUE PLAN ACT FUNDS TO FOODBANK RGV FOR  
THE FOOD ASSISTANCE PROGRAM**

This First Amended Memorandum of Understanding (“MOU”) is made effective as of the date of the last to execute this Memorandum of Understanding by the parties hereto being the COUNTY OF HIDALGO, TEXAS (“COUNTY”), and FOODBANK RGV (“FOODBANK”) “Grantee”, with its principal office located at 724 N. Cage Blvd., Pharr, TX 78577.

**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**, the safety, health and general welfare of the citizens of Hidalgo County is a common objective of both parties. Further, it is the objective of both parties to collaborate with each other to ensure the citizens of Hidalgo County have access to food, , including but not limited to, senior citizens and other vulnerable populations, to mitigate the spread of COVID-19, and respond to disproportionately impacted communities; 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 of SLFRF funds 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 expenditures that were directly related to and incurred as a result of the ongoing COVID-19 public health emergency and the negative economic impacts of the ongoing 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**, as allowed under the Guidance, the County desires to grant a portion of the funds received to be designated for the Food Assistance Program and hereby designates a portion of the funds received to be transferred to FOODBANK for expenses related to the COVID-19 public

health emergency to address food insecurities for local residents 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**, the purposes of this agreement is to memorialize the understanding between the parties that the COUNTY will transfer to FOODBANK a specified amount of the SLFRF in order to directly address food insecurity and provide for necessary expenses for actions taken to respond to the ongoing COVID-19 public health emergency and the negative economic impacts of the ongoing emergency in the community. In exchange, FOODBANK will make efforts to continue to provide services and expanded food distribution to residents of Hidalgo County as authorized in the Guidance and as more fully described below; and

**WHEREAS**, the COUNTY finds that this agreement, as it relates to the provision of services and food distribution to individuals and families that have been directly impacted by the COVID-19 public health emergency, serves a public purpose as it is for the health, safety, and wellbeing of the residents of the County of Hidalgo.

**NOW, THEREFORE**, in consideration of the mutual promises, conditions and covenants expressed between the parties hereto, it is understood and agreed by and between COUNTY and FOODBANK, as follows:

**RESPONSIBILITIES OF THE PARTIES:**

1. FOODBANK 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”**.
2. FOODBANK 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, FOODBANK agrees to comply with all terms and conditions required of entities accepting funds through this agreement and FOODBANK further warrants and represents to the County that the funds it will expend meet the criteria allowed under the SLFRF as outlined below.
3. 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 provide food assistance to those families facing negative economic impacts due to the COVID-19 public health emergency.
4. 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 by December 31, 2024.
5. FOODBANK will provide food distribution and food delivery to residents of the

COUNTY, including but not limited to, senior citizens and other vulnerable populations, in an effort to respond to the ongoing COVID-19 public health emergency and the negative economic impacts of the ongoing emergency in the community.

6. FOODBANK will continue efforts to facilitate compliance with COVID-19 related public health measures by addressing public health needs and providing food assistance to those directly impacted by the COVID-19 public health emergency.
7. FOODBANK will provide services and related actions as authorized under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and agrees to establish and maintain all necessary records and reports that may be required and provide all necessary documentation to ensure expenditures are in compliance with the SLFRF for five (5) years after funds have been expended.
8. COUNTY has designated funds from the SLFRF in the amount of **\$100,000.00** to be allocated to FOODBANK to afford necessary expenses of actions to assist with the response to the ongoing COVID-19 related public health measures, negative economic impacts, and to continue food distribution to residents of the COUNTY.
9. This Agreement is effective upon execution and ends on December 31, 2024. The term of this Agreement may be extended by mutual agreement of the parties. The Agreement may be terminated by either party without cause, upon thirty (30) days prior written notice to the other party.
10. FOODBANK shall deliver a copy of all related supporting expense documentation, along with the Cost Reimbursement/Payment Request form (attached hereto and incorporated by reference as **Exhibit "C"**), and the final report of COVID-19 related expenditures which includes inventory of all property acquired or improved by SLFRF funds, and final financial report to COUNTY no later than December 31, 2024, and shall keep the supporting documentation for a minimum of five (5) years. FOODBANK 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 representative, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by FOODBANK pertaining to this Agreement as it pertains to the use of federal funds.
11. **PROCUREMENT.** FOODBANK agrees to conform to its own applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the SLFRF and/or this Agreement. FOODBANK, as a non-federal entity, is advised that procurements made with federal funds are subject to the provisions of 2 CFR §§ 200.317 – 200.327, and resulting contracts must contain applicable provisions described in Appendix II to Part 200- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Applicable federal law, including but not limited to the procurement provisions of 2 CFR 200 applicable to entities receiving federal funds must be followed and are incorporated by reference herein funds provided to directly address expanded food distribution and related expenses incurred directly relating to COVID-19.
12. **CONFLICT OF INTEREST.** FOODBANK covenants that none of its 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. FOODBANK agrees that all officers, employees, consultants or agents shall comply fully with the requirements of The SLFRF.

13. FOODBANK agrees that no person who is an officer, employee, consultant, or agent of the FOODBANK 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 FOODBANK is now seeking funds from the SLFRF.
14. FOODBANK is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.
15. FOODBANK warrants and represents that they are a non-profit with 501(c)(3) status and eligible to receive funds under the SLFRF.
16. CONFIDENTIALITY. In the event this collaborative effort requires the mutual sharing of information made confidential by the laws of the State of Texas and of the United States, information will only be exchanged as allowed by law.
17. LIABILITY. This Agreement is not intended to extend the liability of the Parties beyond that provided by law. Neither party waives, nor shall be deemed to have hereby waived, any immunity or defenses that would otherwise be available to it against claims arising from third parties.
18. **INDEMNIFICATION. 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.**
19. DISPUTE RESOLUTION. The Parties agree to mandatory participation in mediation as an Alternative Dispute Resolution process, before any action, suit, litigation or other proceeding arising out of or in any way relating to this Agreement may be commenced.
20. 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.
21. This Agreement may be amended or modified by the consent of both parties at any time during its term. Amendments to this Agreement must be in writing and signed by COUNTY and FOODBANK. No change in, addition to, or waiver of any term or condition of this Agreement shall be binding either party unless approved in writing by an authorized representative of each party.
22. 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 FOODBANK, and not otherwise.
23. 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.

24. **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, 2<sup>nd</sup> 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 FOODBANK: Ms. Libby Saenz  
Foodbank RGV  
724 N. Cage Blvd.  
Pharr, Texas 78502  
(956) 904-4506

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.

25. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
26. This Agreement may be executed in any number of counterparts, including facsimile or scanned/mailed PDF documents. Each such counterpart, facsimile, or scanned/mailed PDF document shall be deemed an original instrument, all of which, together, shall constitute one and the same executed Agreement.
27. **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.

28. **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.
29. The Parties to the Agreement agree that 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 FOODBANK policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. FOODBANK shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.
30. The Parties agree to comply with all applicable state or federal statute, rule, regulation, grant, contract provision, subsequent federal guidance or other similar restriction that imposes additional or greater requirements than stated in this MOU that is directly applicable to the performance under this Agreement. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the new 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.
31. **LIABILITY FOR DISALLOWED COSTS.** FOODBANK understands and agrees that the funds received under this Agreement are federal funds and as such, it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of the SLFRF. FOODBANK further understands and agrees that reimbursement to County of such disallowed costs shall be paid by FOODBANK from funds that were not provided or otherwise made available to FOODBANK pursuant to this Agreement or any other federal award.
32. **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.
33. **IMMUNITY.** This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and any applicable 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 either County or FOODBANK has by operation of law.
34. 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.
35. **AUTHORITY TO EXECUTE.** The execution and performance of this Agreement by County and FOODBANK have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and FOODBANK in accordance with its terms.

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

**FOODBANK**

**Hidalgo County**

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Signature

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Printed Name

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Title

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Date

Signature

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Printed Name

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Title

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Date

Approved as to form for Hidalgo County:  
Office of 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 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**            **Cost Reimbursement/Payment Request Form**