

STATE OF TEXAS §

COUNTY OF HIDALGO §

**MEMORANDUM OF UNDERSTANDING
DIRECTING CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS TO
ASSIST THE PRECINCT 4 BOYS & GIRLS CLUB OF EDINBURG RIO GRANDE VALLEY
LEGACY CENTER**

This Memorandum of Understanding (“MOU”) is made on this ____ day of _____, 2023 by and between the COUNTY OF HIDALGO, TEXAS (“COUNTY”), and the BOYS AND GIRLS CLUB OF EDINBURG (“BGC”) “Grantee”, with its principal office located at 702 Cullen Street, Edinburg, Texas.

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 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 5.0 issued September 20, 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 BGC, and hereby designates a portion of these funds to be transferred to BGC due to decreased revenues and contributions, and increased expenses sustained as a direct result of the COVID-19 public health emergency. The funding will ensure that vital community services continue for those who have been impacted or disproportionately impacted 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 BGC a specified amount of the SLFRF for the decreased revenues and contributions, and increased necessary expenses for actions taken to respond to the public health emergency and its negative economic impacts. In exchange, BGC will be able to continue to provide services to vulnerable residents of Hidalgo County who have been impacted and disproportionately impacted 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 public health and negative economic impact to non-profits that have been deemed by the treasury to be “impacted”, and as it relates to the nonprofits vital community services 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 BGC, as follows:

RESPONSIBILITIES OF THE PARTIES:

1. As a result of efforts to respond to the COVID-19 public health emergency, including by providing vital community services to those vulnerable residents of the COUNTY, BGC has sustained significant economic losses, increased expenses and negative economic impacts which were directly caused by and related to the COVID-19 public health emergency as supported by the documentation provided by BGC.
2. BGC 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”.**
3. BGC 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, BGC agrees to comply with all terms and conditions required of entities accepting funds through this agreement and BGC further warrants and represents to the County that the funds it will expend meet the criteria allowed under the SLFRF as outlined below.
4. 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 BGC, an “impacted” nonprofit organization, in order to continue to provide vital community services to underprivileged families facing negative economic impacts due to the COVID-19 public health emergency.

5. 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.
6. BGC 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. (FAQ updated January 2022, attached hereto and incorporated by reference as **Exhibit “B”**).
7. COUNTY will grant funds from the SLFRF in the amount of **\$450,000.00** to BGC 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 providing vital community services to those residents of the COUNTY who have been impacted and disproportionately impacted by the COVID-19 public health emergency. Upon execution of the Agreement by all parties, the COUNTY will disburse funds in one lump sum payment from the SLFRF upon presentation of an appropriate Cost Reimbursement/Payment Request Form attached as Exhibit “C”, and related documentation pursuant to the requirements of paragraph (9.) of this Agreement.
8. This Agreement is effective upon execution and ends on December 31, 2026. Modifications and/or Amendments to the terms of this Agreement may be made by mutual agreement of the parties. The Agreement may be terminated by County without cause, upon thirty (30) days prior written notice to the other party.
9. BGC shall deliver a yearly report of all COVID-19 related expenditures to COUNTY, no later than December 31st of each year. BGC shall maintain records and financial documents for five (5) years after all funds have been expended. Treasury may request the transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. BGC 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 BGC pertaining to this Agreement as it pertains to the use of federal funds.
10. **PROCUREMENT.** BGC agrees to conform to all applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the funds provided to directly address and cover necessary medical care and public health expenses incurred directly relating to COVID-19. BGC 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.
11. **CONFLICT OF INTEREST.** BGC 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. BGC agrees that all officers, employees, consultants or agents shall comply fully with the requirements of the SLFRF. BGC agrees that no person who is an officer, employee, consultant, or agent of the BGC 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 BGC is now seeking funds from the SLFRF. BGC is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

12. BGC warrants and represents that they are a non-profit with 501 (c)(3) status and eligible to receive funds under the SLFRF.
13. **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.
14. **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.
15. **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.**
16. **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.
17. **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.
18. 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 BGC. 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.
19. **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 BGC, and not otherwise.
20. **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.

21. **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: 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 BGC: XXXXXXXXXXXX
Boys and Girls Club of Edinburg Legacy Center
702 Cullen St.
Edinburg, Texas 78541
(956) 537-6015

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.

22. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
23. 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.
24. **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.

25. **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.
26. 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 BGC policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. BGC shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.
27. 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.
28. **LIABILITY FOR DISALLOWED COSTS.** BGC 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. BGC further understands and agrees that reimbursement to County of such disallowed costs shall be paid by BGC from funds that were not provided or otherwise made available to BGC pursuant to this Agreement or any other federal award.
29. **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.
30. **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 BGC has by operation of law.
31. 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.
32. **AUTHORITY TO EXECUTE.** The execution and performance of this Agreement by County and BGC have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and BGC in accordance with its terms.

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

BOYS & GIRLS CLUB LEGACY CENTER

Hidalgo County

Signature

Printed Name

Title

Date

Signature

Printed Name

Title

Date

Approved as to form for Hidalgo County:
Office of Criminal District Attorney, Toribio "Terry" Palacios.

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 5.0 issued September 20, 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** **Cost Reimbursement/Payment Request Form**