

STATE OF TEXAS §

COUNTY OF HIDALGO §

**SECOND AMENDED INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO, TEXAS,
AND MISSION CONSOLIDATED INDEPENDENT SCHOOL DISTRICT
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, the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), and **MISSION CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as (“District”), 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, the District, is organized as an Independent School District under the laws of the State of Texas for the purpose of educating and providing other activities to assist and benefit the youth and general community within its district boundary, and within 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 District to support and expand access to public health services and address educational disparities exacerbated by COVID-19 by providing access to evidence-based mental health services that address the social, emotional, and mental health needs of students in areas of Hidalgo County that have been disproportionately impacted by the COVID-19 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 sub-recipient(s) 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 District desire to enter into this agreement for a public purpose and for the benefit of the residents of the County and District and to further detail each party’s duties and responsibilities; and

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

**SECTION I
RULES AND REGULATIONS**

1.1 District 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 District certifies that District 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 District 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 sub-recipient of SLFRF, District agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and District 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 Youth Wellness Program to support and expand access to public health services and address educational disparities exacerbated by COVID-19 by providing access to evidence-based mental health services that address the social, emotional, and mental health needs of students in areas of Hidalgo County that have been disproportionately impacted by the COVID-19 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 Youth Wellness Program, and/or by December 31, 2023 whichever occurs first.

For purposes of the ARPA Funds, *incurred* means the unit of local government (sub-recipient) 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 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 (dated 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, 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 **\$60,000.00** to be allocated to District, for eligible expenses for the Youth Wellness Program to support and expand access to public health services and address educational disparities exacerbated by COVID-19 by providing access to evidence-based mental health services that address the social, emotional, and mental health needs of students in areas of Hidalgo County that have been disproportionately impacted by the COVID-19 public health emergency. To that end, District 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 District plans to expend the designated funds. The designated funds will be transferred to District for disbursement upon receipt of District’s program plan and budget that meets the guidelines as outlined in the SLFRF.

3.3 Upon execution of the Agreement by all parties and the submission of District’s proposed Budget, the County will disburse thirty-five percent (35%) of SLFRF designated for the District’s Youth Wellness Program noted in Paragraph (3.2) to District for necessary expenses incurred and associated with the development of the program in response to the COVID-19 public health

emergency as set for in the proposed Budget. Remaining funds will be disbursed on an application basis as more fully described below.

3.4 **PAYMENT REQUESTS.** District shall submit requests to COUNTY on the prescribed Cost Reimbursement/Payment Request form (attached hereto and incorporated by reference as **Exhibit “D”**) with supporting records and documentation necessary for submission to the U.S. Department of Treasury. This will ensure any proposed expenditures comply with the terms and conditions of the SLFRF and this Agreement. Upon District’s representation (to include supporting documentation) that it has complied with the terms of the SLFRF and this sub-recipient Agreement, the COUNTY will disburse funds within thirty (30) days upon receipt of a proper Cost Reimbursement/Payment Request form and internal review and audit procedures. Requests shall be submitted to COVID-19@auditor.co.hidalgo.tx.us.

3.5 In consideration of the District’s representation that it will comply with the terms of the SLFRF and further agrees to comply with the terms of this sub-recipient Agreement, County agrees it will transfer to District the amount necessary to fund the Youth Wellness Program as indicated in the attached **Exhibit “C”**. By December 31, 2023, District shall provide to County proof of disbursements in accordance with the Youth Wellness Program plan for review and auditing by County, if necessary, to ensure the expenditures incurred meet the criteria as set forth in the Youth Wellness Program and the SLFRF.

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

3.7 County will not be liable for costs incurred by District 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. District further represents and understands that amounts transferred to District will be released contingent upon submission of an eligible Youth Wellness 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”.**

3.8 Upon request, District 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.

SECTION IV RECORDS AND REPORTS

4.1 District agrees to establish and maintain all necessary records and reports that may be required as outlined by the SLFRF from County. District understands that it is solely District’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 Pursuant to ARPA, District, as a sub-recipient of federal funds, must retain 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 District 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 District from County. In the event the U.S. Department of Treasury disallows expenditures for premium pay submitted by District due to District 's failure to retain and provide necessary records, District understands that any monies reimbursed by County shall then be repaid to County by District in accordance with §8.1.

SECTION V MONITORING VISITS

5.1 District 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 District pertaining to this Agreement as it pertains to the use of federal funds for premium pay.

SECTION VI AUDIT REQUIREMENTS

6.1 District 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 District understands that this Agreement may be suspended or terminated if District 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 District fails to fulfill in a timely and proper manner its obligations under this Agreement, or District violates any of the agreements or stipulations of this Agreement, then the County shall provide District written notification of such non-performance. District 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 District 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 District or its successor, the County will terminate Agreement and seek reimbursement of all funds from District.** District 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 District. County may take any and all appropriate action including injunctive relief against District to prevent the continued failure of District 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 District'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 District understands and agrees that as a sub-recipient under this Agreement it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of District. District further understands and agrees that reimbursement to County of such disallowed costs shall be paid by District from funds that were not provided or otherwise made available to District 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 District 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. District 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 District agrees that no person who is an elected official, officer, employee, consultant, or agent of District'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 District is now seeking funds from the SLFRF.

10.3 District 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 District, 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: 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 District: Joel Garcia, CPM
Finance Division | Assistant Superintendent for Finance
Mission Consolidated Independent School District
(956) 323-5515

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 District.

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 District policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. District 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 District'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 District has by operation of law.

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

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

DISTRICT

THE COUNTY OF HIDALGO

Dr. Carol G. Perez, Superintendent

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,
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 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** **Youth Wellness Program Plan and Proposed Budget**
- EXHIBIT –D** **Cost Reimbursement/Payment Request Form**