

**FIRST AMENDED MEMORANDUM OF UNDERSTANDING
DIRECTING CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
TO ASSIST WITH THE BOYS AND GIRLS CLUB MCALLEN, SOUTH
COMMUNITY DEVELOPMENT PROJECT**

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 the BOYS AND GIRLS CLUB OF MCALLEN, (BGC) “Subrecipient”, a local non-profit organization with its principal office located at 2620 West Galveston, McAllen, Texas 78501.

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 and/or grant funds to a non-profit organization, **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 grant a portion of the funds received to be designated for the Boys and Girls Club Community Development Project for expenses incurred in order to continue to provide vital community services which are in jeopardy after an existing facility closed. These services aim to foster Strong Healthy Communities by providing, expanded, and enhanced, child care and after school enrichment programs, which increase access to healthy food, tutoring, career preparation programs, safe recreational spaces, and support for students social, and emotional health needs in a disproportionately impacted community. Development of this neighborhood feature expands access to safe recreational spaces thereby promoting increase physical activity, which improves health outcome and allows for safe and socially distanced recreation during the ongoing COVID-

19 pandemic. The facility aims to revitalize the surrounding neighborhood environment, thus improving the health and public safety of those residing in the disproportionately impacted area and in compliance with the terms and criteria of the SLFRF 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, 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 childcare and afterschool enrichment programs, health programs, safe recreational spaces, and additional resources for children, families, and households in high poverty districts and other vulnerable populations, to mitigate the spread of COVID-19, and respond to disproportionately impacted communities; and

WHEREAS, the purpose of this agreement is to memorialize the understanding between the parties that the COUNTY will grant BGC a specified amount of the SLFRF in order to directly address the necessary expenses for actions taken to respond to the public health emergency and its negative economic impacts. In exchange, BGC will be able to provide expanded access to child care and afterschool enrichment programs, social and emotional health services, and safe recreational spaces in an underprivileged and disproportionately impacted community for the benefit of those residents in 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 public health and negative economic impact to individuals and families that have been disproportionately impacted by the COVID19 public health emergency, serves a public purpose 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. 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”**.
2. 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 sub-recipient of SLFRF, BGC agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient 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.
3. **ELIGIBILITY**. ARPA provides payments from the SLFRF may only be used to fund eligible uses, and specifically in this instance, funds are being transferred- to BGC, in response to, and in support of public health needs and negative economic impacts from the COVID-19 public health emergency,

as BGC will be able to continue providing vital community services, as well as provide expanded, and enhanced child care, after school and enrichment programs, tutoring, career preparation programs, safe recreational spaces, and support for students social and emotional health needs, targeted towards those individuals and families in Hidalgo County who reside in, near and around a Qualified Census Tract (QCT) or populations that have been and continue to be disproportionately impacted by 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 for purposes of the ARPA Funds, incurred means the (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 5.0 dated September 20, 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 (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)**.
5. BGC will provide services and related actions as authorized in the Treasury SLFRF Guidance and agrees to establish and maintain all necessary records and reports that may be required and provide all necessary documentation to ensure expenditures related to the administration of financial assistance in compliance with the SLFRF guidance (FAQ updated, July 27, 2022 attached hereto and incorporated by reference as **Exhibit “B”**).
6. COUNTY will grant funds from the SLFRF in the amount of **\$1,000,000.00** to BGC for the Boys and Girls Club of McAllen, South Community Development Project to include necessary expenses of actions directly related to the development of the project in response to the COVID-19 public health emergency. BGC will provide to County a proposed Budget of incurred and/or proposed expenses for the Boys and Girls Club of McAllen, South Community Development Project which shall be made part of this Agreement as **Exhibit “C”**. The Budget is intended to demonstrate how BGC plans to expend the designated funds within the eligibility criteria and the justification for same. The proposed Budget shall be provided to the Hidalgo County Budget Officer.
7. Upon execution of the Agreement by all parties and the submission of BGC’s proposed Budget, the COUNTY will disburse funds in one (1) 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 (.8) of this Agreement.
8. PAYMENT REQUESTS. BGC 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 BGC’s representation (to include supporting documentation) that is 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 arpa@auditor.co.hidalgo.tx.us.
9. BGC shall make quarterly reports to COUNTY to include a status of all expenditures and an updated Budget with supporting expense documentation. In addition, BGC shall provide to COUNTY a final report of COVID-19 related expenditures no later than November 30, 2024, and shall keep the

supporting documentation for a minimum of five (5) years. Moreover, BGC shall retain the improvements for a minimum of five (5) years after completion of the project. 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. Quarterly reports shall be provided to the Hidalgo County Budget Officer and the Hidalgo County Auditor.

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 SLFRF and/or this Agreement. 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. **PERFORMANCE MONITORING:** COUNTY will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, suspension or termination procedures will be initiated.
12. **PROGRAM REPORTING:** The Subrecipient shall submit such reports as required by the County to meet its local obligations and its obligations to Treasury. The County will prescribe the report format, as well as the time and location for submission of such reports. Required reports include, but are not limited to the following: A. Quarterly reports which shall include the progress made to date, or justification for lack of progress, in providing the services specified under the section entitled Responsibilities of the Parties in this Agreement. B. Quarterly reports on demographic and income information regarding persons assisted by the Subrecipient through this Agreement. C. Closeout reports including a final performance report, inventory of all property acquired or improved by SLFRF funds, and final financial report, upon termination or completion of the award.
13. **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.
14. 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.
15. BGC is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.
16. This Agreement is effective upon execution and ends on December 30, 2024. The term of this Agreement may be extended 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.
17. BGC warrants and represents that they are a non-profit with 501(c)(3) status and eligible to receive funds under the SLFRF.

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: Dalinda Gonzalez Alcantar
2620 W. Galveston, McAllen, TX 78501
(956) 682-5791

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.

27. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
28. This Agreement may be executed in any number of counterparts, including facsimile or scanned/emailed PDF documents. Each such counterpart, facsimile, or scanned/emailed PDF document shall be deemed an original instrument, all of which, together, shall constitute one and the same executed Agreement.
29. **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.
30. **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.
31. 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.
32. 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.
33. **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.

- 34. **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.
- 35. **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.
- 36. 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.
- 37. **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 and Girls Club of McAllen, South

Hidalgo County

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

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

By: _____
Jaelyn 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 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021, November 15, 2021, and January 2022, April 27, 2022, and July 27, 2022– to include any future updated guidance**
- EXHIBIT – C** **Proposed Budget**
- EXHIBIT – D** **Cost Reimbursement/Payment Request Form**