

County of Hidalgo, §
State of Texas §

**SECOND AMENDED MEMORANDUM OF UNDERSTANDING
DIRECTING CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
TO ASSIST WITH THE PRECINCT 2 TOGIVE INTERNATIONAL COMMUNITY
DEVELOPMENT PROJECT**

This Second 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 TOGIVE INTERNATIONAL (TOGIVE) “Grantee”, a local non-profit organization with its principal office located at 601 N. Main Street, McAllen, 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 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 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 ToGive International Community Development Project for expenses incurred in order to continue providing educational services and practices through fine arts education after-school curriculum for children and youth, in a disproportionately impacted community, 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 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 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 continue to have access to, educational services and practices through fine arts education after-school curriculum for children and youth in disproportionately impacted communities, and to mitigate the spread of COVID-19; and

WHEREAS, the purpose of this agreement is to memorialize the understanding between the parties that the COUNTY will grant TOGIVE 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, TOGIVE will continue to provide educational services and practices through fine arts education after-school curriculum for children and youth, 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 non-profits operation in a QCT that has been deemed by the treasury to be 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 TOGIVE, as follows:

RESPONSIBILITIES OF THE PARTIES:

1. TOGIVE 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. TOGIVE 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, TOGIVE agrees to comply with all terms and conditions required of entities accepting funds through this agreement and TOGIVE 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 payments from the SLFRF may only be used to fund eligible uses, and specifically in this instances, funds are being transferred- to TOGIVE, in order to continue to provide educational services and practices through fine arts education after-school curriculum for children and youth, targeted towards those individuals and families in Hidalgo County who reside in 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.
5. TOGIVE will provide services and related actions as authorized under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and 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 for five (5) years after funds have been expended. (FAQ updated January 2022, attached hereto and incorporated by reference as **Exhibit "B"**).
6. COUNTY will grant funds from the SLFRF in the amount of **\$252,900.00** to TOGIVE for the TOGIVE International Community Development Project, to include necessary expenses of actions directly related to continue providing educational services and practices through fine arts education after-school curriculum for children and youth, which will respond to the public health needs and support the negative economic impacts for those residents of the County in the QCT or those have been disproportionately impacted by the COVID-19 public health emergency. To that end, TOGIVE 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 TOGIVE plans to expend the designated funds.
7. Upon execution of the Agreement by all parties, and upon receipt of TOGIVE'S program plan and budget that meets the guidelines as outlined in the SLFRF, COUNTY will disburse funds in three (3) installments of \$84,300.00 per year over the next three (3) years, payable on or before December 31st of each year. Payment will be provided upon final review and approval of documentation received for each annual installment.
8. This Agreement is effective upon execution and ends on December 31, 2026. 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.
9. TOGIVE 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 "D"**), 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, 2026, and shall keep the supporting documentation for a minimum of five (5) years. TOGIVE 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 TOGIVE pertaining to this Agreement as it pertains to the use of federal funds.
10. **PROCUREMENT.** TOGIVE 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. TOGIVE, 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.** TOGIVE 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. TOGIVE agrees that all officers, employees, consultants or agents shall comply fully with the requirements of The SLFRF.
12. TOGIVE agrees that no person who is an officer, employee, consultant, or agent of the TOGIVE 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 TOGIVE is now seeking funds from the SLFRF.
 13. TOGIVE is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.
 14. TOGIVE warrants and represents that they are a non-profit with 501(c)(3) status and eligible to receive funds under the SLFRF.
 15. **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.
 16. **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.
 17. **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.**
 18. **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.
 19. **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.
 20. 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 TOGIVE. 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.
 21. **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 TOGIVE, and not otherwise.
 22. **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.
 23. **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 TOGIVE: Augusto Contreras
601 N. Main Street
McAllen, Texas 78504
(956) 445-6784

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.

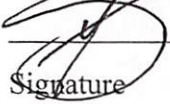
24. Neither party shall assign any right, benefit or duty under this Agreement without the other party's prior written consent.
25. This Agreement may be executed in any number of counterparts, including facsimile or scanned/emailed PDF documents. Each such counterpart, facsimile, or scanned/emailed PDF document shall be deemed an original instrument, all of which, together, shall constitute one and the same executed Agreement.
26. 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.
27. 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.
28. 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

TOGIVE policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. TOGIVE shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.

29. 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.
30. **LIABILITY FOR DISALLOWED COSTS.** TOGIVE 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. TOGIVE further understands and agrees that reimbursement to County of such disallowed costs shall be paid by TOGIVE from funds that were not provided or otherwise made available to TOGIVE pursuant to this Agreement or any other federal award.
31. **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.
32. **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 TOGIVE has by operation of law.
33. 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.
34. **AUTHORITY TO EXECUTE.** The execution and performance of this Agreement by County and TOGIVE have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and TOGIVE in accordance with its terms.

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

ToGive International



Signature

Jorge A. Contreras
Printed Name

Executive Director
Title

10/27/2022
Date

Hidalgo County


Signature

Richard F. Cortez
Printed Name

County Judge
Title

11/1/22
Date

APPROVED BY
COMMISSIONERS COURT
ON: 10/18/22 

Approved as to form for Hidalgo County:
Office of Criminal District Attorney, Ricardo Rodriguez, Jr.

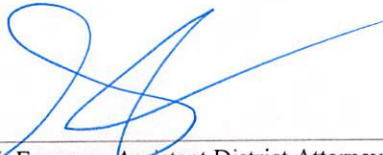
By: 
Jaclyn M. Erasmus, Assistant District Attorney

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** **Proposed Budget**
- EXHIBIT – D** **Cost Reimbursement/Payment Request Form**

**AI-88013
CC REGULAR AGENDA SPECIAL MTG**

**Budget and Management 28. B. 1.
American Rescue Plan Act**

Meeting Date: 10/18/2022

Submitted For: Eddie Cantu, COMM. PCT. #2 **Submitted By:** Erika Zamora, COMM. PCT. #2

Department: COMM. PCT. #2

CAPTION

Discussion, consideration, and approval of the second amended Memorandum of Understanding between ToGive International and the County of Hidalgo previously approved under the Hidalgo County American Rescue Plan Act - ToGive International Community Development Project on CC 03/08/2022 (AI-84699) and amended on CC 06/28/2022 (AI#86320).

BACKGROUND

ToGive International Community Development Project - Project Number: ARPA-22-122-068 CC 3/8/22 AI#84699

Fiscal Impact

CALENDAR YEAR: 2022

ACCT. #: 2-1290-441-22-115-257-1-843

FUNDS AVAILABLE Y/N?:N

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

N/A

Attachments

2nd MOU
legal approval

Form Review

| Inbox | Reviewed By | Date |
|---------------------------------|--------------------|---------------------------------|
| Budget & Management | Veronica Ortiz | 10/14/2022 03:55 PM |
| Final Approval | Monica Salinas | 10/14/2022 05:59 PM |
| Form Started By: Erika Zamora | | Started On: 10/14/2022 03:52 PM |
| Final Approval Date: 10/14/2022 | | |