

AT 11:40 FILED O'CLOCK A. M.  
DEC 05 2022  
ARTURO GUAJARDO, JR., COUNTY CLERK  
HIDALGO CO. TEXAS  
BY [Signature] DEPUTY

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMERICAN RESCUE PLAN ACT INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE COUNTY OF HIDALGO, TEXAS, AND HIDALGO COUNTY  
COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT FOR  
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

THIS Agreement is made on and entered into effective as of the 1st day of November, 2022, by and between the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), and **HIDALGO COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT**, hereinafter referred to as (“CSCD”), 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**, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; 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 CSCD for expenses related to the COVID-19 public health emergency to provide premium pay through an established program that will provide eligible workers who perform essential work during the COVID-19 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 CSCD desire to enter into this agreement for a public purpose and for the benefit of those essential workers who are relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities;

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

## **SECTION I RULES AND REGULATIONS**

1.1 The CSCD 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 CSCD certifies that CSCD 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 CSCD 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, CSCD agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and CSCD 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 a premium pay program to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.

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 CSCD premium pay program, and/or by March 31, 2023, whichever occurs first.

For purposes of the ARPA Funds, *incurred* means the unit of local government 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 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)**.

For the purposes of ARPA Funds, *eligible worker* means one who has been, and continues to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

For the purposes of ARPA Funds, *essential work* means, work involving regular in-person interactions or regular physical handling of items that were also handled by others”. A worker would not be engaged in essential work and, accordingly, may not receive premium pay for telework performed from a residence.

For the purposes of ARPA Funds, *premium pay* means an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker is permitted. If premium pay would increase total pay above 150% of their State’s average annual wage, or their residing county’s, a brief written justification of how the premium pay is responsive to workers performing essential work during the public health emergency is required.

Additional guidance related to premium pay, eligible workers and essential work may be found in **Exhibit “A”** and **Exhibit “B”** as noted above.

3.2 County has designated funds in the amount of \$510,015.00 to be allocated to CSCD to afford premium pay to eligible workers performing essential work as defined in the Act. These designated funds will be transferred to CSCD for disbursement upon the establishment of the Hidalgo County/CSCD premium pay program plan and budget for its eligible workers that meets the guidelines as outlined in the SLFRF. (See attached Exhibit “C”- premium pay program plan and budget).

3.3 In consideration of the CSCD’s representation that it will comply with the terms of the SLFRF and further agrees to comply with the terms of this Agreement, County agrees it will transfer to CSCD the amount necessary to fund the premium pay program as indicated in the attached Exhibit “C”. By March 31, 2023, CSCD shall provide to County proof of disbursements in accordance with the premium pay plan for review and auditing by County, if necessary, to ensure the expenditures incurred meet the criteria as set forth in the premium pay program and the SLFRF.

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

3.5 County will not be liable for costs incurred by CSCD 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. CSCD further represents and understands that amounts transferred to CSCD will be released contingent upon submission of an eligible premium pay program 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”.

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

## **SECTION V MONITORING VISITS**

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

## **SECTION VI AUDIT REQUIREMENTS**

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

10.3 CSCD 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 CSCD, 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, 2<sup>nd</sup> Floor  
Edinburg, TX 78539  
(956)318-2600

With copy to: Mr. Vidal Roman  
Hidalgo County Budget Officer  
505 S. McColl Rd. Suite G  
Edinburg, Texas 78539  
(956)292-7025  
-And-

Ms. Linda Fong  
Hidalgo County Auditor  
2808 S. Bus. Hwy 281  
Edinburg, Texas 78539  
(956)318-2511

If to CSCD: Mr. Faustino Lopez  
3100 S. Business 281  
P.O. Box 970  
Edinburg, Texas 78539

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 CSCD.

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

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

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

**HIDALGO COUNTY**

**HIDALGO COUNTY COMMUNITY  
SUPERVISION AND CORRECTIONS  
DEPARTMENT (CSCD)**

*Richard F. Cortez*

Richard F. Cortez  
Hidalgo County Judge

\_\_\_\_\_  
Faustino Lopez  
CSCD Executive Director



ATTEST

*Arturo Guajardo, Jr.*  
\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

APPROVED BY  
COMMISSIONERS COURT  
ON: *11/1/22 jml*

*Approved by Hidalgo County Commissioners Court on November 1, 2022*

APPROVED AS TO FORM FOR COUNTY:

Office of Hidalgo County 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 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**            **Premium Pay Program and Proposed Budget**