

INTERLOCAL COOPERATION AGREEMENT BETWEEN UTAH COUNTY AND LOCAL ENTITY FOR DISBURSEMENT FROM THE CORONAVIRUS RELIEF FUND

THIS IS AN INTERLOCAL COOPERATION AGREEMENT (“Agreement”) effective the 15th day of June, 2020 by and between Utah County, a political subdivision of the State of Utah (“County”) and _____, a political subdivision of the State of Utah (“Recipient”) (collectively “parties”).

WITNESSETH:

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act (“Interlocal Act”), Title 11, Chapter 13, Utah Code Annotated, 1953 as amended, public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into written agreements with one another for joint or cooperative action; and

WHEREAS, pursuant to the Interlocal Act, the parties desire to work together through joint and cooperative action that will benefit the residents of Recipient and County; and

WHEREAS, the parties to this Agreement are public agencies as defined in the Interlocal Act; and

WHEREAS, earlier this year the United States of America began battling a public health emergency known as Coronavirus Disease 2019 (“COVID-19”). On March 27, 2020 and in response to COVID-19, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”); and

WHEREAS, the Federal Government provided \$1.25 billion to Utah state and local governments through the Coronavirus Relief Fund (“CRF”) included in section 5001 of the CARES Act. Based on the distribution formula in the CARES Act, \$934.8 million was paid to the State of Utah (“State”), \$203.6 million was paid directly to Salt Lake County, and \$111.6 million was paid directly to Utah County (the “County Allocation”). State and local governments can only use the CRF payments to respond to the COVID-19 pandemic. While the County is not required to distribute a portion of its \$111.6 million payment to local entities, the County Commission have elected to share a portion with local entities within Utah County; and

WHEREAS, the CARES Act provides that payments from CRF may only be used to cover costs that: (1) are necessary expenditures incurred due to the public health emergency with respect to COVID–19, (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

NOW, THEREFORE, the parties do mutually agree, pursuant to the terms and provisions of the Interlocal Act, as follows:

Section 1. EFFECTIVE DATE; DURATION

This Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Act, upon the submission of this Agreement to, and the approval and execution thereof by Resolution of the governing bodies of each of the parties to this

Agreement. The term of this Agreement shall be from the effective date hereof through December 31, 2020.

This Agreement shall not become effective until it has been reviewed and approved as to form and compatibility with the laws of the State of Utah by the Utah County Attorney's Office and the attorney for Recipient. Prior to becoming effective, this Agreement shall be filed with the person who keeps the records of each of the parties hereto.

Section 2. ADMINISTRATION OF AGREEMENT

The parties to this Agreement do not contemplate nor intend to establish a separate legal entity under the terms of this Agreement. The parties hereto agree that, pursuant to Section 11-13-207, Utah Code Annotated, 1953 as amended, County, shall act as the administrator responsible for the administration of this Agreement. The parties further agree that this Agreement does not anticipate nor provide for any organizational changes in the parties. The administrator agrees to keep all books and records in such form and manner as the Utah County Clerk/Auditor shall specify and further agrees that said books shall be open for examination by the parties hereto at all reasonable times.

Section 3. PURPOSE

This Agreement has been established and entered into between the County and Recipient to provide CRF funds to the Recipient from the County Allocation to respond to the COVID-19 pandemic.

Section 4. CRF FUNDING AMOUNTS

1. From the County Allocation, \$20 million will be set aside for economic support, to be overseen and recommended by a seven-member committee chosen by the Council of Governments (“COG”) within Utah County and then allocated by the County in accordance with the recommendation. This \$20 million shall be known as “Part 1” of the County Allocation and shall only be expended as authorized by the CARES Act including the costs incurred by County to administer this Part 1. This seven-member committee shall comply with the Utah Open and Public Meetings Act, Utah Code, Title 52, Chapter 4.

2. From the County Allocation, \$45,815,170.95 will be set aside for eligible recipients who may receive an allocation up to the maximum amount listed in the Available Funds for Cities and Unincorporated County document attached hereto as Exhibit “A” and incorporated herein by this reference. This \$45,815,170.95 shall be known as “Part 2” of the County Allocation. This amount may be subject to revision by the County due to federal mandate or by an order of a court of law. If Recipient places any CRF funds in an interest-bearing account, Recipient must expend the interest earned on CRF funds in accordance with the requirements of the CARES Act or return the interest earned to County. If Recipient received funds from any other sources other than the County Allocation, then Recipient shall provide an accounting to County of all such funds from the other sources and repay to County such funds up to an amount equal to the Recipient’s portion of the County’s Allocation. Recipient acknowledges that it shall receive no funds from the County outside of those CRF funds in the County Allocation.

3. From the County Allocation, \$45,815,170.95 will be set aside for the County. This \$45,815,170.95 shall be known as “Part 3” of the County Allocation.

Section 5. PERMISSIBLE USE OF CRF FUNDING

The CARES Act and additional guidance issues by the United States Treasury Department provides that CRF funds may only be used to cover costs that meet the following conditions:

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
 - a. The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency.
 - b. CRF Funds may NOT be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.
 - c. The expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending the CRF funds.
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the Recipient; and
 - a. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of CRF funds in such a line item, allotment, or allocation.
 - b. The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the Recipient, without taking into account subsequent supplemental

appropriations enacted or other budgetary adjustments made by the Recipient in response to the COVID-19 public health emergency.

- c. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
- a. A cost is “incurred” when the Recipient has expended funds to cover the cost.

These provisions and guidance are current as of May 26, 2020. The Recipients accepting funds must agree to adhere to any additional current or future Federal or State legislative guidance regarding spending, reporting, or any other matter related to CRF funds. Further, the Recipients shall require that any subgrantee to which it awards CRF funds adhere to the CARES Act and any current or future guidance related to the CRF funds. Federal guidance has been updated regularly and can be found at <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

Section 6. TIME PERIOD

The Recipient has until **November 2, 2020** to expend the CRF funds and provide the necessary documentation of the expenditure of the CRF funds to County. CRF funds provided by the County that are not expended on eligible expenditures on or before **November 2, 2020**, must be returned to the County on or before 5:00 P.M. MST, **November 9, 2020**, so that the County will have time to reallocate and expend the funds before they expire on December 30, 2020. The Recipient may petition the County to retain allocated, but unspent CRF funds, after the **November 2, 2020** date, with approval from the County. Any requests for exceptions shall be emailed to Peter Brown, Finance Manager COVID Project, in the Utah County Clerk/Auditor’s Office, peterb@utahcounty.gov, before 5:00 P.M. MST, November 2, 2020.

Section 7. REPORTING ON USE OF CRF FUNDS

The Recipient shall retain documentation related to any uses of the CRF funds, including but not limited to invoices and/or sales receipts. All payroll expenditures must illustrate compliance with CARES Act by detailed, daily documentation. Any subgrants made by the Recipient shall similarly require, as a term of the grant, that the subgrantee shall retain documentation and shall produce such documentation to the Recipient and the County upon request.

Consistent with County's responsibilities for the management of CARES funds distributed to it and in accordance with being subject to the Federal Single Audit Act, Recipient shall be prepared to submit receipts and HR records if requested in connection with an audit. All receipts should be individually accompanied (either physically or by PO number) by an explanation form that will be provided by the County that will need to explain how the expenses respond to the "reasonably necessary" justification of the CARES Act Coronavirus Relief Fund (CFR). The Recipient is required to report CRF expenditures at the detailed transaction level on a quarterly basis or data uploaded to Transparent Utah if available for use by County and Recipient. CRF Funds will be identified using function codes specified for these CRF funds in the Uniform Chart of Accounts for Local Government of Utah (revised June 2020) and related resources provided by the Office of the State Auditor. The Recipient is also required to provide summary and detailed documentation supporting the use of CRF Funds upon request of County, state, federal, or independent auditors. The County may request additional reporting if necessary.

Section 8. ACCOUNTABILITY FOR THE USE OF CRF FUNDS

If County, state, or federal audit findings determine that any CRF funds were expended by

the Recipient in violation of the requirements of the CARES Act and request repayment of those CRF funds, the Recipient shall provide funds to the County for repayment to the Federal Government as required by the CARES Act. If the County is forced to repay the funds because the Recipient is unwilling or unable to repay the funds, the amount paid by the County will become a past due obligation of the Recipient to the County and may be collected as such.

Section 9. AVAILABILITY OF CRF FUNDS

It is expressly understood and agreed that the obligation of the County to proceed under this Agreement is conditioned upon the availability of CRF funds remaining in the County Allocation. If the CRF funds anticipated for the continuing fulfillment of the Agreement from the County Allocation are, at any time, not forthcoming or insufficient, either through the failure of the Federal government to provide or if CRF funds are not otherwise available to the County, the County shall have the right upon ten (10) working days written notice to the Recipient, to terminate this Agreement without damage, penalty, cost, or expense to the Recipient of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

It is also expressly understood and agreed that any disbursement of CRF funds to Recipient shall be considered an advance payment from County to Recipient subject to repayment of those CRF funds. Recipient shall either submit to County the appropriate justification documents of funds under the CARES Act or repay the CRF funds to the County. If the Recipient is unwilling or unable to repay any portion of the CRF funds which are not expended as required herein, that amount of the CRF funds will become a past due obligation of the Recipient to the County and may be collected as such.

Section 10. METHOD OF TERMINATION

This Agreement will automatically terminate at the end of its term herein, pursuant to the provisions of paragraph one (1) of this Agreement. Prior to the automatic termination at the end of the term of this Agreement, any party to this Agreement may terminate the Agreement sixty (60) days after providing written notice of termination to the other party. The Parties of this Agreement agree to bring current, prior to termination, any financial obligation contained herein.

Section 11. INDEMNIFICATION

To the fullest extent permitted by law, Recipient shall indemnify and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, audits, orders, decrees, judgements, losses, risks of loss, damages, expenses, and liabilities arising out of or related to the Agreement. Recipient shall also pay any litigation and appeal expenses that County incurs, including attorney's fees, penalties, and interest arising out of or related to the Agreement. Recipient shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of the Agreement. County reserves the right to conduct, control, and direct its own defense for any claims, demands, causes of action, audits, orders, decrees, judgements, losses, damages, expenses, and liabilities arising out of or related to the Agreement. Both Recipient and County agree that the terms of this Agreement are subject to, and not a waiver of, the protections, immunities and liability limits of the Governmental Immunity Act, U.C.A. 63G-1-101, et. seq. Recipient's obligations under this provision shall survive the expiration or other termination of this Agreement.

Section 12. FILING OF INTERLOCAL COOPERATION AGREEMENT

Executed copies of this Agreement shall be placed on file in the office of the County Clerk/Auditor of County and with the official keeper of records of Recipient and shall remain on file for public inspection during the term of this Agreement.

Section 13. ADOPTION REQUIREMENTS

This Agreement shall be (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties (c) submitted to and approved by an Authorized Attorney of each of the parties, as required by Section 11-13-202.5, Utah Code Annotated, 1953 as amended, and (d) filed in the official records of each party.

Section 14. AMENDMENTS

This Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, (c) submitted to and approved by an Authorized Attorney of each of the parties, as required by Section 11-13-205.5, Utah Code Annotated, 1953 as amended, and (d) filed in the official records of each party.

Section 15. SEVERABILITY

If any term or provision of the Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent

permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Agreement unenforceable.

Section 16. NO PRESUMPTION

Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that each of the parties have participated in the preparation hereof.

Section 17. HEADINGS

Headings herein are for convenience of reference only and shall not be considered any interpretation of the Agreement.

Section 18. BINDING AGREEMENT

This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties hereto.

Section 19. NOTICES

All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their addresses first above written, or at such other addresses as may be designated by notice given hereunder.

Section 20. ASSIGNMENT

The parties to this Agreement shall not assign this Agreement, or any part hereof, without the prior written consent of all other parties to this Agreement. No assignment shall relieve the original parties from any liability hereunder.

Section 21. GOVERNING LAW

All questions with respect to the construction of this Agreement, and the rights and liability of the parties hereto, shall be governed by the laws of the State of Utah.

Section 22. COUNTERPARTS AND FACSIMILE SIGNATURES

The Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, emailed, texted, electronic, or power of attorney signatures shall be binding upon the executing party.

Section 23. SUB-RECIPIENT REQUIREMENTS

By virtue of terms and conditions of the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. CRF funds received through this Agreement make Recipient a sub-recipient of the federal grant.

As Recipient is a Sub-recipient of the grant monies, and as such, shall have no authorization, express or implied, to bind County to any agreements, settlements, liability, or

understanding whatsoever, and agrees not to perform any acts as agent for the County, except as herein expressly set forth. Recipient as Sub-recipient shall be responsible for the payment of all income tax and social security amounts due as a result of CRF funds received from the County for these necessary COVID-19 related purchases. Persons employed by the County and acting under the direction of the County shall not be deemed to be employees or agents of Recipient.

- a) All Recipient’s records with respect to any matters covered by this Agreement shall be made available to the County, State of Utah, and the Comptroller General of the United States or any of their authorized representatives.
- b) Failure of Recipient to comply with the above requirements will constitute a violation of this Agreement and may result in the withholding of future payments.
- c) Local governments or non-profit organizations that expend \$750,000 or more in total federal financial assistance (from all sources) in the Recipient's fiscal year shall have a Single Audit completed.
- d) All Sub-recipient's, regardless of Single Audit eligibility, will make all pertinent financial records available for review, monitoring or audit, in a timely manner to appropriate officials of the federal granting agency, State of Utah, County and/or the General Accounting Office.
- e) To comply with 2 C.F.R. § 200.331 the County as the pass-through entity is providing the following required information:

Subrecipient Name	[City Name]
Subrecipient DUNS number	[City DUNS]
Federal Award Identification Number	Not Available
Federal Award Date	March 27, 2020
Subaward Period of Performance Start & End Date	March 1, 2020 – December 30, 2020

Amount of Federal Funds Obligated by this action by the County to the Subrecipient	[Award Amount]
Total Amount of Federal Funds Obligated to the Subrecipient by the County including the current obligation	[Award Amount]
Total Amount of the Federal Award committed to the Subrecipient by the County	[Award Amount]
Federal award project description	Project description: Through this subaward, Utah County will provide Covid-19 relief funding for direct support for cities in Utah County, direct support relating to expenditures “reasonably necessary” to help combat the spread of Covid-19.
Name of Federal awarding agency	United States Department of the Treasury
Name of pass-through entity	Utah County Government
Contact information for awarding official of the pass-through entity	Utah County Auditor’s Office Attn: Peter Brown, CARES Act Finance Manager 100 East Center Street, Suite 3600 Provo, UT 84606 Phone: 801.851.8222 Email: PeterB@UtahCounty.gov
CFDA Number and Name	21.019
Is the award for Research and Development?	No
Indirect cost rate for the Federal award	None

Nothing contained in this Agreement is intended to, nor shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Recipient as Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-recipient is an independent contractor.

UTAH COUNTY

Authorized by Resolution No. 2020-____, authorized and passed on the _____ day of

_____, 2020.

**BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH**

By: _____
TANNER AINGE, Chairman

ATTEST: AMELIA POWERS GARDNER

Utah County Clerk/Auditor

By: _____
Deputy

**APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:
DAVID O. LEAVITT**

Utah County Attorney

By: _____
Deputy County Attorney

RECIPIENT

Authorized by Resolution No. _____, authorized and passed on the _____ day of _____, 2020.

By: _____
MAYOR

ATTEST: _____
City/Town Recorder

APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:

City/Town Attorney