

INTERLOCAL COOPERATION AGREEMENT

Between

_____ COUNTY, UTAH and _____ CITY, UTAH

THIS INTERLOCAL COOPERATION AGREEMENT (“Agreement”) is entered into between _____ COUNTY, a body corporate and politic of the State of Utah (“County”), and _____ CITY, a Utah municipality within _____ County (“Municipality”). The County and Municipality may collectively be referred to hereinafter as “the Parties.”

RECITALS:

WHEREAS, the Parties are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 et seq. (the Cooperation Act”), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage; 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 Coronavirus Aid, Relief, and Economic Security Act Federal Funding (CARES) Act; and

WHEREAS, State and local governments may only use the CRF payments to respond to the COVID-19 pandemic; and

WHEREAS, the State of Utah, as permitted by the U.S. Treasury, is distributing a portion of its \$934.8 million CRF disbursement provided by the CARES Act to Utah’s counties and municipalities located outside of Salt Lake County and Utah County (eligible local governments); and

WHEREAS, the County received funds through the State distribution of CRF funds and entered into an interlocal agreement with the State of Utah; and,

WHEREAS, municipalities within the County also received funds through the State distribution of CRF funds and entered into an interlocal agreement with the State of Utah; and

WHEREAS, the Parties now desire to enter into an interlocal agreement by which the County may manage reporting and disbursement of CRF funds on behalf of the Municipality.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this agreement, the mutual benefits to the parties to be derived herefrom, it is hereby agreed as follows:

1. DISBURSEMENT OF FUNDS

A. The Municipality will pay all or a portion of its one-third CRF allocation from the State to the County, at the discretion of the Municipality, to manage and oversee proper disbursement of funds, in accordance the CARES Act and US Department of Treasury (Treasury) guidelines.

B. All or a portion of the remaining two-thirds of CRF disbursed to the Municipality in the future, subject to the availability of funding and at the discretion of the Municipality, will also be paid to the County to oversee its distribution according to Treasury guidelines.

2. FUNDING AMOUNT:

A. Eligible counties and municipalities which accepted the terms and conditions of the agreement with the State of Utah (recipients) may be paid up to the maximum amount listed in the attached State of Utah Coronavirus Relief Fund Allocation to Eligible Municipal and County Governments document. The funding population-based allocation formula was developed

after discussions between the Governor's Office of Management and Budget, the Office of the Legislative Fiscal, the Utah Association of Counties, and the Utah League of Cities and Towns. The formula was also presented to the Legislature's Executive Appropriations Committee during its May 13, 2020 meeting. This maximum amount is not guaranteed, and the amount may be subject to revision by the Governor or the Legislature. Upon approval of this agreement, recipients will be paid one-third of their CRF allocation from the State. The remaining two-thirds will be disbursed in the future, subject to the availability of funding.

3. PERMISSIBLE USE OF FUNDING

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

- i. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 1. 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.
 2. Funds may NOT be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.
 3. The expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending the funds.
- ii. were not accounted for in the State's or recipient's budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the recipient; and
 1. 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 funds in such a line item, allotment, or allocation.
 - 2. The “most recently approved” budget refers to the State’s or recipient’s 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.
 - 3. 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.
- iii. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
- 1. A cost is “incurred” when the recipient has expended funds to cover the cost. These provisions and guidance are current as of May 28, 2020. 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 the CRF. Further, 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.
 - a. Federal guidance is updated regularly and can be found at <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>. The latest guidance documents from the U.S. Treasury are attached to this Agreement

4. AVAILABILITY OF FUNDING

- A. The Parties have until November 30, 2020 to expend the CRF funds provided by the State. CRF funds provided by the State that are not expended on eligible expenditures on or before November 30, 2020, shall be returned to the State on or before 5:00 P.M. MST, December 4, 2020, so that the State will have time to reallocate and expend the funds before they expire on December 30, 2020. The Parties may petition the State to retain allocated, but unspent CRF funds, after the November 30, 2020 date, with approval from the State.
 - (i) Any requests for exceptions shall be emailed to Taylor Kauffman in the Governor's Office of Management and Budget, tkauffman@utah.gov, before 5:00 P.M. MST, November 23, 2020.

5. ACCOUNTABILITY FOR THE USE OF FUNDS

- A. Funds provide through this agreement are considered to be federal financial assistance subject to 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. The CFDA number assigned to the CRF is 21.019, pending completion of registration by the federal government. This agreement allows the County to manage reporting and disbursement on behalf of the municipality. If state or federal audit findings determine that any funds were expended by the recipient in violation of CARES Act requirements and result in a request for repayment to the Federal Government of those funds, the recipient shall provide funds to the State sufficient to meet such repayment request(s). If the State is forced to repay the funds because the recipient is unwilling or unable to repay the funds, the amount paid by the State will become a past due obligation of the recipient to the State and may be collected as such.

6. GENERAL PROVISIONS

- A. Interlocal Cooperation Act. In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:
- (i) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Section I 1- I3-202.5 of the Cooperation Act.
 - (ii) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 1 I-I3-209 of the Cooperation Act.
 - (iii) The term of this Agreement shall not exceed fifty (50) years pursuant to Section I 1-13-216 of the Cooperation Act.
 - (iv) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.
 - (v) No separate legal entity is created by the terms of this Agreement and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties under this Agreement.
- B. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be deemed sufficient if given by a written communication and shall be deemed to have been received upon personal delivery, actual receipt, or within three (3) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed to the Parties as set forth below:
- C. Term of the Agreement. This agreement shall be effective upon execution by all Parties and shall continue through December 31, 2021 (the "Initial Term"). At the conclusion of the Initial Term, the Parties shall have the option to extend the Agreement for two (2) additional five-year terms, upon the same terms and conditions set forth in this Agreement. This option to extend the Agreement shall be exercised upon any Party providing written notice to the other Parties

at least thirty (30) days prior to the expiration of the Initial Term, and upon all Parties signing a letter indicating the extension of the Agreement prior to expiration of the Initial Term.

- D. Agency. No agent, employee, or servant of one Party is or shall be deemed to be an agent, employee, or servant of the other Parties. None of the benefits provided by one Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other Parties. The Parties shall each be solely and entirely responsible for their own acts and for the acts of their respective agents, employees, and servants during the performance of this Agreement.
- E. Indemnification.
 - (i) The Parties agree to indemnify, hold harmless, and defend both the County and the Municipality, their officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the County or Municipality, their subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, the County or Municipality's breach of this Agreement or any acts or omissions of or by the County or Municipality, their agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement.
- F. Governmental Immunity. The Parties are governmental entities under the Governmental Immunity Act of Utah, §§ 630-7-101, et seq. (1953, as amended) (the "Immunity Act"). Nothing contained in this Agreement shall be construed in any way to modify the limits of liability set forth in that Act or the basis for liability as established in the Act. Nothing contained in this Agreement shall be construed as a waiver by any Party of any defenses or limits of liability available under the Immunity Act and other applicable law. The Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

- G. No Officer or Employee Interest. It is understood and agreed that no officer or employee of any Party has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement.
- H. Default. If either party defaults in the performance of the Agreement, or any of its covenants, terms, conditions or provisions, the defaulting party shall pay all costs and expenses, not including attorneys fees, which may arise or accrue to the non-defaulting party from enforcing the Agreement.
- I. No Limitation of Rights. The rights and remedies of the Parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The Parties agree that the waiver of any breach of this Agreement by any Party shall in no event constitute a waiver as to any future breach.
- J. Compliance with Laws. The Parties shall comply with all applicable statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority in the performance of its obligations under this Agreement.
- K. Records. Financial records, supporting documents, statistical records and all other records pertinent to this Agreement must be kept readily available for review by Parties from time to time upon either Party's request. Such records must be retained and maintained for a minimum of three (3) years after the end of a budget period. If question still remain, such as those raised as a result of an audit, records must be retained until completion or resolution of any audit in process or pending resolution. Such records are subject to the Utah Government Records Access and Management Act, Utah Code Ann. §§ 630-2-101 et seq. (1953, as amended).
- L. Assignment and Transfer. The Parties may not assign or transfer their respective duties of performance nor their rights under this Agreement.
- M. Time. The parties stipulate that time is of the essence in the performance of this Agreement.

- N. Entire Agreement. This Agreement and the attached Policies and Procedures constitutes the entire Agreement between the Parties, and no statements, promises, or inducements made by either party, or agents for either party, that are not contained in this written Agreement and the attached Policies and Procedures shall be binding or valid. This Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties; and the attached Policies and Procedures may not be enlarged, modified or altered, except in the manner set forth in the Policies and Procedures.
- O. Severability. The Parties agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be void, voidable, unenforceable, or invalid, prohibited or unenforceable under applicable law, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.
- P. Governing Law. It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of the County, both as to interpretation and performance. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County.
- Q. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.
- R. Warrant of Signing Authority. The person or persons signing this Agreement on behalf of each Coalition Member warrants his or her authority to do so and to bind the Coalition Member.

CONTACT INFORMATION

Municipality Information

Municipality Name:

Street Address:

City, State, ZIP Code:

Municipality's preferred method of payment:

☐ Other _____

Contact Person Name: _____

Contact Person Title: _____

Contact Person Phone: _____

Contact Person E-mail: _____

County Information

County Name:

Street Address:

City, State, ZIP Code:

County's preferred method of payment receipt:

☐ Other _____

Contact Person Name: _____

Contact Person Title: _____

Contact Person Phone: _____

Contact Person E-mail: _____

ACCEPTANCE

MUNICIPALITY

Acceptance of the Agreement by the or Municipality's Chief Executive, Chief Administrator, or Chief Financial Officer:

☐ I have read the attached Terms and Conditions for Accepting Coronavirus Relief Fund Monies from the State of Utah.

☐ I accept the Terms and Conditions for Coronavirus Relief Fund Monies from the State of Utah and am authorized to do this on behalf of the Municipality submitting these funds to the County.

Signature: _____

Municipality Authorized Representative: _____

Title of Municipality Authorized Representative:

Date: _____

COUNTY

Acceptance of the Agreement by the or County's Chief Executive, Chief Administrator, or Chief Financial Officer:

☐ I have read the attached Terms and Conditions for Accepting Coronavirus Relief Fund Monies from the State of Utah.

☐ I accept the Terms and Conditions for Coronavirus Relief Fund Monies from the State of Utah and am authorized to do this on behalf of the County receiving these funds from the Municipality.

Signature: _____

County Authorized Representative: _____

Title of County Authorized Representative: _____

Date: _____