

STATE OF TEXAS §

COUNTY OF HIDALGO §

**CARES ACT INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO, TEXAS, AND
THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY**

THIS Agreement is made on and entered into effective as of the ____ day of July, 2020, by and between **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), and **THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY** hereinafter referred to as (“UTRGV”), 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, UTRGV is an institution of higher education defined as a “state agency” under Section 771.002, Government Code, and identified as a party that may be contracted with under the Interlocal Cooperation Act, Section 791.011(b), Government Code; 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, the County and UTRGV and their respective communities have been affected by the COVID-19/Coronavirus public health emergency and the resulting Federal, State and Local disaster declarations and executive orders regarding the same; and

WHEREAS, the County, pursuant to its statutory and constitutional authority, is responsible for the safety and well-being of its citizens, UTRGV, pursuant to its statutory authority, is responsible for the education and training of students and physicians and for the safety and well-being of its students, employees, faculty and patients it serves, and both are desirous that the necessary services and equipment are available to respond to the public health emergency; and

WHEREAS, the County and UTRGV are authorized to enter into this Agreement pursuant to the Act, which authorizes local governments to contract with each other and with agencies of the state, to perform governmental functions and services under the terms of the Interlocal Cooperation Act; and

WHEREAS, on or about March 27, 2020, the Federal Government passed the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), including the Coronavirus Relief Fund (the “CRFund”) which provides for direct payments to qualifying units of local governments navigating the impact of the COVID-19 outbreak; and

WHEREAS, the County met the population threshold and received a direct distribution of the CRFund to be used for 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”) issued April 22, 2020, (which is attached hereto and incorporated by reference herein as **Exhibit “A”**), the CRFund allows a recipient to transfer funds to another unit of government provided that the transfer qualifies as **a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act as outlined in the Guidance**; and

WHEREAS, the County desires to designate a portion of the funds received to reimburse UTRGV for expenses incurred as a result of the COVID-19 public health emergency in compliance with the terms and criteria of the CRFund and as more fully described below; and

WHEREAS, amounts paid from the CRFund are subject to restrictions outlined in the Guidance and as set forth in section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act; and

WHEREAS, the CRFund 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 UTRGV desire to enter into this agreement for a public purpose and for the benefit of the residents of County and UTRGV and to further detail each party’s duties and responsibilities; and

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

**SECTION I
RULES AND REGULATIONS**

1.1 The UTRGV agrees to abide by the Guidance provided under the CARES Act, Coronavirus Relief Fund, and as more particularly described in section 601(d) 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 UTRGV certifies that UTRGV and its contractors/vendors associated with this Agreement are 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 BUDGET**

3.1 UTRGV represents that it has read and understood the terms and conditions of the CRFund attached hereto as **Exhibit “A”** and as a condition of participating in the CRFund UTRGV agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and UTRGV further warrants and represents to the County that the expenditures it has incurred and expended meet the criteria allowed under the CRFund as outlined below:

The CARES Act provides that payments from the CRFund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (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 government; and
3. were incurred and expended during the period that begins on March 1, 2020, and ends on December 30, 2020.

For purposes of the CARES Act Funds, *incurred* means the unit of government (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 provided in the attached **Exhibit “A”** and in the additional CRF FAQ’s and guidance provided by the U.S. Department of Treasury (dated April 22, 2020, May 4, 2020 and May 28, 2020) which are attached hereto and incorporated by reference herein as **Exhibit “B” (to include Hidalgo County’s General Guidelines and any future updated guidance from the U.S. Treasury)**.

3.2 County has designated funds in the amount of \$3,675,000 to be allocated to UTRGV on a reimbursement basis only. To that end, UTRGV shall provide County with a proposed budget (**Budget**) of incurred and proposed expenses to be made part of this Agreement. (**See Budget form with instructions attached hereto as Exhibit “C”**). Further, as part of their **Budget**, UTRGV shall provide a plan on how they will expend the designated funds by December 30, 2020. Failure to expend designated funds by December 30, 2020, may result in re-programming and/or reallocation of CRFunds by County.

3.3 In consideration of the UTRGV’s representation that it has complied with the terms of the CRFund and further agrees to comply with the terms of this sub-recipient Agreement, County agrees it will reimburse to UTRGV only those amounts which meet the identified criteria after review and auditing by either County and/or the U.S. Department of Treasury. This does not mean County will reimburse UTRGV for each and every proposed expenditure submitted, but rather those that meet the criteria identified in the Guidance. **See Exhibits “A” and “B.”**

3.4 UTRGV agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from their proposed Budget and/or the requirements of this Agreement. Budget adjustments will be considered and may be submitted to Mr. Sergio Cruz, Hidalgo County Budget Officer, for final approval by County.

3.5 County will not be liable for costs incurred or performances rendered by UTRGV before commencement of this Agreement or after termination of this Agreement and will not be responsible for reimbursements pertaining to costs incurred or performances rendered that are not in compliance with this Agreement. UTRGV further represents and understands that amounts reimbursed to UTRGV may be released in phases and contingent upon approval of conditions and criteria having been met to that point.

3.6 Upon request, UTRGV 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 required for reimbursement under this Agreement.

3.7 Upon execution of the Agreement by all parties and the submission of UTRGV’s proposed budget, County will disburse twenty-percent (20%) of CRFunds designated for UTRGV as noted in §3.2 to reimburse UTRGV for necessary expenses incurred related to the COVID-19 public health emergency.

SECTION IV RECORDS AND REPORTS

4.1 UTRGV agrees to establish and maintain all necessary records and reports that may be required for reimbursement of CRFunds from County. UTRGV understands that it is solely the UTRGV's responsibility to keep all records and reports pertaining to CRFund activity in a manner acceptable to the U.S. Department of Treasury.

4.2 Per the CARES Act 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 601(d) of the Social Security Act.

4.3 Pursuant to 2 CFR §200.333, as a sub-recipient, UTRGV must retain records and any supporting documentation for a minimum of three (3) years from the later of the completion of the CRFund's public objective, submission of the final expenditure report, any litigation, dispute or audit.

4.4 Records related to real property and equipment acquired with CRFunds shall be retained for three (3) years after final disposition.

4.5 County may direct UTRGV 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.

4.6 Failure to maintain records and reports as required will result in delay or forfeiture of reimbursement of the UTRGV's designated CRFunds. In the event the U.S. Department of Treasury disallows expenditures submitted by UTRGV for reimbursement due to UTRGV's failure to submit the necessary records, UTRGV understands that any monies reimbursed by County shall then be repaid to County by UTRGV in accordance with §10.1.

SECTION V MONITORING VISITS

5.1 UTRGV shall allow County to conduct on-site monitoring visits to assure compliance with applicable federal requirements, terms and conditions, and adequacy of timeliness of performance by UTRGV and those performance goals are being achieved, if applicable. UTRGV 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 belonging to or in use by UTRGV pertaining to this Agreement as it pertains to the use of federal funds.

SECTION VI PAYMENT REQUESTS

6.1 Requests for reimbursement shall be submitted on the prescribed **Cost Reimbursement Request Form (Exhibit "D")** with all supporting records and documentation that may be necessary for submission to the U.S. Department of Treasury. Examples of supporting documentation can be found in

the County's General Guidelines attached as **Exhibit "B."** Requests for reimbursement with supporting documentation shall be submitted to COVID-19@auditor.co.hidalgo.tx.us.

6.2 UTRGV shall further provide County with a final Cost Reimbursement Request Form, and all documentation required no later than 30 days after the period of performance of this Agreement, or November 30, 2020.

SECTION VII AUDIT REQUIREMENTS

7.1 UTRGV 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 VIII SUSPENSION AND TERMINATION

8.1 UTRGV understands that this Agreement may be suspended or terminated if UTRGV materially fails to comply with the provisions of the Agreement or the prescribed terms and conditions as provided in the attached **Exhibits "A", "B", "C" and "D."**

8.2 If UTRGV fails to fulfill in a timely and proper manner its obligations under this Agreement, or UTRGV violates any of the agreements or stipulations of this Agreement, then the County shall provide UTRGV written notification of such non-performance. Such non-performance may be the basis for immediate termination of the Agreement. **Should any breach by the UTRGV 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 UTRGV or its successor, the County will terminate Agreement and seek reimbursement of all funds from UTRGV.** To the extent authorized by the Constitution and laws of the State of Texas, UTRGV 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 UTRGV. To the extent authorized by the Constitution and laws of the State of Texas, County may take any and all appropriate action including injunctive relief against UTRGV to prevent the continued failure of UTRGV to comply with the CRFund 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.

8.3 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 UTRGV's obligation to reimburse County for any incurred expenses disallowed by the U.S. Department of Treasury or any other overseeing federal agency.

SECTION IX ASSETS

9.1 UTRGV shall not purchase any asset unless so permitted by the Guidance and to the extent the purchase of the asset is consistent with the limitation on the eligible use of funds provided by section 601(d) of the Social Security Act.

9.2 Procurement of any assets meeting the requirements of the CRFund shall be done in the form and

manner as required by both State **and** Federal law, as noted in Section XII below.

9.3 UTRGV as a Sub-Recipient of the CRFund shall maintain property records, perform a physical inventory, reconcile results of the physical inventory to property records, safeguard the property, maintain the property, and use proper disposition procedures to ensure the highest possible return. UTRGV shall be responsible for the care, maintenance, repair, custody, control, disposition and use of any asset purchased with CRFunds.

9.4 The disposition of any asset improved or acquired in part or in whole with CRFunds by the UTRGV during the covered award period or just prior to the expiration of that term, December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the CRFund provided by section 601 (d) of the Social Security Act.

SECTION X LIABILITY FOR DISALLOWED COSTS

10.1 UTRGV understands and agrees that as a sub-recipient under this Agreement it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of UTRGV CRFunds. UTRGV further understands and agrees that reimbursement to County of such disallowed costs shall be paid by the UTRGV from funds that were not provided or otherwise made available to UTRGV pursuant to this Agreement or any other federal award.

SECTION XI INDEMNITY CLAUSE AND INSURANCE REQUIREMENT

11.1 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.

11.2 County acknowledges that, as an agency of the State of Texas, UTRGV's liability for the tortious conduct of agents and employees of UTRGV (other than medical liability of its physicians) or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Acts (Texas Civil Practice and Remedies Code, Chapters 101, 104, and 108). County further acknowledges that UTRGV shall self-insure against any other risk that may be incurred by UTRGV as a result of its duties and participation under this Agreement. No Insurance carrier of either party shall have a right of subrogation against the other party to this Agreement.

SECTION XII DISPUTE RESOLUTION

12.1 The Parties' representatives will meet as needed to implement the terms of the Agreement and will make a good faith effort to informally resolve any disputes. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise requested or approved in writing by County, UTRGV shall continue performance and will not be excused from performance during the period any breach of the Agreement claim or dispute is pending.

12.2 The laws of the State of Texas shall govern this agreement and all disputes arising out of or relating to this Agreement, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any action, suit, litigation or other proceeding arising out of or in any way relating to this Agreement shall be commenced exclusively in the Hidalgo County District Court or the United States District Court, Southern District of Texas – McAllen Division.

12.3 To the extent authorized by the Constitution and laws of the State of Texas and subject to the statutory authority of the Texas Attorney General, UTRGV, as the sub-recipient of the CRFunds, hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts referenced above for the purposes of prosecuting and/or defending such litigation. To the extent authorized by the Constitution and laws of the State of Texas and subject to the statutory authority of the Texas Attorney General, UTRGV further waives and agrees not to assert by way of a motion, as a defense, or otherwise, in any suit, action or proceedings, any claim that the UTRGV is not personally subject to the jurisdiction of the above referenced courts; the suit, action or proceeding is brought in an inconvenient forum; and/or venue is improper.

12.4 To the extent authorized by the Constitution and laws of the State of Texas, 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.

SECTION XIII PROCUREMENT

13.1 UTRGV agrees to conform to its own applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the CRFund and/or this Agreement. **UTRGV, as a non-federal entity, is advised that procurements made with federal funds are subject to the provisions of 2 CFR §§200.317 – 200.326, 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.**

SECTION XIV CONFLICT OF INTEREST

14.1 UTRGV 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, outside corporation, company or association that is hired to carry out any of the activities covered by the CRFund. UTRGV agrees that all, officers, employees, consultants or agents shall comply fully with the requirements of Texas Government Code Chapter 572, Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest.

14.2 UTRGV agrees that no person who is an , officer, employee, consultant, or agent of the UTRGV's organization or the County's organization shall gain any interest in any outside corporation, company, or association that is hired to carry out any of the activities for which UTRGV is now seeking reimbursement from the CRFund.

14.3 UTRGV is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

**SECTION XV
MISCELLANEOUS PROVISIONS**

15.1 **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.

15.2 **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.

15.3 **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 referring to this Agreement and executed by County and UTRGV, and not otherwise.

15.4 **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.

15.5 **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, 2nd Floor
Edinburg, TX 78539
(956) 318-2600

With copy to: Mr. Sergio Cruz
Hidalgo County Budget Officer
2818 S. Bus. Hwy 281
Edinburg, TX 78539
(956) 292-7025

-And-
Ms. Maria Arilia Duran, CPA
Hidalgo County Auditor
2808 S. Bus. Hwy 281
Edinburg, TX 78539
(956) 318-2511

If to UTRGV: The University of Texas Rio Grande Valley

Attention: Chief Legal Officer
1201 W. University Dr.
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.

15.6 **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.

15.7 **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.

15.8 **Assignment.** This Agreement shall not be assignable by UTRGV. County may assign this Agreement with the consent of UTRGV.

15.9 **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.

15.10 **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.

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

15.12 **Governmental Purpose.** 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.

15.13 **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.

15.14 **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.

15.15 **Immunity.** This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and UTRGV's governmental immunity, and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any

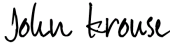
way intended to constitute a waiver of immunities from suit or from liability that the County or UTRGV has by operation of law.

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

(Signature Page Follows)

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

THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY

DocuSigned by:

17E1F969B1E84C4...

John H. Krouse, MD, PhD, MBA
Dean, School of Medicine
Executive Vice President, Health Affairs

7/15/2020
Date: _____

THE COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

Approved by Hidalgo County Commissioners Court on: _____

APPROVED AS TO FORM:

Office of Hidalgo County Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
Josephine Ramirez-Solis, Assistant District Attorney

TABLE OF EXHIBITS

EXHIBIT – A **Guidance for State, Territorial, Local, and Tribal Governments Updated June 30, 2020 – to include any future updated guidance**

EXHIBIT – B **Frequently Asked Questions Updated as of July 8, 2020, and Coronavirus Relief Fund Reporting and Record Retention Requirements Dated July 2, 2020– to include any future updated guidance**

EXHIBIT – C **Proposed Budget Form with Instructions**

EXHIBIT- D **Cost Reimbursement Form with Instructions-to include Individual Activity Report with Instructions which may be used for payroll submissions**