

COOPERATIVE AGREEMENT
Heavy Equipment and Trucking Student Projects
Huntington City - Utah State University Eastern

THIS COOPERATIVE AGREEMENT ("**Agreement**") is made and entered into as of the last date of signature to this document set forth below ("**Effective Date**") by and between Huntington City, a body corporate and politic of the State of Utah ("**City**"), and Utah State University, on behalf of USU Eastern ("**USU**"). City and USU may each be referred to as "**Party**" or collectively as the "**Parties**."

WHEREAS, the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 et seq., sets forth the mechanism for creating cooperative agreements between public entities;

WHEREAS, the Parties desire to provide a mechanism for USU students who are involved in heavy equipment and trucking classes to train on City-owned property;

WHEREAS, USU provides training programs for student certification to use heavy equipment and trucks and is in need of public land upon which to conduct training exercises; and

WHEREAS, City is willing to provide City-owned land for these training exercises, including the digging of trenches, backfilling trenches, cutting dirt down to grade; and loading and unloading dirt.

NOW, THEREFORE, the Parties agree as follows:

1. Term and Termination.

a. Term. This Agreement shall be for a two-year term from the period beginning on the Effective Date as signed below, provided there is available City-owned land for USU's training needs or until either Party provides the other Party with notice of termination. The termination will be effective sixty (60) days after notice unless earlier terminated by mutual agreement or otherwise in keeping with the terms of this Agreement.

b. Termination. Either Party may terminate this Agreement for cause by the City or USU in advance by providing prior written notice. USU will be given ten (10) days after written notification to correct and cease any violations, after which this Cooperative Agreement may be terminated for cause immediately.

2. Coordination. USU and City will regularly coordinate regarding any storage of USU-owned equipment on City property and the implementation of heavy equipment training projects on City-owned property. The Parties designate the following individuals as their primary point of contact for coordinating purposes:

USU:

Name: Leon McElprang
Title: Program Lead, Heavy Equipment
and Equipment and Trucking Dept.
Phone: c. 435-820-6606
Email: leon.mcelprang@usu.edu

City:

Name: Huntington City
Title: Mayor Leonard Norton
Phone: 435-749-0686
Email: mayor@huntingtonut.com

Each Party may update its respective point of contact as needed by written notice. The Parties' respective points of contact will hold a coordination meeting at least quarterly and invite USU and City administrators to coordination meetings as needed.

3. Equipment. USU will be responsible for insuring, maintaining, and keeping secure, its own equipment. USU will maintain a current and accurate inventory of its equipment associated with this Agreement.

4. City Property Access.

a. Equipment Storage. The City agrees to provide USU with access to its property for the purposes of storing USU-owned equipment. The specific location(s) and periods for storage will be mutually coordinated in writing by the Parties' points of contact. During any such storage period, USU will be responsible for the safety and security of its equipment. The City assumes no responsibility or liability for USU's equipment during storage on City-owned property.

b. Training Projects. The City agrees to provide USU with access to its property for the purposes of implementing heavy equipment training projects for USU students, which training projects include digging trenches, backfilling trenches, cutting dirt down to grade, and loading and unloading dirt. The times, locations, and details of heavy equipment training projects will be mutually scheduled and coordinated by the Parties' points of contact. USU agrees to provide supervision of students during any such training projects and, unless otherwise agreed to by the Parties, will be responsible for all consumables (e.g., fuel) associated with the training project. The City assumes no responsibility or liability for damage or injury that may be sustained by USU's equipment, USU employees, or USU students during such training projects. Similarly, the City recognizes that USU is not a contractor for the City and will not guarantee, warranty, or ensure the quality of any work that may be performed during a training project. Any work performed in association with a training project will be performed on an "AS-IS" basis and the City will not assume any liability associated with any such training project upon its completion. USU has no expectation of compensation for any improvements made to City property pursuant to such training projects. City expects no compensation for use of its City-owned property.

c. Restoration of City-owned Property. Within ninety (90) days of the termination of this Agreement, USU will reasonably restore the City-owned property used for training to its original condition, including filling of any pits trenches, or other excavated areas, leveling any piles or mounds, and remediating any other that were created during the training.

5. Employees. All USU employees and students shall be governed by USU policies and procedures. All City employees shall be governed by City policies and procedures. Each Party will be responsible for the activities of its own employees and or students and for complying with its own policies and procedures. The Parties agree to work together to provide a positive and safe work environment for City employees and USU employees and students who interact with one another. If a complaint arises, the Parties will coordinate in investigating and addressing such a complaint pursuant to city ordinances and state law and each Party's respective policies and procedures.

6. No Discrimination and Compliance with the Law. USU and City shall each operate without discrimination based on race, color, sex, age, disability, religion, or national origin. Each Party will comply with all applicable laws.

7. USU Insurance. USU carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager and applicable law. Nothing in the Agreement shall require USU to carry different or additional insurance. A copy of the insurance coverage is attached.

8. Liability. Each Party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by such Party or its employees, students, agents, or subcontractors, in the performance or omission of any act or responsibility of said Party under this Agreement. Neither Party shall be liable for any special, consequential, lost profit, expectation, punitive, or other indirect damages in connection with any claim arising out of or relating to this Agreement, whether grounded in tort (including negligence), strict liability, contract, or otherwise.

9. Miscellaneous

a. Choice of Law and Venue. The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the Seventh Judicial District Court for Emery County of the State of Utah.

b. Government Records and Management Act. The Parties acknowledge that each is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code section 63G-2-101 et seq., as amended ("**GRAMA**"); that certain records within each Party's possession or control, including this Agreement, may be subject to public disclosure.

c. Governmental Immunity. The Parties further acknowledge that each is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101 et seq., as amended ("**Immunity Act**"). Nothing in the Agreement shall be construed as a waiver by either Party of any protections, rights, or defenses applicable to either Party under the Immunity Act, including without limitation, the provisions of Section

63G-7-604 regarding limitation of judgments. It is not the intent of either Party to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed.

d. Notice. Any payment, notice, or other communication required or permitted to be given to either Party hereto shall be in writing and shall be deemed to have been properly given and effective: (a) on the date of delivery if delivered via electronic mail or in person during recipient's normal business hours; or (b) on the date of attempted delivery if delivered by courier, express mail service or first-class mail, registered or certified. Such notice shall be sent or delivered to the coordinators set forth in Section 2.

e. Assignment. Neither party may assign, transfer, or otherwise dispose of its rights, interests, or duties hereunder, in whole or in part, to any third party without prior written approval from the other Party.

f. Relationship of Parties. In assuming and performing the obligations of this Agreement, the Parties are each acting as independent parties, and neither shall be considered or represent itself as a joint venture, partner, agent, or employee of the other.

g. Amendment and Supplement. Any amendment and/or supplement of this Agreement shall come into force only after a written agreement is signed by both Parties. The amendment and supplement duly executed by both Parties shall be part of this Agreement and shall have the same legal effect as this Agreement.

h. Merger. This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter thereof.

i. Severability. The provisions of this Agreement are severable, and if any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions herein.

j. No Public Agency. No public agency is created by this Agreement.

k. Time of the Essence. Time is of the essence in performing all duties and obligations under this Agreement.

IN WITNESS THEREOF the Parties hereto have caused this Agreement to be duly executed on their behalf by a duly authorized representative as of the Effective Date set forth above.

Huntington City:

Utah State University:

By:_____

By:_____

Print Name:_____

Print Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Attest:

City Recorder

Approved as to Form _____
Lisa Watts Baskin City _____

Approved as to Form _____
Attorney for USU _____