

Interlocal Cooperation Agreement

(Environmental Dashboard)

THIS INTERLOCAL COOPERATION AGREEMENT (this “*Agreement*”) is made effective 1 July 2019 by and between the **CENTRAL WASATCH COMMISSION**, an interlocal entity of the state of Utah whose address is 41 North Rio Grande Street, Ste. 202, Salt Lake CWC, UT 84101 (“*CWC*”), and the **UNIVERSITY OF UTAH**, an institution of higher education and a body corporate and politic of the state of Utah, for its DIGIT Lab and its Ehleringer Group, whose address is c/o Phoebe B. McNeally, Research Associate Professor, DIGIT Lab, 260 South Central Campus Drive, Room 270, Salt Lak City, UT 84112 (“*University*”). In this Agreement, CWC and University are each a “*Party*” and collectively are “*Parties*.”

RECITALS:

A. CWC is a interlocal entity of the state of Utah, formed and existing pursuant to the Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 *et seq.* (the “*Interlocal Act*”).

B. University is an institution of higher education and a body corporate and politic of the state of Utah as provided for in UTAH CODE ANN. § 53B-2-101(1)(a).

C. Effective 15 March 2016, The Brendle Group, Inc. (“*Brendle*”) entered into an “*Agreement*” with Salt Lake County (“*County*”) whereunder Brendle agreed to develop the “*Mountain Accord Environmental Monitoring and Adaptive Management Plan*” as described in that agreement, which was amended pursuant to the “*First Amendment to the Agreement*” dated effective 8 July 2016 between Brendle and County (the original agreement, as amended, is hereafter referred to as the “*Brendle Agreement*”).

D. Effective 23 April 2018, County assigned and delegated to CWC, and CWC took and assumed, all of County’s rights, interests and duties under the Brendle Agreement. The Brendle Agreement now has been completed and CWC owns the rights to the initiative dashboard and environmental monitoring and adaptive management plan (the “*Environmental Dashboard*”) formulated by Brendle under the Brendle Agreement.

E. CWC now desires to engage University’s DIGIT Lab and Ehleringer Group to perform the work necessary to further refine and enhance CWC’s Environmental Dashboard as described in the attached proposal, as the same may be revised from time to time by mutual agreement of the Parties (the “*Proposal*”).

F. Pursuant to the authority granted in the Interlocal Act, the Parties desire to enter into an “*interlocal agreement*” whereunder such work will be performed on the basis provided for in this Agreement.

G. Both of the Parties are “*public agencies*” for purposes of the Interlocal Act and, as such, are empowered to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their respective resources and powers.

H. The Parties have determined that it is mutually advantageous to enter into this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Act, the Parties hereby agree as follows:

Section 1. **Scope of Work** University shall provide the services and work to CWC that are described in the attached Proposal as well as all ancillary and associated services as may be reasonably necessary or advisable to complement and complete the Work described in the Proposal (collectively, the “*Work*”), all as contemplated by all applicable legal requirements and best practices. Subject to the foregoing, the Work shall include the following:

(a) **Phases**. The Work shall be divided into the phases, steps and work described in the Proposal. In this Agreement, “*Phase 1*” shall mean and refer to the Phase 1 Work described in the Proposal, and “*Phase 2*” shall mean and refer to the Phase 2 Work described in the Proposal. The Parties acknowledge that the description and scope of the Phase 2 Work contained in the Proposal is based on current available information and certain assumptions, and that the final description of the Phase 2 Work will be determined only after the Phase 1 Work have been completed and University has submitted a revised Proposal (the “*revised Proposal*”) for CWC’s approval which details the tasks and associated costs needed to bring the Environmental Dashboard to fruition. This Agreement shall be amended to formally adopt the revised Proposal.

(b) **Public Meetings**. University shall attend such meetings concerning the Work as CWC reasonably may direct. CWC shall schedule and advertise all public meetings or hearings. CWC may request University to make a presentation concerning the Service at one or more public meetings in order to receive public input and direction from CWC.

(c) **Schedule**. It is anticipated that the Phase 1 Work will be completed by 15 November 2019. Although the completion schedule for the Phase 2 Work shall be as specified in the revised Proposal, the Parties anticipate that the Phase 2 Work will be completed by 1 November 2020. University shall substantially comply with the performance schedule for the component Work as specified in the Proposal from time to time.

(d) **Deliverables**. University shall provide all deliverables identified in the Proposal, as well as such other documentation and deliverables as CWC reasonably may request. All reasonable and final adjustments and amendments to the resulting deliverables as directed by CWC will be made by University prior to final adoption/approval by CWC of the Environmental Dashboard.

(e) **Other Work**. University shall perform other services and work may be mutually agreed to by the Parties in writing.

If University believes that any of the aforementioned Work merit payment of any additional fee beyond the Fee (defined below), then University shall so inform CWC in advance before undertaking any of such additional services, describing the need for such additional services and the not to exceed cost of providing them. If CWC desires University to proceed with any such additional services, CWC shall so inform University in writing. University may not perform any additional work, or seek compensation therefor, without CWC’s prior written consent.

Section 2. **Consideration.**

(a) **Payment for Work and Indirect Costs.** CWC shall pay University:

(i) \$38,890 for the Phase 1 Work provided by University under this Agreement and an additional \$3,889 for indirect costs related to those Phase 1 Work; and

(ii) An estimated \$85,596 for the Phase 2 Work and an additional estimated \$8596 for indirect costs related to those Phase 2 Work, subject to revision in accordance with the revised Proposal.

(b) **Invoices.** During performance of this Agreement, University shall submit an invoice to CWC for each calendar month in which Work is performed. Each invoice shall be submitted within one month after the calendar month to which the invoice relates. Each invoice shall detail the Work performed, by whom, the date the Work was performed, the time expended by each person, and billing rates for each person's work. The amounts billed in an invoice shall bear appropriate relation to the stage of completion and the total cost of the subject tasks as specified in the Proposal. Each invoice also shall detail any indirect costs incurred by University during the performance of the Work.

(c) **Maximum Payable Amount.** In no event shall CWC be required to pay University more than \$42,779 for the Phase 1 Work and related indirect costs, nor more than the additional amount for the Phase 2 Work and related indirect costs specified in the revised Proposal.

Section 3. **Performance of Work; Examination of Work.** Except as otherwise provided in this Agreement, University shall furnish all supervision, personnel, labor, materials, supplies and shall obtain all licenses and permits required for performance of the Work. The Work shall be performed in a good, workmanlike manner in full compliance with applicable laws and standards of performance. Subject to the foregoing, the exact nature of how the Work is performed shall be subject to University's oversight, inspection and direction. All Work shall be subject to examination by CWC at any reasonable time(s). CWC shall have the right to reject any non-compliant Work. Neither examination of the Work, lack of the same, acceptance of the Work by CWC nor payment therefor shall relieve University from its obligations under this Agreement regarding the quality and accuracy of the Work.

Section 4. **Independent Contractor; Equipment and Facilities.** University shall perform the Work as an independent contractor, and all persons employed by University in connection with this Agreement or the Work shall be employees of University and not employees of CWC in any respect or for any purpose. Subject to its payment obligations under Section 2, above, CWC shall not have any obligation or liability for the payment of any salaries, wages or other compensation or benefits to University or its employees or contractors in connection with the Work. University shall have the exclusive right and responsibility to supervise and accomplish University's performance of the Work. University shall furnish and supply at its cost all necessary administration, labor, supervision, travel, fuel, tools, equipment, supplies and other items necessary and incident to full and proper supervision of the Work. The Work shall be performed at University's offices and other mutually-agreeable places.

Section 5. **CWC's Duties.** CWC timely shall cooperate with University by promptly providing (a) complete access to all of the current Environmental Dashboard database, and (b) feedback concerning the Work as provided in this Agreement.

Section 6. **Reports.** University shall keep CWC reasonably informed of the status of the Work.

Section 7. **No Obligations to Third Parties.** The Parties agree that University's obligations under this Agreement are solely to CWC and that CWC's obligations under this Agreement are solely to University. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement. All conditions to the obligations of CWC to make disbursements hereunder are imposed solely and exclusively for the benefit of CWC and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that CWC will not make disbursements in the absence of strict compliance with any or all thereof and no other person, under any circumstances, will be deemed to be a beneficiary of such conditions, any or all of which may be waived in whole or in part by CWC at any time if CWC, in its sole discretion, deems it advisable to do so.

Section 8. **Agency.** No agent, employee, or servant of University or CWC is or shall be deemed to be an agent, employee, or servant of the other Party. None of the benefits provided by each 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 Party. University and CWC shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement.

Section 9. **Immunity.** University and CWC are governmental entities under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. § 63G-7-101, *et seq.*) (the "*Immunity Act*"). There are no indemnity obligations between the Parties. Subject to and consistent with the terms of the Immunity Act, each of the Parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither Party waives any defenses otherwise available under the Immunity Act nor does any Party waive any limits of liability currently provided by the Immunity Act or any other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

Section 10. **Termination.**

(a) **Termination for Default.** CWC may terminate this Agreement for an Event of Default (defined below) by University upon written notice from CWC to University.

(b) **Termination by University for Default.** University may terminate this Agreement for an Event of Default by CWC upon written notice from University to CWC.

(c) **Event of Default.** As used in this Agreement, the term "*Event of Default*" means (a) a Party fails to make any payment herein when the same becomes due and such failure continues for a period of 30 days after written notice to the Party failing to make such payment; (b) a Party hereto fails to perform any of its material obligations and such failure continues for a period of 30 days after written notice to such defaulting Party; or (c) any material representation

or warranty of a Party contained in this Agreement proves to be untrue or incorrect in any material respect when made.

(d) Force Majeure. Neither Party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of 60 days, University or CWC shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other Party.

(e) 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 either Party shall in no event constitute a waiver as to any future breach.

(f) Termination for Convenience. CWC reserves the right to terminate this Agreement, in whole or in part, whenever CWC determines in its sole discretion that it is in CWC's interest to do so. If CWC elects to exercise this right, CWC shall provide written notice to University at least 30 days prior to the date of termination for convenience. Upon such termination, University shall be paid for all services up to the date of termination. University agrees that CWC's termination for convenience will not be deemed a termination for default nor will it entitle University to any rights or remedies provided by law or this Agreement for breach of contract by CWC or any other claim or cause of action.

Section 11. Non-Funding.

(a) Intent to appropriate. CWC intends to request the appropriation of funds to be paid for the Work to be provided by University under this Agreement. If funds are not available beyond June 30th of any effective fiscal year of this Agreement, CWC's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on CWC as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of University, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) Notice of Non-Appropriation. If funds are not appropriated to fund performance by CWC under this Agreement, CWC shall promptly notify University of said non-funding and the termination of this Agreement. However, in no event, shall CWC notify University of said non-funding later than 30 days after the expiration of the fiscal year for which funds were last appropriated.

Section 12. Force Majeure. Neither Party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of 60 days, CWC shall have the right to terminate this Agreement without liability or penalty effective upon written notice to University.

Section 13. **No Limitation of Rights.** The rights and remedies of the Parties hereto are not mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof. The rights and remedies of the Parties hereto are in addition to any other rights and remedies provided by law.

Section 14. **Compliance with Laws.** Each Party 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, including, but not limited to, those laws requiring access to persons with disabilities as well as the laws governing non-discrimination against all protected groups and persons in admissions and hiring.

Section 15. **Required Insurance Policies.** Both Parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.

Section 16. **GRAMA.** CWC and University are both governmental entities subject to the Government Records Access and Management Act ("*GRAMA*"), UTAH CODE ANN. §§ 63G-2-101 *et seq.* As a result, CWC and University are required to disclose certain information and materials to the public, upon request. University shall timely refer all requests for documents, materials and data in its possession provided to University by CWC under this Agreement to CWC for response by CWC. CWC shall have the sole obligation or privilege of releasing such information as required by law.

Section 17. **Confidentiality.** Subject to GRAMA, University shall hold all information provided to it by CWC for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any employee of University who is not involved in the performance of Work, or to any representative of the news media without CWC's prior written consent. Materials, information, data, reports, plans, analyses, budgets and similar documentation provided to or prepared by University in performance of this Agreement shall also be held confidential by University. CWC shall have the sole obligation or privilege of releasing such information as required by law.

Section 18. **Ownership of Work Product.** The results of all Work performed by University under this Agreement shall become the sole property of CWC. Ownership of the Work shall apply regardless of the form of the work product including, but not limited to, writings, drawings, reports, databases, and any form of video or audio, etc. Upon final payment by CWC to University, University shall deliver or make available to CWC all work product applicable to the Work provided under this Agreement including, but not limited to, work product in draft form.

Section 19. **Geographic Information System (GIS) Data.** If any GIS data is created or maintained under this Agreement, University agrees to comply with the Federal Geographic Data Committee (FGDC) standards.

Section 20. **Additional Interlocal Act Provisions.**

(a) **No Separate Entity; No Joint Ownership.** This Agreement does not create a separate legal/interlocal entity, and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties under this Agreement.

(b) Joint Board. As required by UTAH CODE ANN. § 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of University's designee, Office of Special Projects Director, and CWC's designee, Executive Director Ralph Becker, or their replacements.

(c) Financing Joint Cooperative Undertaking and Establishing Budget. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained. Instead, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(d) Attorney Review. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for the parties in accordance with UTAH CODE ANN. § 11-13-202.5.

(e) Copies. Duly executed original counterparts of this Agreement shall be filed with the keeper of the records of each party pursuant to UTAH CODE ANN. § 11-13-209.

(f) Approval. This Agreement shall be authorized as provided in UTAH CODE ANN. § 11-13-202.5.

(g) Term. Pursuant to UTAH CODE ANN. § 11-13-216, the term of this Agreement shall not exceed 50 years.

Section 21. Conflict Resolution. In the event of a dispute between the Parties regarding the Work or this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that a CWC representative will meet as soon as practical with a University representative to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved pursuant to section 23 below.

Section 22. Notice. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the Party at its address specified above or to any replacement address provided by prior written notice to the sender.

Section 23. Claims and Disputes. Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial University Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, each of the Parties shall continue to perform its obligations hereunder during the pendency of such dispute.

Section 24. Titles and Captions. All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 25. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 26. **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 27. **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

Section 28. **Time.** Time is the essence of this Agreement.

Section 29. **Assignment; Subcontracting.** University may not assign or delegate any of its rights or duties under this Agreement, nor may University subcontract the performance of any of the Work, without CWC's prior written consent, which CWC may withhold, delay or condition in its sole discretion.

Section 30. **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any Party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 31. **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 32. **Litigation Expenses.** If any action, suit or proceeding is brought by a Party concerning this Agreement, all costs and expenses of the prevailing Party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the nonprevailing Party.

Section 33. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 34. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to University the exclusive right to perform any or all of the services or work of the same nature and the Work as from time to time may be required by CWC.

DATED effective the date first-above written.

CWC:

ATTEST:

CENTRAL WASATCH COMMISSION

By: _____
Christopher F. Robinson, Secretary

By: _____
Chris McCandless, Chair

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Wm. Shane Topham,
CWC Attorney

UNIVERSITY:

ATTEST:

UNIVERSITY OF UTAH



William Ernest, Grant & Contracts



Todd Nilsen,, Associate Director

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Jason Seifert, University's Attorney

CWC:

ATTEST:

CENTRAL WASATCH COMMISSION

By: _____
Christopher F. Robinson, Secretary

By: _____
Chris McCandless, Chair

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

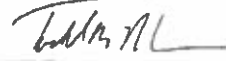
By: _____
Wm. Shane Topham,
CWC Attorney

UNIVERSITY:

ATTEST:

UNIVERSITY OF UTAH


William Ernest, Grant & Contracts


Todd Nilsen, Associate Director

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:



James Weifers, University Attorney, Associate General Counsel

Exhibit to Interlocal Cooperation Agreement

(Attach Proposal)