

Consulting Agreement

THIS CONSULTING AGREEMENT (this “*Agreement*”) is entered into effective 10 January 2022 between **CENTRAL WASATCH COMMISSION**, an interlocal entity and political subdivision of the state of Utah whose address is 41 North Rio Grande Street, Suite 102, Salt Lake City, Utah 84101 (“*CWC*”), and **COMMON GROUND INSTITUTE LLC**, a Utah limited liability company whose address is 2205 South 1000 East, Salt Lake City, UT 84106 (“*Provider*”).

RECITALS:

A. CWC desires to obtain from a qualified expert a situational assessment and facilitation of a path forward for CWC as detailed in CWC’s “Request for Proposal” issued on or about 7 December 2021 (the “*RFP*”).

B. Provider has significant experience and professional expertise in providing services of the type desired by CWC, and submitted a proposal dated 27 December 2021 (the “*Proposal*”) to CWC detailing the services that Provider would perform if engaged by CWC. A copy of the Proposal is attached to this Agreement.

C. After reviewing the Proposal, CWC has determined to retain Provider to provide the subject services.

D. By this Agreement, CWC desires to retain Provider, and Provider desires to be retained by CWC, to perform the subject services on the terms and conditions specified herein.

E. The parties intend to identify herein the services to be performed for CWC by Provider, the basis of compensation for such services, and to otherwise set forth their entire agreement concerning such services. Consequently, this Agreement shall supersede any and all prior or contemporaneous negotiations and/or agreements, oral and/or written, between the parties concerning the services to be provided under this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. **Engagement of Provider.** CWC hereby engages Provider, and Provider hereby agrees, to perform the Services (defined below) as specified in this Agreement.

Section 2. **Scope of Services.** Provider shall provide the services to CWC that are described in the Proposal as well as all ancillary and associated services as may be reasonably necessary or advisable to complement and complete the services described in the Proposal (collectively, the “*Services*”), all as contemplated by all applicable legal requirements and best practices. Subject to the foregoing, the Services shall include the following:

(a) **Phases.** The Services shall be divided into the phases, steps and work described in the Proposal.

(b) Public Meetings. Provider shall attend such public meetings concerning the Services as CWC reasonably may direct. CWC shall schedule and advertise all public meetings or hearings. CWC may request Provider to make a presentation concerning the Service at one or more public meetings in order to receive public input and direction from CWC. All reasonable and final adjustments and amendments to the resulting deliverables as directed by CWC will be made by Provider prior to Provider's deemed completion of the Services.

(c) Schedule. It is anticipated that the Services will be completed by 1 March 2022 as outlined in the Proposal. Provider shall comply with such performance schedule for the component Services as CWC reasonably may direct upon reasonable prior notice to Provider.

(d) Deliverables. Provider shall provide all deliverables identified in the Proposal, as well as such other documentation and deliverables as CWC reasonably may request.

(e) Other Services. Provider shall perform other services and work as specified in the Proposal, or as may be mutually agreed to by the parties in writing.

If Provider believes that any of the aforementioned Services merit payment of any additional fee beyond the Base Fee (defined below), then Provider 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 Provider to proceed with any such additional services, CWC shall so inform Provider in writing. Provider may not perform any additional services, or seek compensation therefor, without CWC's prior written consent.

Section 3. Fees for Services. CWC shall pay Provider for Services actually performed as follows: (a) \$20,000 for the Services outlined in the Proposal (the "*Base Fee*"); and (b) a pre-approved price for any additional related Services under section 2, above, as mutually agreed by CWC and Provider in advance, in writing, on a case-by-case basis.

Section 4. Method of Payment. Upon completion of the Services, Provider shall submit a detailed invoice to CWC setting forth the Services performed. CWC shall pay (or provide a reasoned objection to) the amount set forth in the invoice within 30 days after receipt.

Section 5. Services Performed in a Professional, Reasonable Manner. Provider shall perform the Services in a professional, reasonable, responsive manner in compliance with the Proposal, all laws, and all applicable standards of performance. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Provider.

Section 6. Personnel, Equipment and Facilities. Except as otherwise specified in this Agreement, Provider shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, office space, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incidental to performing any and all of the Services. Provider shall not use CWC staff as a means to perform the Services in lieu of using Provider's own staff, nor shall Provider perform any of the Services on CWC's premises or utilizing any CWC equipment or supplies; provided, however, that CWC shall endeavor to provide to Provider any support specified in the Proposal.

Section 7. **Term.** This Agreement shall be effective on the date hereof. This Agreement shall terminate no later than 30 June 2022 or such later date as CWC reasonably may designate.

Section 8. **Assignment and Delegation.** If Provider chooses to subcontract to one or more third parties any part(s) of the Services, such subcontract shall be at Provider's own risk, and Provider shall remain fully responsible for the full, timely and proper performance of all of the Services.

Section 9. **Independent Contractor Status.** Provider shall perform the Services as an independent contractor, and all persons employed by Provider in connection herewith shall be employees or independent contractors of Provider and not employees of CWC in any respect.

(a) **Control.** Provider shall have complete control and discretion over all personnel providing Services hereunder.

(b) **Salary and Wages.** CWC shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Services hereunder.

(c) **No Employment Benefits.** All personnel providing Services are and shall be and remain Provider's employees, and shall have no right to any CWC pension, civil service, or any other CWC benefits pursuant to this Agreement or otherwise.

Section 10. **Termination.** Either party may terminate this Agreement, without cause, upon at least 30 days' prior written notice to the other party. Either party also may terminate this Agreement for cause upon at least ten days' prior written notice and opportunity to cure to the defaulting party. Neither party shall have any liability to the other for damages nor other losses because of termination of this Agreement, provided; however, CWC shall pay Provider all amounts due for actual work performed within the scope of Services before the effective date of the termination, as specified herein.

Section 11. **Indemnification.** Provider shall defend, indemnify, save and hold harmless CWC (including, without limitation, its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorneys' fees and cost of suit), relating to or arising in any way from the Services provided, or to be provided, hereunder. Provider shall so defend, indemnify, save and hold harmless CWC whether such demands, liabilities, claims, damages, actions and/or proceedings are attributable to the simple negligence, gross negligence, recklessness or intentional misconduct of Provider (or any officers, employees, agents, subcontractors, etc. of Provider), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. Nothing herein shall, however, require Provider to indemnify as provided in this section with respect to (a) CWC's own negligence or intentional misconduct, or (b) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Services provided, or to be provided, by Provider hereunder.

Section 12. **Laws and Regulations.** Provider shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances, including without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Provider shall comply with equal opportunity laws and regulations to the extent that they are applicable.

Section 13. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Provider any exclusive right to perform any or all Services (or similar services) now or hereafter required by CWC.

Section 14. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding the Services which is not disposed of by agreement shall be decided by CWC, which shall provide written notice of the decision to Provider. Such decision by CWC shall be final unless Provider, within 30 calendar days after such notice of CWC's decision, provides to CWC a written notice of protest, stating clearly and in detail the basis thereof. Provider shall continue its performance of this Agreement during such resolution. If the parties do not thereafter agree to a mutually-acceptable resolution, then they shall resolve the dispute pursuant to section 15 below.

Section 15. **Claims and Disputes.** Unresolved 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 District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, Provider shall continue to perform the Services during any such litigation proceedings and CWC shall continue to make undisputed payments to Provider in accordance with the terms of this Agreement.

Section 16. **Notices.** 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 parties at their respective addresses set forth above or such other address(es) as may have been previously provided to the other party by notice hereunder.

Section 17. **Conflicts; Omissions.** In the event of inconsistencies within or between this Agreement, the Proposal or applicable legal requirements, Provider shall (a) provide the better quality or greater quantity of Services, or (b) comply with the more beneficial requirements to CWC, either or both in accordance with CWC's interpretation.

Section 18. **Additional Provisions.** The following provisions also are integral to this Agreement:

(a) **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.

(b) **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.

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

(d) Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(e) Time. Time is the essence hereof.

(f) Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) 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, but shall be under no obligation to, 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.

(h) Rights and Remedies. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

(i) 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.

(j) Litigation. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

(k) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(l) 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.

(m) Authorizations. Each person signing this Agreement represents and warrants that he is authorized to sign this Agreement for the party indicated.

DATED effective the date first-above written.

CWC:

ATTEST:

CENTRAL WASATCH COMMISSION,
a Utah interlocal entity

By: _____
Jeff Silvestrini, Secretary

By: _____
Christopher F. Robinson, Chairman

PROVIDER:

COMMON GROUND INSTITUTE LLC,
a Utah limited liability company

By: _____
Ben McAdams, Manager

Exhibit to Consulting Agreement

(Attach Proposal)