

Employment Agreement

THIS EMPLOYMENT AGREEMENT (this “*Agreement*”) is made effective 1 July 2023 by the **CENTRAL WASATCH COMMISSION**, an interlocal entity whose address is 41 North Rio Grande Street, Ste. 102, Salt Lake City, UT 84101 (“*CWC*”), and **LINDSEY NIELSEN**, an individual whose address is 328 East Downington Avenue, Salt Lake City, UT 84115 (“*Employee*”).

RECITALS:

A. CWC is an interlocal entity and political subdivision of the state of Utah organized effective 29 June 2017 under the Interlocal Cooperation Act set forth in UTAH CODE ANN. §11-13-101 *et seq.* (the “*Act*”).

B. CWC consists of various member governmental entities (“*Members*”) and is governed by a board (the “*Board*”) of commissioners (“*Commissioners*”) appointed by the Members.

C. CWC’s base governing document is the interlocal agreement dated 30 May 2017, as amended. The Board also has adopted bylaws and enacted various resolutions to provide additional organizational framework for CWC and its operations. Such interlocal agreement, bylaws, resolutions, and all similar such documents and amendments thereto adopted by the Board now or in the future are collectively referred to herein as the “*Governing Documents*.”

D. The Governing Documents contemplate that CWC’s day-to-day operations will be overseen and conducted by an executive director, who will serve as CWC’s chief administrative officer under the Board’s direction.

E. Employee has been employed on a full-time basis by CWC since 6 August 2018, most recently serving as a co-executive director of CWC since 6 June 2022.

F. CWC desires to employ Employee, and Employee desires to be employed, as CWC’s sole executive director on the terms and conditions specified in this Agreement.

G. This Agreement shall supersede any and all prior negotiations and agreements, oral and/or written, between the parties concerning Employee’s employment by CWC, all of which agreements (including the 6 June 2022 “Amended and Restated Employment Agreement” between the parties) shall be deemed terminated as of the effective date of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Services.** CWC hereby employs Employee, and Employee hereby accepts such employment, to perform the functions and duties of CWC’s executive director, including, without limitation, the following, which may be amended from time to time by the Board:

- (a) Act as principal administrative officer of CWC and coordinate and direct all staff and consultant services as needed for daily operations of CWC and as may be directed by the Board;
- (b) Recommend to the Board for Board approval all staff appointments, consultant acquisitions, staff advancements, and other employment policies and act as the liaison with CWC's legal counsel and finance staff, supervising their work on behalf of CWC;
- (c) Coordinate with finance consultants and staff to prepare, file, and administer an annual approved budget;
- (d) Develop a public outreach plan and public engagement efforts as directed by the Board;
- (e) Maintain CWC's records, and respond to records requests, in compliance with the Government Records Access and Management Act, UTAH CODE ANN. 63G-2-101 *et seq.*;
- (f) Make recommendations to the Board regarding accomplishing the purposes of CWC under its Governing Documents;
- (g) Act as a facilitator for and liaison with the stakeholders council (the "*Stakeholders Council*") described in the Governing Documents;
- (h) Prepare and post agendas and notices for the meetings of the Board, the Stakeholders Council, and other public bodies of CWC, keep minutes and/or recordings, and otherwise assure compliance of those bodies with the requirements of the Open and Public Meetings Act, UTAH CODE ANN. 52-4-101 *et seq.*;
- (i) Prepare applications for grants and other funding needed or available to accomplish the purposes of CWC;
- (j) Coordinate with finance staff to ensure receipt of all monies due or payable to CWC and deposit such monies in such depositories as shall be selected by the Board;
- (k) Coordinate with finance staff to maintain, under the supervision of the Board, such funds and accounts as may be required by governmental accounting practices and applicable fiscal procedures laws;
- (l) Coordinate with finance staff to ensure distribution of monies payable by CWC and co-sign payments together with the Treasurer (two signatures required);
- (m) Coordinate with finance staff to present a financial statement of receipts and expenditures to the Board on a quarterly basis, or more frequently if requested by the Board;
- (n) In coordination with finance staff, and under the supervision of the Board, arrange for and oversee a certified annual review or audit of the financial accounts and records of CWC as required by law;
- (o) Prepare reports for CWC, the Stakeholder Council, and others of highlights, accomplishments, major reviews and other important matters of CWC;

- (p) Conduct Stakeholder Council and staff meetings;
- (q) Communicate CWC activities, objectives, and efforts to the Board, the Stakeholder Council, and key audiences;
- (r) Manage CWC's office space and landlord relationship;
- (s) Direct and supervise CWC's staff, including (i) providing performance counseling and conducting any necessary disciplinary proceedings, (ii) implementing and managing an employee work, vacation and sick time management system; and (iii) in consultation with the Board, managing CWC's benefits packages and pay ranges for staff;
- (t) Working closely with the Board Chair and Co-Chair, effectuate the will of the Board in accordance with the CWC's Governing Documents and strategic plan adopted by the Board;
- (u) Under direction of the Board, (i) create an organizational strategic plan; (ii) create and administer a CWC Youth Council; (iii) work to usher action on the Central Wasatch National Conservation and Recreation Area Act; (iv) plan and strategize concerning CWC's transportation projects and partnerships; and (v) implement an annual Wasatch Symposium event;
- (v) Represent CEC in and around the Central Wasatch Mountains, including stakeholder events, Youth Council events, trail-maintenance workdays, etc., and otherwise build and maintain relationships on behalf of CWC throughout its jurisdiction;
- (w) Perform any other functions detailed in (a) Section 1 of Employee's "Amended and Restated Employment Agreement" with CWC dated 6 June 2022, and (b) Section 1 of the "Amended and Restated Employment Agreement" between Employee's former co-executive director colleague Blake Perez and CWC dated 6 June 2022;
- (x) Perform all other duties required by applicable law or the Governing Documents, together with such other proper and legally permissible administrative, management and other functions and duties as the Board may from time-to-time assign;

All such duties, functions and responsibilities are hereinafter collectively called the "*Services*." Employee shall devote her full time and attention to the performance of the Services in a professional manner in accordance with all legal requirements and professional standards, including, without limitation, the Code of Ethics (the "*Ethical Code*") of the International City/County Management Association (the "*ICMA*"), which Ethical Code shall furnish some of the principles to govern Employee's conduct as CWC's executive director. Although Employee may delegate performance of certain of Employee's functions specified in this Section 1, Employee is ultimately responsible to the Board for the full, timely and proper performance of all of those functions.

Employee shall observe and comply with the rules and regulations of CWC as adopted by the Board, either orally or in writing, respecting performance of the Services, and shall timely and properly carry out and perform orders, directions and policies announced to Employee by the Board from time to time, either orally or in writing. Employee is not an hourly employee, and therefore shall be required to work as necessary to fully perform her responsibilities hereunder.

2. **Term of Employment.** Employee's initial term of employment hereunder shall be from the effective date hereof through 30 June 2024, and thereafter shall continue in effect on a July 1 – June 30 fiscal year basis unless sooner terminated by a party. Notwithstanding the foregoing, however, Employee shall serve at the Board's pleasure, and nothing in this Agreement shall prevent, limit or otherwise interfere with the Board's right to terminate Employee's employment at any time, with or without cause, subject to Employee's right to severance as provided below. Similarly, nothing herein shall prevent, limit or otherwise interfere with Employee's right to resign at any time from the position of CWC's executive director as provided below. Subject to the foregoing, this Agreement shall continue in effect until it is terminated by the Board or by Employee as provided below.

3. **Services, Independent Activities.**

(a) **Full-Time Services; Limitations.** Throughout the duration of this Agreement, Employee shall be actively involved in personally performing the Services on a full-time basis, devoting Employee's time, attention and best efforts to CWC's affairs. Employee shall not be employed by any other person or entity while she is employed hereunder. Notwithstanding the foregoing, however, expending reasonable amounts of time for personal charitable or professional activities, or such outside business activities as may be pre-approved by the Board following Employee's written request and full disclosure, shall not be deemed a breach of this Agreement if such activities do not materially interfere with the Services to be rendered to CWC hereunder. Employee shall not, without the Board's express prior written consent (which consent may be withheld in the Board's sole, subjective discretion), engage in any activity competitive with or adverse to CWC's interests, whether alone in concert with others.

(b) **Political Activities.** CWC is an interlocal agency whose Members are political subdivisions of the state and whose Board members typically are elected officers of those Member entities. CWC's funding is dependent, in large part, on contributions from its Member entities, and the ultimate success of CWC's initiatives can be materially influenced by various federal, state and local elected officials. Consequently, Employee recognizes the importance of CWC being viewed as being, and being, politically neutral in connection with all elections of (i) local officials who are or may be directly or indirectly involved in CWC or its initiatives, and (ii) federal and state officials who may be able to influence the success or failure of CWC's current or future initiatives. Employee further recognizes that, as the chief administrative officer, spokesman and "public face" of CWC, Employee's own political activities may be attributed by some to CWC. For those reasons, Employee shall avoid any political activities which reasonably may adversely affect the public perception of CWC's political neutrality and/or may cause any local, state or federal officials to be less cooperative with CWC and its initiatives than they otherwise may be. Employee shall consult in advance with the chair of the Board (the "*Chair*") before engaging in any political activities which may adversely impact CWC and, at the least, shall conduct Employee's political activities in the same manner as a "further restricted employee" under the federal Hatch Act of 1939, as amended.

4. **Standards.** Employee shall perform Employee's duties under this Agreement in accordance with (a) all legal requirements, (b) the Ethical Code, and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

5. **Compensation and Benefits.** Conditioned on Employee's proper and timely performance of the Services, CWC shall provide the following compensation and benefits to Employee:

(a) **Base Salary.** CWC shall pay Employee an annual base salary (the "*Base Salary*"). Through 30 June 2024 Employee's Base Salary shall be the equivalent of One Hundred Fifteen Thousand and 00/100ths Dollars (\$115,000.00) annually. On 1 July 2024 and effective each July 1st thereafter, the Board may increase (but not decrease) the Base Salary as the Board deems appropriate in its sole, subjective discretion based on the Board's periodic evaluations of Employee's performance. The Base Salary shall be paid to Employee in approximately equal installments in accordance with CWC's payroll practices from time to time. Appropriate deductions shall be made from each paycheck for withholding of FICA (or equivalent), federal and state income taxes, and any other appropriate items. As an "exempt" salaried employee, Employee shall not be entitled to overtime pay.

(b) **Bonuses.** In addition to the Base Salary, CWC may, but shall not be obligated to, pay to Employee such incentive bonuses as the Board may from time to time determine in its sole, subjective discretion based on the Board's evaluation of Employee's performance. The Board and Employee may cooperatively develop and implement a formal, written evaluation system that includes quantifiable goals and benchmarks to gauge Employee's performance of the Services for purposes of determining the propriety of bonuses and Base Salary increases.

(c) **Transportation Allowance.** Employee shall receive a \$ [REDACTED] per month transportation allowance for use, in Employee's reasonable discretion, to apply against the cost of operate Employee's personal vehicle or to park that vehicle at CWC's offices, public transit costs, or similar commuting/transportation costs. If Employee retains a parking stall at CWC's offices and the monthly charge for such stall exceeds Employee's transportation allowance, Employee's transportation allowance shall be applied against such monthly parking stall fee and Employee shall be responsible to pay any balance. Employee's transportation allowance is in lieu of any duty of CWC to reimburse Employee for automobile mileage incurred in CWC-related travel.

(d) **Equipment.** Employee shall be provided with appropriate office furnishings and equipment, including computers (desktop or laptop), iPad or the like. Employee's use of any CWC-provided device(s) shall be in accordance with applicable policies described in CWC's employee manual (the "*Manual*") or otherwise announced by the Board from time to time. Employee acknowledges that she has no expectation of privacy concerning any use of her private devices for CWC business. Promptly upon CWC's request from time to time, Employee shall make her personal communication devices available to CWC for review, determination and retrieval of any communications that may constitute public records for purposes of the Government Records Access and Management Act ("*GRAMA*"), UTAH CODE ANN. 63G-2-101 et seq.

(e) **Dues and Subscriptions.** CWC shall pay such dues and subscriptions on behalf of Employee as are approved in CWC's annual or as authorized separately from time to time by the Board.

(f) Professional Development. CWC shall pay for Employee's attendance at seminars, conferences and committee meetings as are approved in CWC's annual budget or as are authorized separately from time to time by the Board.

(g) Retirement. Annually CWC shall pay into one or more retirement accounts for Employee's benefit on a basis at least equivalent (as a percentage of income) as CWC's other full-time employees. Such contribution shall not exceed the maximum permitted by federal law. Employee's retirement payments shall be payable in installments at the same time as retirement benefits are paid for CWC's other employees.

(h) Insurance. CWC shall provide Employee with health, dental, disability, term life and other insurance coverage on the same basis as CWC's other full-time employees.

(i) Other Customary Benefits. Employee shall have the right to participate in and receive any other benefits or working conditions as are provided for CWC's other full-time employees.

(j) FICA. If CWC hereafter elects to not participate in the federal Social Security System, then in lieu of FICA contributions CWC employees will be given an equivalent amount for investment in a retirement savings account of their choice. A portion of such contribution may also be used to fund a health savings account, if preferred by the employee.

6. Holidays; Personal Time Off; Executive Leave. Employee shall be entitled to the same paid holidays as CWC's other full-time employees. Employee also shall accrue personal time off ("PTO") in lieu of, *inter alia*, paid vacation and paid sick leave on the same basis as CWC's other full-time employees in accordance with the Manual and other policies approved by the Board from time to time; provided, however, that Employee shall inform the Chair in advance of Employee's intent to use vacation time, and further shall obtain the Chair's pre-approval of Employee's intent to use more than three (3) consecutive days of vacation time.

7. Bonding. CWC shall bear the full cost of any fidelity or other bonds covering Employee as required by statute or as desired by the Board.

8. Expenses. Employee may be reimbursed for Employee's reasonable business expenses in accordance with CWC's reimbursement policy from time to time, including reimbursement for miles traveled on CWC business (excluding commuting to and from Employee's residence) in Employee's personal vehicle at applicable rates and requirements of the Internal Revenue Code.

9. Termination by CWC. The Board may terminate Employee's employment at any time, with or without cause, as provided in this Section 9.

(a) Termination for Cause. The Board may terminate Employee's employment hereunder "for cause," which shall be defined as proven malfeasance in office pursuant to Laws of Utah 1977, Chapter 48, or other applicable law, which malfeasance shall include (to the extent legally permissible), without limitation, the following:

(i) Misfeasance, malfeasance and/or non-feasance in performance of Employee's duties and responsibilities hereunder;

- (ii) Conviction of a felony, whether or not upheld on appeal;
- (iii) Gross neglect of duty, including inability or unwillingness to properly discharge responsibilities of office after fair warning and opportunity to cure;
- (iv) Violation of any substantive CWC policy, rule or regulation which would subject any other full-time CWC employee to termination;
- (v) The commission of any fraudulent act, or other act against CWC's interest which is materially prejudicial to CWC's or its interests;
- (vi) The commission of any act which involves moral turpitude or which causes CWC disrepute or embarrassment; or
- (vii) Material violation of the Ethical Code.

Upon the Board's determination of the existence of one or more of the above elements supporting termination of Employee's employment for cause, this Agreement shall be terminated upon written notice to Employee. In connection with such termination, CWC shall pay to Employee any accrued and unpaid salary and benefits earned (including unused accrued PTO in accordance with CWC's policies then in effect), but shall have no obligation to pay Employee severance pursuant to applicable law or this Agreement.

(b) Termination Without Cause. Any termination of Employee's employment for a reason other than those specified in section 9(a) above shall be deemed termination "without cause." Upon any termination without cause, CWC shall pay to Employee any accrued and unpaid salary and benefits (including unused accrued PTO in accordance with CWC's policies then in effect) and also shall pay to Employee a lump sum severance payment in such amount as may be specified by the Board. Severance pay ("*Severance*") shall not be construed as compensation for services performed. Payment of Severance shall constitute full and complete payment and satisfaction of any claim that Employee may have or assert to have against CWC under this Agreement or otherwise.

10. Termination by Employee. Employee may terminate this Agreement at any time by delivering to the Board a written notice of termination at least 60 days prior to the effective date of the termination. If Employee voluntarily resigns, CWC shall pay to Employee all compensation and benefits due hereunder up to her final day of employment, including compensating Employee for unused accrued PTO in accordance with CWC's policies then in effect. CWC shall have no further financial obligation to Employee for Severance or any other payment pursuant to this Agreement or otherwise; provided, however, that this shall not impact Employee's vested interest, if any, in any CWC-sponsored retirement account.

11. Termination Upon Employee's Death or Disability. Upon Employee's death or disability, CWC's obligations under this Agreement shall terminate except for:

- (a) Transfer of ownership of retirement funds, if any, to Employee or her designated beneficiaries;

(b) Payment to Employee or her designated beneficiaries for Employee's unused accrued PTO in accordance with CWC's policies then in effect; and

(c) Processing and coordination of payment of all outstanding health, disability or life insurance benefits in accordance with CWC's insurance policies or plans.

For purposes of this Agreement, "*disability*" shall have the same meaning as in any disability policy maintained from time to time by CWC for its employees or, if no such policy exists, then as provided in federal social security laws, rules and regulations.

12. **Non-Funding.** The parties acknowledge that funds are not presently available for performance of this Agreement by CWC beyond 30 June 2024. CWC's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement. If no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or if there is a reduction in appropriations of CWC, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on CWC as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to CWC of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Employee or her successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Notwithstanding the foregoing, however, upon any such non-funding, Employee may, at her option, elect to continue her employment hereunder without compensation until such time, if any, as funding becomes available, whereupon Employee's compensation hereunder shall resume. If Employee elects not to continue her employment hereunder in connection with any such non-funding, then Employee shall be deemed to have been terminated without cause under section 9(b) above, whereupon CWC shall pay Severance to Employee.

13. **Indemnification.** To the extent permitted by law, CWC shall defend, save harmless and indemnify Employee from any and all claims, actions, damages, proceedings (in law or equity), fees (including reasonable attorney's fees) and costs arising from, or in any way attributable to, Employee's proper performance of her duties hereunder so long as Employee is reasonably acting within the scope of her employment.

14. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the

meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. Both parties have had substantive input into the negotiation and drafting of this Agreement; consequently, this Agreement shall not be construed or interpreted more strictly against either party as the “drafter” of this Agreement.

(j) Attorneys’ Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys’ fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, (b) within two (2) 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 to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement, or (c) the next business day following transmission to the Chair, with a copy to CWC’s legal counsel, via email.

(l) No Assignment. Employee’s rights and duties herein are personal in nature, and therefore cannot be assigned or delegated to any third party without the Board’s prior written consent.

[Signature page follows]

DATED effective the date first above written.

CWC:

ATTEST:

CENTRAL WASATCH COMMISSION,
a Utah interlocal entity

By: _____
Jeff Silvestrini, Secretary

By: _____
Christopher F. Robinson, Chair

EMPLOYEE:

LINDSEY NIELSEN