

Employment Agreement

THIS EMPLOYMENT AGREEMENT (this “*Agreement*”) is made effective 2 October 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 **SAMANTHA KILPACK**, an individual whose address is 227 East Center Street, Bountiful, UT 84010 (“*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 (the “*Executive Director*”), who will serve as CWC’s chief administrative officer under the Board’s direction. CWC heretofore has engaged Lindsey Nielsen to serve as CWC’s Executive Director.

E. In consultation with the Board, the Executive Director has determined that the performance of CWC’s business will be enhanced if a “Director of Operations” (“*Director of Operations*”) is employed to carry out the job functions specified in this Agreement.

F. Following a selection process, the Executive Director, in consultation with a selection committee appointed by the Board, desires to appoint Employee as CWC’s Director of Operations, subject to the parties’ entry into a mutually-acceptable employment agreement.

G. Consequently, CWC desires to employ Employee, and Employee desires to be employed, as CWC’s Director of Operations on the terms and conditions specified in this Agreement.

H. This Agreement shall supersede any and all prior negotiations and agreements, oral and/or written, between the parties concerning Employee’s employment by CWC as its Director of Operations.

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:

A G R E E M E N T:

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1. **Duties.** CWC hereby employs Employee, and Employee hereby accepts such employment, to perform the functions and duties of CWC's Director of Operations. Those functions and duties include the following services (collectively, the "*Services*"):

- (a) Be familiar with and committed to CWC's mission and work;
- (b) Utilize excellent written and verbal communication skills, collaborative interpersonal practices, sound critical-thinking and problem-solving skills, and be organized in Employee's job functions;
- (c) Manage office administration and operations including treasury issues, leasing issues, contracts, consulting agreements, and financial reporting;
- (d) Facilitate the coordination of public meetings, including scheduling and preparing materials committee and Board meetings. This includes preparing copies of materials, public meeting packets, presentations, and sending out and publicly posting meeting notices as required by the Open and Public Meetings Act and other applicable law;
- (e) Work with the Executive Director to maintain CWC's organizational budget and audit records as CWC's Budget Officer;
- (f) Manage organizational bookkeeping;
- (g) Maintain public records, information and support, including compliance with the Government Records Access and Management Act, UTAH CODE ANN. 63G-2-101 et seq. ("*GRAMA*"), as CWC's Records Officer;
- (h) Assist with the implementation of CWC policies and procedures;
- (i) Assist the Executive Director in strategic planning, and annual Board retreat planning;
- (j) Working with CWC's Community Engagement Coordinator, facilitate the annual Short-Term Project Grant program;
- (k) Work to plan, coordinate, and implement the first annual Wasatch Symposium event;
- (l) Liaise with the CWC Stakeholders Council and Youth Council, as directed by the Executive Director;
- (m) Represent CWC in and around the Central Wasatch Mountains including

stakeholder events, Youth Council events, and trail-maintenance workdays;

(n) Build and maintain relationships throughout the study area on behalf of CWC;

(o) Other work as assigned by the Executive Director;

(p) Communicate to the Executive Director any information, suggestions, ideas, and recommendations regarding CWC's work that Employee believes may benefit CWC; and

(q) Such other related and unrelated services and duties as are customarily performed by an employee in a similar position or as may be assigned to Employee from time to time by the Executive Director.

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 in connection with CWC.

Employee shall observe and comply with the rules, regulations and policies of CWC as adopted by the Board, either orally or in writing, respecting performance of Employee's duties, with the requirements of CWC's employee manual from time to time (the "*Manual*"), if any, and shall timely and properly carry out and perform orders, directions and policies announced to Employee by the Executive Director 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.

Employee is not authorized to, and shall not, make commitments or contracts on behalf of CWC.

2. **Term of Employment.** Employee's initial term of employment shall be from 5 September 2023 through 30 June 2024, subject to a probationary period from 5 September 2023 – 4 March 2024 (the "*Probationary Period*"). Thereafter, this Agreement automatically shall continue in effect for successive one-year (July 1st through June 30th) renewal periods. Notwithstanding the foregoing, however, Employee shall serve at the pleasure of the Executive Director in consultation with the Board, and nothing in this Agreement shall prevent, limit or otherwise interfere with CWC's right to terminate Employee's employment at any time, with or without cause. Similarly, nothing herein shall prevent, limit or otherwise interfere with Employee's right to resign at any time from the position of CWC's Director of Operations as provided below. Subject to the foregoing, this Agreement shall continue in effect until it is terminated by CWC or by Employee as provided below.

3. **Services, Independent Activities.** 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 as directed by Executive Director. 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 Executive Director 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 CWC's express prior written consent (which consent may be withheld in CWC's sole, subjective discretion), engage in any activity competitive with or adverse to CWC's interests, whether alone in concert with others.

4. **Standards.** Employee shall perform Employee's duties under this Agreement in accordance with (a) directions of the Executive Director; (b) all laws and legal requirements, (c) the Ethical Code, and (d) such other standards as may, from time to time, be applicable during the term of this Agreement. Employee will work about 40 hours each week, with the potential for some evening and weekend work. Employee's position requires both in-person and remote work, as directed by the Executive Director. Light physical effort may be required, as well as frequent exposure to stress resulting from human behavior and Employee's job requirements.

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 Compensation.** Employee will be a non-exempt employee and will be paid bi-weekly, in arrears, at the rate of \$40.86 per hour (i.e., about \$85,000 per year for 2,080 work hours) based on Employee's actual work hours and otherwise in accordance with the CWC's payroll practices ("*Base Compensation*"). On 1 July 2024 and effective each July 1st thereafter, Employee's Base Compensation may be increased (but not decreased) as CWC deems appropriate in its sole, subjective discretion based on Executive Director's evaluation, in consultation with the Board, of Employee's performance. The Base Compensation shall be paid to Employee in accordance with CWC's payroll practices from time to time. Appropriate deductions shall be made from each paycheck for withholding of federal and state income taxes and any other appropriate items. As a "non-exempt" salaried employee, Employee shall be entitled to overtime pay if overtime work is requested by the Executive Director and performed by Employee.

(b) **Bonuses.** In addition to the Base Compensation, CWC may, but shall not be obligated to, pay to Employee such incentive bonus(es) as CWC may from time to time determine in its sole, subjective discretion based on Executive Director's evaluation of Employee's performance.

(c) **Transportation Allowance.** Employee shall receive a \$120.00 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 such computers and the like shall be in accordance with applicable policies described in the Manual or announced by the Board or the Executive Director from time to time. Further, Employee shall receive a \$50.00 per month allowance to defray the cost of operating Employee's "smart" phone or

other communication device(s), provided by that by accepting such allowance Employee shall be deemed to have waived any 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 GRAMA.

(e) Dues and Subscriptions. CWC shall pay such dues and subscriptions on behalf of Employee as are approved in CWC's annual budget or as authorized separately from time to time by Executive Director in consultation with 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 Executive Director.

(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 administrative/management 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 administrative/management 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 administrative/management employees in accordance with the Manual and other policies approved by the Board from time to 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. Executive Director, in consultation with the Board, may terminate Employee's employment at any time, with or without cause.

(a) Termination For Cause. CWC 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 crime, 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 against CWC's interest.

(vi) The commission of any act which involves moral turpitude or which causes CWC disrepute or embarrassment.

(vii) Material violation of the Ethical Code.

Upon CWC'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, for any termination without cause following the Probationary Period, also may pay to Employee a lump sum severance payment in such amount as may be specified by the Executive Director in consultation with the Board. Severance pay ("*Severance*") shall not be construed as compensation for services performed. Such 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 Executive Director or, if none, the Board a written notice of termination at least 45 days before 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 the 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 may 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 performance of her duties hereunder so long as Employee is reasonably acting within the scope of her employment.

14. **Social Media**. CWC shall own all social media postings and contacts arising through Employee's work on behalf of CWC, including all "followers" or "friends" that are acquired through accounts used or created on behalf of CWC such as email addresses, blogs, Twitter, Facebook, YouTube and any other social media site or network. Employee promptly shall turn over those items (and any usernames or passwords) to CWC upon termination of her employment.

15. **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 or (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.

(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.

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:

SAMANTHA KILPACK