

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “*Agreement*”) is entered into effective 2 May 2022 by and between **CENTRAL WASATCH COMMISSION**, an interlocal entity whose address is 41 North Rio Grande Street, Ste. 102, Salt Lake City, UT 84101 (“*CWC*”), and **GREG OGDEN**, an individual whose address is 1761 Anderson Avenue, Springville, UT 84663 (“*Contractor*”).

RECITALS:

A. CWC is an interlocal entity of the state of Utah. As such, CWC is obligated to comply with the fiscal procedures for interlocal entities set forth in UTAH CODE ANN. 11-13-501 to -532, including the audit requirements under UTAH CODE ANN. 11-13-529.

B. CWC desires to engage Contractor on a part-time, independent contractor basis to perform independent audit services for CWC as specified in this Agreement.

C. Contractor is a Utah-licensed certified public accountant with significant experience in providing services of the type needed by CWC, heretofore has been engaged to render such services to CWC between 2018 and 2022, and desires to be so engaged by CWC to continue to provide such services as specified in this Agreement.

D. The parties have determined that it is mutually advantageous to enter into 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 hereto agree as follows:

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

2. **Detailed Description of the Services.** In furtherance of this Agreement, Contractor shall do, perform, and carry out in good, professional and timely manner, the services described in on the attached exhibit (the “*Exhibit*”). Such work, together with all ancillary and additional services and materials as may be reasonable required to accomplish the desired result in a competent, comprehensive and finished manner, is referred to herein as the “*Services*.”

3. **Fees for Services.** CWC shall pay Contractor for Services actually performed the comprehensive sum of \$ [REDACTED] for the FY 2023 audit. Comprehensive fees for the next two years’ audits would be \$ [REDACTED] (FY 2024) and \$ [REDACTED] (FY 2025) if CWC extends this Agreement to cover one or more of those audits. No other fees are charged for secretarial work, travel, per diem, or other out-of-pocket expenses. The foregoing amounts are based on the assumption that CWC’s books and records will be posted up-to-date through the end of such fiscal year and that timely assistance will be rendered by CWC personnel in the preparation of detailed schedules and providing substantiating information and detail as required. If Contractor determines that any additional charge is merited based on those factors, Contractor shall so inform CWC’s executive

director in advance and shall not proceed further without approval by the executive director of such increase. Additional consulting services outside the scope of the audit will be billed at \$150/hour.

4. **Method of Payment.** Each calendar month, Contractor shall submit to CWC a detailed invoice setting forth the Services performed during the immediately preceding calendar month, describing the Services rendered by type and date and specifying the resulting charges. Charges shall be in relation to the portion of the Services then completed, and the cumulative amount billed for any annual audit shall not exceed the maximum charge specified above for that audit year. CWC shall pay (or provide a reasoned objection to) the amount set forth in the current invoice within 30 days after receipt.

5. **Services Performed in a Professional, Reasonable Manner.** Contractor shall perform the Services in a professional, reasonable, responsive manner in compliance with all laws and 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 Contractor.

6. **Personnel, Equipment and Facilities.** Contractor 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. Except as specified in the Exhibit, Contractor shall not use CWC staff as a means to perform the Services in lieu of using Contractor's own staff, nor shall Contractor perform any of the Services on CWC's premises or utilize any CWC equipment or supplies.

7. **Term.** This Agreement shall be effective on the date hereof and shall terminate on 30 June 2023. This Agreement may be extended by CWC upon written notice to Contractor for up to two additional fiscal year periods, each covering the Services for the prior fiscal year's audit.

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

(a) **Control.** Contractor shall have complete control and discretion over all of Contractor's personnel providing Services hereunder.

(b) **Salary and Wages.** Subject to Section 3, above, CWC shall not have any obligation or liability for the payment of any salaries, wages or other compensation to Contractor's personnel providing Services hereunder.

(c) **No Employment Benefits.** Except for CWC staff assigned by executive director to assist Contractor in performing the Services as described in the Exhibit, all personnel providing Services are and shall be and remain Contractor's employees, and shall have no right to any CWC pension, civil service, or any other CWC benefits pursuant to this Agreement or otherwise.

9. **Termination**. Either party may terminate this Agreement, without cause, upon at least 60 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 Contractor all amounts due for actual work performed within the scope of Services before the effective date of the termination, as specified herein.

10. **Indemnification**. Contractor 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. Contractor 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 Contractor (or any officers, employees, agents, subcontractors, etc. of Contractor), 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 Contractor 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 Contractor hereunder.

11. **Laws and Regulations**. Contractor 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. Contractor shall comply with equal opportunity laws and regulations to the extent that they are applicable.

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

13. **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 Contractor. Such decision by CWC shall be final unless Contractor, 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. Contractor 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 14 below.

14. **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, Contractor shall continue to perform the Services during any such litigation proceedings and CWC shall continue to make undisputed payments to Contractor in accordance with the terms of this Agreement.

15. **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 at such other address(es) as a party may provide to the other by prior written notice.

16. **Intellectual Property Rights.** CWC shall own and retain all right, title and interest in and to all Services and all other reports, documents, materials, ideas, concepts, know-how, specifications, plans, notes, drawings, designs, pictures, images, text, audiovisual works, data, information, graphics, designs, layouts and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered or made by Contractor in connection with the Services or which relate in any manner to the Services or which result from any Services produced or undertaken by Contractor for CWC, including any and all intellectual property rights therein (collectively, the “*Work Product*”). To the extent applicable, CWC shall be deemed to be the “author” of all Work Product, and all Work Product will constitute “works made for hire” under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.), and any other applicable law. To the extent that any Work Product does not constitute a work made for hire, Contractor hereby assigns to CWC all right, title and interest that Contractor may have or may hereafter acquire in all Work Product, including all intellectual property rights therein. Notwithstanding the foregoing, however, Contractor shall be entitled to use and display in her professional portfolio any publicly-disseminated written work performed as part of the Services.

17. **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.

(n) Execution and Delivery. This Agreement may be executed and/or delivered by email, facsimile or other electronic means with the same legal effect as manual execution and physical delivery.

(o) Joint and Several Liability. The liability of Contractor hereunder shall be the joint and several liability of each of the individuals and/or entities which comprise Contractor from time to time.

(p) Engagement Letter. A party's execution and delivery of this Agreement also shall constitute such party's execution and delivery of the Exhibit.

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 of the Board

CONTRACTOR:

GREG OGDEN, CPA

Exhibit to Independent Contractor Agreement

(Attach Copy of Contractor's September 26, 2018 Engagement Letter)