

Independent Contractor Agreement

(Legal Services)

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “*Agreement*”) is entered into effective 2 May 2022 between the **CENTRAL WASATCH COMMISSION**, an interlocal entity of the state of Utah (“*CWC*”) and **Wm. SHANE TOPHAM**, an attorney licensed to practice law in the state of Utah (“*Attorney*”).

RECITALS:

A. Attorney is in the business of providing legal services to the public. Attorney currently performs legal services under the assumed name “Topham Legal”; provided, however, that Attorney freely may perform the Legal Services (defined below) under another name or through another business entity or arrangement. The assumed name or other business entity or arrangement through which Attorney now or hereafter provides the Legal Services to CWC hereunder is referred to herein as the “*Firm*”.

B. Attorney has provided legal services to CWC since soon after CWC’s inception.

C. CWC desires to continue to engage Attorney to act as CWC’s attorney, and Attorney is willing to so act, as provided 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, mutual covenants and undertakings, the parties hereby agree as follows:

1. Scope of Services to be Provided. Attorney shall furnish all civil legal services required by CWC (the “*Legal Services*”) from 2 May 2022 until termination of this Agreement. The Legal Services shall include, without limitation, identifying potential legal issues; proposing resolution thereof; attending all CWC board meetings and work sessions; attending all CWC-related agenda planning, advisory subcommittee and other meetings; providing advice concerning legal issues affecting CWC; providing training and legal advice to CWC’s commissioners, officers and staff as requested; responding to legal inquiries by CWC commissioners, officers and staff concerning CWC matters; drafting or reviewing written documents affecting CWC; and resolving such other legal issues and providing such other legal services as Attorney and CWC deem reasonably necessary for the proper functioning of CWC. Provision of the Legal Services by Attorney and the Firm shall be subject to all applicable laws, rules and regulations, including, without limitation, the Rules of Professional Conduct (“*RPC*”) adopted by the Utah Supreme Court from time to time in effect in the State of Utah, as well as such other professional standards and practices as may, from time to time, be applicable.

2. Fees. Fees will be determined primarily by the time expended by Attorney and other attorneys, law clerks and paralegals employed by the Firm that may assist in performing the Legal Services. Each month Attorney, through the Firm, shall provide CWC with an invoice for each active matter setting forth advanced costs and a detailed description of the Legal

Services rendered during the preceding period, billed in one-tenth hour increments. Attorney's hourly rate shall not exceed \$260.00 during the first two years of this Agreement. On the second anniversary of this Agreement, and every two years thereafter, Attorney's hourly rate shall be increased upon notice to CWC in accordance with intervening increases in the Consumer Price Index ("CPI"). Attorney also shall be entitled to reimbursement of any actual, out-of-pocket costs necessarily advanced by Attorney or Firm in performance of the Legal Services in accordance with CWC's reimbursement policies.

3. Annual Budget. CWC's approved budget for each fiscal year shall include a pre-estimate of the fees for anticipated Legal Services during such fiscal year, reasonably based on prior years' budgeted amounts and anticipated workflow for the upcoming fiscal year. Attorney shall use his diligent best efforts to assure that the fees charged for such fiscal year do not exceed the budgeted amount, subject to unanticipated occurrences and CWC's legal needs in response to those occurrences, as directed by CWC's executive director and/or governing board.

4. Term; Non-Funding. This Agreement shall terminate on 30 June 2022, but shall be automatically renewed for successive, consecutive one-year (July 1-June 30) periods until this Agreement is terminated as provided herein. Attorney acknowledges, however, that funds are not presently available for CWC's performance of this Agreement beyond the end of CWC's current fiscal year, which is 30 June 2022. CWC's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement for subsequent fiscal years. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations 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 reduction in appropriation, 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).

5. Assignment and Delegation. Attorney shall not assign or delegate the performance of his duties under this Agreement without CWC's prior approval; provided, however, that Attorney may utilize the services of other attorneys or paralegals in the Firm to assist Attorney in providing the Legal Services hereunder, as reasonably deemed appropriate by Attorney in his professional judgment.

6. Employment Status.

(a) Status. In performing the Legal Services, Attorney shall at all times be an independent contractor, and not an employee, of CWC. Attorney shall have complete control and discretion over all Firm personnel providing the Legal Services. All such personnel shall be and remain employees of the Firm and shall be considered to be independent contractors in the same manner as Attorney.

(b) Salary and Wages. Except for its obligation to satisfy the Firm's monthly invoices as described above, CWC shall not have any obligation or liability for the payment of any salary or other compensation to Attorney or other personnel providing the Legal Services.

(c) Employment Benefits. Attorney and all personnel providing the Legal Services are and shall remain employees of the Firm and shall have no right to any CWC pension, civil service or other benefits pursuant to this Agreement or otherwise.

(d) Errors and Omissions Insurance. Attorney, and all other personnel providing the Legal Services, shall be covered by the Firm's errors and omissions insurance coverage with a liability limit of at least \$1.0 Million.

7. Termination. This Agreement shall be terminated upon the happening of any of the following events:

(a) For Cause. For cause upon at least 30 days' prior written notice and opportunity to cure by the terminating party where the other party has materially breached any provision of this Agreement or violated any material statutory or common law duty or obligation to the terminating party, including, without limitation, Attorney's failure to substantially perform any of Attorney's material obligations hereunder to the CWC's reasonable satisfaction at any time;

(b) Without Cause. Without cause at any time upon at least 30 days' prior written notice by a party to the other.

During such 30 days notice period, Attorney shall continue, and shall be allowed to continue, to provide all Legal Services reasonably required by the CWC on the same basis as theretofore, with Attorney being entitled to payment for Legal Services rendered during the notice period as provided in this Agreement.

(c) Mutual Consent. Whenever CWC and Attorney mutually agree in writing to terminate this Agreement;

(d) Death. Upon Attorney's death; or

(e) Conduct. If Attorney is convicted of any crime which is classified by the State of Utah as a Class A misdemeanor or greater, or if Attorney violates the RPC and is disbarred, suspended from the practice of law, or publicly reprimanded by the Utah State Bar, a Utah district court and/or the Utah Supreme Court.

8. 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 parties as set forth below or at such other address(es) as a party may designate in a notice to the other party.

CWC:	CENTRAL WASATCH COMMISSION
	Attn. Executive Director(s)
	41 North Rio Grande Street, Ste. 102
	Salt Lake City, UT 84101

Attorney: Wm. Shane Topham
TOPHAM LEGAL
4930 Fairview Drive
Holladay, UT 84117

9. *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.

10. *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.

11. *Applicable Law.* The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah.

12. *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.

13. *Time.* Time is the essence hereof.

14. *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.

15. *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.

16. *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.

17. *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.

18. *Disclosure and Waiver of Conflict.* CWC acknowledges and agrees that (a)

Attorney prepared this Agreement; (b) CWC has been advised by Attorney that the interest of CWC and Attorney under this Agreement are opposed to each other; and (c) CWC has been advised by Attorney to retain separate counsel. Notwithstanding the foregoing, CWC (x) desires to enter into this Agreement; (y) acknowledges that it has been advised to retain separate counsel and has done so or waives its right to do so; and (z) forever waives any claim that the Attorney's representation of CWC and Attorney's rights under this Agreement constitute a conflict of interest.

19. Conflicts of Interest.

(a) Attorney shall attempt to avoid all conflicts of interest with other clients of Attorney and/or the Firm and shall comply with the RPC in that respect. Because Attorney will be acting as the official attorney for CWC, he shall also comply with all applicable ethics laws. Attorney represents and certifies that he has not offered or given any gift or compensation prohibited by law to any CWC officer or employee to secure favorable treatment with respect to this Agreement.

(b) Pursuant to UTAH CODE ANN. 11-13-203(1), CWC is a different legal person from its members. Although Attorney has assured that neither he nor the Firm has any conflict of interest with CWC itself, Attorney now represents, or hereafter will represent, either members of CWC or other Firm clients whose interests are or may be adverse to those of one or more CWC members, which representation therefore may constitute conflicts of interest between the Firm (including Attorney) and one or more of the current or future members of CWC. **CWC irrevocably agrees, for itself and its members, that Attorney's and the Firm's representation of CWC under this Agreement will not prejudice or affect in any way Attorney's or the Firm's representation of—or right to represent—either CWC's individual members (such as Attorney's representation of CWC member Cottonwood Heights as its city attorney) or the representation of any other clients who now or hereafter may have matters adverse to CWC's members or entities represented by CWC's non-member commissioners (such as UTA or Metro Water).**

(c) The terms and conditions of the Firm's standard engagement letter are incorporated herein by reference. A copy of such engagement letter is attached to this Agreement.

IN WITNESS WHEREOF, CWC has caused this Agreement to be signed by its Chairman and attested by its Secretary and delivered; and Attorney has caused the same to be signed and delivered.

[Signature page follows]

ATTEST:

CENTRAL WASATCH COMMISSION,
a Utah interlocal entity

Jeff Silvestrini, Secretary

By:_____
Christopher F. Robinson, Chair

ATTORNEY:

Wm. Shane Topham