

Employment Agreement

THIS EMPLOYMENT AGREEMENT (this “*Agreement*”) is made effective 6 August 2018 by the **CENTRAL WASATCH COMMISSION**, an interlocal entity whose address is c/o 170 South Main Street, 15th Floor, Salt Lake City, UT 84101 (“*CWC*”), and **LINDSEY NIELSEN**, an individual whose address is _____ (“*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 member governmental entities (currently including Salt Lake County, Salt Lake City, Sandy City and the city of Cottonwood Heights) (“*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 among the current Members. 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. CWC heretofore has engaged Ralph Becker to serve as CWC’s executive director (the “*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 communications director is employed to carry out the job functions specified in this Agreement.

F. Employee has significant expertise in local government and submitted an application to serve as CWC’s communications director.

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

H. Consequently, CWC desires to employ Employee, and Employee desires to be employed, as CWC’s communications director on the terms and conditions specified in this Agreement.

I. This Agreement shall supersede any and all prior negotiations and agreements, oral and/or written, between the parties (or Park City, as CWC’s agent for purposes of the underlying job posting) concerning Employee’s employment by CWC as its communications director.

A G R E E M E N T:

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:

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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 communications director. In summary, the communications director's job entails, under the general supervision and direction of the Executive Director (and/or the CWC chief of staff, as determined by the Executive Director), developing and implementing a full range of strategic communications, community engagement, and outreach activities, including but not limited to, strategic communication planning; social media and web content; public events; interaction with the media; message development; publication production and research. In furtherance of those purposes, Employee shall perform the following services (collectively, the "*Services*"):

- (a) Develop and implement a strategic communication plan for CWC, including community outreach, public engagement, internal communication and crisis communication;
- (b) Assist CWC teams as needed to develop strategic communications and engagement;
- (c) Develop CWC's publications and presentations;
- (d) Maintain relationships and communications with targeted communities to educate and inform about upcoming projects;
- (e) Coordinate and assist with outreach efforts, including establishing public meetings and all activities associated with those meetings, presentations and tours, meetings and events with community organizations, businesses, and individuals;
- (f) Oversee CWC website content and images to remain current, including incorporating new images and updates text to maintain a vibrant website;
- (g) Develop and assist with CWC's social media efforts as part of a team, including strategic messaging (as determined in conjunction with the Executive Director and other key CWC staff), posting, monitoring and response;
- (h) Assist with the coordination of CWC communications and engagement with the CWC's members and stakeholders council;
- (i) Research, write and edit CWC publications;

- (j) As assigned, coordinate photography and statistical information for publication;
- (k) Prepare and deliver presentations;
- (l) Plan and coordinate proactive media outreach strategies for public education and awareness on building of CWC programs and projects;
- (m) Assist with recruitment efforts as needed;
- (n) Prepare, finalize and post agendas and minutes of all public meetings of CWC's Board, Executive Committee, Stakeholders Council, and all other associated public bodies (collectively, the "CWC Bodies") in full compliance with the Open and Public Meetings Act, UTAH CODE ANN. 52-4-101 *et seq.*;
- (o) Serve as clerk of the CWC Bodies, attending their meetings, keeping the records of their proceedings, and performing such other duties of a like nature as may be required by the Board, by the Executive Director, by the Governing Documents, or by state or federal law;
- (p) Be responsible for the recording, filing, indexing, making available for public inspection, and safekeeping of all proceedings of all records of CWC Bodies;
- (q) Record all Board resolutions and other legislation in full, uniformly and permanently, and authenticate the same, assigning each resolution and other legislation an identifying number if the responsible CWC Body has not already done so;
- (r) Post or publish, as required by law, resolutions and other legislation adopted by the Board, and all legal notices;
- (s) Maintain a properly indexed record of all contracts, agreements and other legal documents to which any CWC Body is a party;
- (t) Act as the city records officer for the CWC Bodies under the "Government Records Access Management Act" ("*GRAMA*"), UTAH CODE ANN. §63G-2-101, *et seq.*, including overseeing and coordinating records access and management and city archives activities as required by local, state, and federal law; and
- (u) Perform other duties as assigned.

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.

2. **Term of Employment.** Employee's initial term of employment shall be from 2 August 2018 through 30 June 2019, subject to a probationary period from 2 August 2018 - 1 February 2019 (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 communications director 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 or the CWC chief of staff; (b) all 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.

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 2019, Employee's Base Salary shall be the equivalent of Seventy Thousand and 00/100ths Dollars (\$70,000.00) annually. On 1 February 2019, on 1 July 2019 and effective each July 1st thereafter, Employee's Base Salary 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 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 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 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. CWC shall provide Employee a \$50 per month transportation allowance for use, in Employee's reasonable discretion, to apply against parking charges for Employee's personal 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 charges for such stall exceed \$50, Employee's transportation allowance shall be applied against such parking stall fee and Employee shall be responsible to pay any balance.

(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 Executive Director from time to time.

(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 2019. 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. **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.

CITY:

ATTEST:

CENTRAL WASATCH COMMISSION,
a Utah interlocal entity

By: _____
Ben McAdams, Secretary

By: _____
Chris McCandless, Chair of the Board

EMPLOYEE:

LINDSEY NIELSEN