

Interlocal Cooperation Agreement

between

MIDA

and

Hideout

This Interlocal Cooperation Agreement (“**Agreement**”) is made and entered into as of _____, 2019 (the “**Effective Date**”) by and between the Military Installation Development Authority, a public corporation and political subdivision of the State of Utah (“**MIDA**”) and the Town of Hideout, a political subdivision of the State of Utah (“**Hideout**”). Individually each may be referred to as a “**Party**” and collectively as “**Parties**”.

Recitals:

WHEREAS, MIDA, in cooperation with Wasatch County (the “**County**”) has created the Military Recreation Facility Project Area in Wasatch County, as shown in Exhibit A, including any future land, some of which is located within Hideout, that may be added thereto (“**MRF Project Area**”); and

WHEREAS, the creation and operation of a project area is governed by Chapter 1, Title 63H Utah Code annotated 1953, as amended (“**MIDA Act**”) and political subdivisions may enter into cooperative agreements, including revenue sharing pursuant to Chapter 13, Title 11 Utah Code annotated 1953, as amended (“**Interlocal Cooperation Act**”); and

WHEREAS, pursuant to the MIDA Act, MIDA is “independent, nonprofit, separate body corporate and politic, with perpetual succession and statewide jurisdiction, whose purpose is to facilitate the development of land within a project area or on military land associated with a project area”; and

WHEREAS, pursuant to the MIDA Act, MIDA may exercise “exclusive police power within a project area to the same extent as though the authority were a municipality, including the collection of regulatory fees,” and neither MIDA nor any land included in a project area is subject to “Title 10, Chapter 9a, Municipal Land Use, Development and Management Act” (“**LUDMA**”), nor are they subject to “ordinances or regulations of a county or municipality including those relating to land use, health, business license, or franchise”; and

WHEREAS, MIDA is authorized under the provisions of the MIDA Act to receive certain tax revenues within a project area to, among other things, assist with development activities within the project area, including a portion of the property tax set as set forth in §63H-1-501 of the MIDA Act (the “**Property Tax Allocation**”); and

WHEREAS, the Property Tax Allocation includes revenues that would otherwise be distributed to Wasatch County or other local taxing entities; and

WHEREAS, MIDA does not independently set property tax rates for properties within the MRF Project Area nor does MIDA’s receipt of the Property Tax Allocation result in any additional property tax burden for the MRF Project Area; and

WHEREAS, as part of the MIDA Act, MIDA may contract for the provision of municipal services within a project area, and MIDA desires to contract with Hideout and has already contracted with related service districts for the provision of municipal services and permitting and inspection services in the MRF Project Area, and Hideout and certain service districts desire to provide such services on the terms and conditions set forth herein or set forth in the agreements with the Service Districts (defined below); and

WHEREAS, MIDA is focused on the development and operation of the Military Recreation Facility and related amenities (collectively, the “**MRF**”) and Hideout is focused on the development within Hideout’s boundaries, which includes some of the MRF Project Area; and

WHEREAS, the MRF can be a catalyst for the development of Hideout; and

WHEREAS, pursuant to the MIDA Act and the Interlocal Cooperation Act, MIDA desires to share certain revenues with Hideout in connection with the development of the MRF Project Area and Hideout’s agreement to provide municipal services and permitting and inspection services to the MRF Project Area, as set forth below;

Agreement:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants made herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. TERM. This Agreement shall commence on the Effective Date and shall continue for 25 years from the date that MIDA receives the first Property Tax Allocation from property within the Hideout Zone (as defined below), as set forth in §63H-1-501 of the MIDA Act, until the final payment is made in that 25 year Property Tax Allocation Period, unless (a) the MIDA board finds, ~~and the Hideout legislative body concurs,~~ that a longer term will produce significant benefit and the Property Tax Allocation Period, defined below, is extended, in which case the term shall align with the extended Property Tax Allocation Period; or (b) earlier terminated by the mutual agreement of the parties. The Parties agree that Termination of this Agreement shall not affect the boundaries of the MRF Project Area.
2. PROJECT AREA. MIDA created the Military Recreation Facility Project Area – Part 1 of the MRF Project Area that consists of the Blue Ledge parcel in Wasatch County and the Red Maple Parcel in Summit County. MIDA is currently in the process of creating the Military Recreation Facility Project Area – Part 4 (“**Part 4 Project Area**”), which will include the MRF. This Agreement shall govern all property within the MRF Project Area that is also located within Hideout’s municipal boundary and that is depicted and identified as the “Hideout Zone” by a blue shading and within the black dashed line on Exhibit A attached hereto (the “**Hideout Zone**”) Hideout has irrevocably consented to the inclusion of the Hideout Zone in the MRF Project Area during the term of this Agreement, most of which will be added when the Part 4 Project Area is created. Any Hideout Zone property shown in Exhibit A which is not included in the Part 4 Project Area may be added to the MRF Project Area in the future, by MIDA, with the consent of Hideout and the landowner. No additional property may be added to the Hideout Zone without Hideout first adopting another resolution consenting to such additional property being added.
3. RESERVED
4. POLICE POWERS. Pursuant to the MIDA Act, MIDA shall have the exclusive right to exercise all of MIDA’s statutory authority within the Hideout Zone subject only to those reservations and delegations of authority expressly set forth in this Agreement.

5. MUNICIPAL SERVICES.

- a. Pursuant to §63H-1-201(3)(q) of the MIDA Act, for any property in the Hideout Zone, Hideout shall provide normal and customary municipal services which it currently or in the future provides to other land within Hideout, including, but not limited to, police protection, snow removal on Hideout owned roads, maintenance of Hideout owned roads and other Hideout owned rights-of-way, animal control, flood control of public properties, road grading permits and inspections; building permits, inspections, and certificates of occupancy, business licenses, courts and prosecution, (collectively, the “**Municipal Services**”). This provision shall not obligate Hideout to provide any service to the Hideout Zone which Hideout does not provide to other areas within the municipal boundaries of Hideout.
- b. The Parties recognize that some municipal type services, including the providing of water, sewer, wastewater treatment, refuse collection, and fire protection, are not provided by Hideout but are provided by separate service districts, which are separate and distinct legal entities and political subdivisions of the state (“**Service Districts**”). MIDA has entered into separate agreements with the existing Service Districts for the provision of services by the applicable Service District. In the event any service currently provided by Hideout is hereafter transferred to a Service District that has an interlocal cooperation agreement with MIDA, MIDA understands and agrees that such service will no longer be provided to the Hideout Zone by Hideout. If a new Service District is created, then the cost of the service provided by the new Service District shall be deducted from the Municipal Services Revenue Fund proceeds paid to Hideout, as provided in Section 6, and the deduction shall be used to offset the new cost to the property owners imposed by the new Service District for the same level of service provided prior to the creation of the new Service District. The offset shall not apply to the cost of for an enhanced level of service provided by the new Service District. Subject to the foregoing, the offset shall be determined by Hideout Mayor and the MIDA Executive Director. MIDA will not create a new Service District within the Hideout Zone without the consent of Hideout.
- c. Subject to the terms of this Agreement, MIDA may provide if it elects, but shall have no responsibility to provide, Municipal Services in the Hideout Zone; provided, however, MIDA shall provide financial remuneration to Hideout for Municipal Services provided by Hideout from the Municipal Services Revenue Fund (defined below), as provided in Section 6 hereof. Such remuneration shall be payable only from the Municipal Services Revenue Fund, which revenue shall be collected solely from property in the MRF Project Area that is located in the Hideout Zone at the time it is collected. Notwithstanding the foregoing, however, MIDA will not provide any Municipal Services which Hideout is providing as of the date of this Agreement without Hideout’s consent, except pursuant to the provisions set forth in Section 5(h) below.
- d. For those portions of the Hideout Zone, with respect to which Hideout is providing Municipal Services as provided in this Agreement, Hideout’s rules, ordinances and regulations applicable to the provision of such Municipal Services shall be those rules, ordinances and regulations adopted by Hideout and in effect as of the date of this Agreement or hereafter adopted, amended or modified by Hideout. MIDA shall take such actions as are necessary to formally adopt such rules, ordinances and regulations as the applicable regulations for the Hideout Zone to the extent

required by the MIDA Act. Notwithstanding the foregoing, Hideout will only be required to provide the Municipal Services at the same level as to other areas of Hideout.

- e. No fees or generally applicable taxes shall be levied by Hideout or payable by MIDA or any property owner within the Hideout Zone with respect to Municipal Services except for those taxes to be placed in the Municipal Services Revenue Fund as contemplated by Section 6 hereof or as otherwise provided for herein.
- f. Hideout shall not discriminate with respect to the provision of Municipal Services to the property, businesses, or residents of the Hideout Zone but shall provide the Municipal Services to the Hideout Zone in substantially the same manner and to the same extent that Hideout provides such Municipal Services to the balance of Hideout. Nothing in this Agreement shall be construed to prohibit Hideout from adding additional Municipal Services after the Effective Date of this Agreement as it deems appropriate, provided, however, that such additional services must also be provided to the Hideout Zone in accordance with the terms of this Subsection (f).
- g. Hideout shall indemnify, release, and hold MIDA harmless from any and all claims, damages, suits, liabilities, and attorney's fees of whatever nature (collectively, "**Claims**") which may arise from Hideout's control and provision of the Municipal Services but only to the extent that Hideout would have liability for such Claims absent the existence of MIDA and the MRF Project Area. MIDA shall indemnify, release and hold Hideout harmless for any and all Claims which arise out of MIDA's acts and decisions regarding land use decisions reversal of a Hideout Final Land Use Decision as set forth in Section 8 and any Municipal Services MIDA provides.
- h. In the event that Hideout does not timely provide any of the Municipal Services to any portion of the Hideout Zone in accordance with the provisions of Section 5 above and applicable law, MIDA shall have the right upon a minimum of sixty (60) days prior written notice to Hideout, to: (i) remove, in whole or in part, the Municipal Services for the Hideout Zone from Hideout's obligations under this Agreement, and to have such Municipal Services provided by another service provider; or (ii) supplement, in whole or in part, such Municipal Services with another provider. The required notice which MIDA must provide at least sixty (60) days prior to implementing either (i) or (ii) above, shall outline in reasonable detail the facts and other reasons for MIDA's- assertion that Hideout has failed to perform. Hideout shall thereafter have the opportunity to cure the issues raised in MIDA's notice or contest the assertions in the notice. If, following such sixty (60) day cure period, MIDA exercises remedies (i) or (ii), above, Hideout shall not receive any part of the Municipal Services Revenue Fund, but only to the extent MIDA exercises such remedies which are used by MIDA to provide for any Municipal Services under the terms of this Subsection 5(h). In addition, MIDA reserves the right, without cost to Hideout and without any loss of the portion of the Municipal Services Revenue Fund, to supplement any Municipal Services itself or through a third-party service provider at any time and from time to time.

6. PAYMENTS FOR MUNICIPAL SERVICES.

- a. Pursuant to the MIDA Act, MIDA will receive tax revenue from the following sources, which tax revenue shall be paid into a designated fund to pay for municipal services in the Hideout Zone (the “**Municipal Services Revenue Fund**”):
 - i. Hideout’s portion of any property tax remaining after MIDA is paid the property tax allocation, also defined as “dedicated tax collections” in the MIDA Act, collected from the MRF Project Area;
 - ii. A Municipal energy tax in the MRF Project Area authorized by the MIDA Act;
 - iii. A Transient room tax from the MRF Project Area authorized by the MIDA Act; and
 - iv. A Telecommunications tax from the MRF Project Area authorized by the MIDA Act.
- b. For providing the Municipal Services in the Hideout Zone, MIDA shall remit all of the Municipal Services Revenue Fund to Hideout which are assessed or levied to properties located in, or from residents or occupants of, the Hideout Zone, less ten percent (10%) to pay for MIDA’s administrative, overhead, legal, and other operating expenses.
 - i. MIDA shall remit such funds to Hideout within 30 days of receipt of the funds.
 - ii. Hideout shall use the funds, as it determines in its sole discretion, to provide the Municipal Services in the Hideout Zone, and as otherwise allowed under applicable law. Hideout does not have to account to MIDA in how it is using Municipal Service Revenue Fund and is only subject to providing the Municipal Services, as provided in Section 5.
- c. If Hideout creates a new Service District to provide a service already provided by Hideout as part of the Municipal Services, the taxes, fees or costs charged by the new Service District to provide such services shall be offset as described in Subsection 5(b).
- d. Hideout may charge and collect its normal development, regulatory, permitting, and / or inspection fees, including but not limited to, impact fees and fees associated with road grading inspections, building permits, and business licenses from the Hideout Zone.

7. RESERVED.

8. LAND USE APPROVALS. Pursuant to MIDA’s statutory authority, and under Utah Code § 63H-1-201(3)(q), the parties agree that the following land use laws and administrative review procedures will apply within the Hideout Zone:

- a. MIDA designates and authorizes Hideout as the land use authority in the Hideout Zone, specifically authorizing Hideout to utilize its Land Use and

Development Code (“**Hideout Code**”), as may be amended by Hideout from time to time, MIDA hereby adopts, ratifies, and authorizes all of Hideout’s land use decisions made on the Hideout Zone prior to the date of this Agreement, as if they had been made by MIDA.

- b. In the Hideout Zone, no land use approvals from MIDA shall be required, and Hideout shall be the final land use authority for all purposes, except the right of appeal to the MIDA Board, as provided below.
- c. Land use decisions made by Hideout, as provided under the Hideout Code, where all administrative remedies have been exhausted and the only action remaining is an appeal to district court are final land use decisions (“**Hideout Final Land Use Decisions**”). Hideout Final Land Use Decisions may be appealed to the MIDA Board, as provided herein, and then would go to the district court. Appeals of a Hideout Final Land Use Decision shall be made to the MIDA Board pursuant to rules and procedures established by the MIDA Board. The appeal shall be filed in writing within 30 days of the date Hideout Final Land Use Decision is made, setting forth the reasons for the appeal and the alleged errors made by Hideout.
- d. Hideout shall indemnify and hold MIDA harmless, including for any attorney’s fees, for any liability resulting from MIDA’s approval of Hideout land use decisions and approvals described herein or made or issued after the date hereof. Except, if MIDA does not uphold a Hideout Final Land Use Decision on appeal, then MIDA shall indemnify and hold Hideout harmless, including for any attorney’s fees, for any liability to a third party from MIDA’s decision.
- e. Hideout agrees to timely provide MIDA with notice of all building permits and certificates of occupancy, issued by Hideout, for construction occurring within the Hideout Zone during the Term of this Agreement.

9. INFRASTRUCTURE DEVELOPMENT.

MIDA and Hideout agree to cooperate and coordinate with each other so that Infrastructure, defined below, crossing between and/or intended to serve the Hideout Zone and the balance of the MRF Project Area and other areas of Hideout adjacent to the MRF Project Area are designed and installed so as to work to the betterment of both areas; provided, however, that Hideout will not be obligated to assume any liability, costs, or expenses of any sort for portions of any Infrastructure outside the Hideout Zone unless constructed or owned by Hideout. In the event of any disagreement between Hideout and MIDA over the location, scope, or other coordination details of such Infrastructure crossing between land in the Hideout Zone and land in the balance of the MRF Project Area or land adjacent to the MRF Project Area, the joint decision of Hideout Mayor and the MIDA Executive Director shall control.

10. DEVELOPMENT FUND. Pursuant to the MIDA Act, , including financing or refinancing, MIDA shall receive funds to pay for the development of land within the MRF Project Area, ongoing operation of the MRF, MIDA expenses, and the cost of acquisition, construction,

maintenance, repair, or replacement of publicly owned land, infrastructure, or improvements (including without limitation, roads, streets, public utility infrastructure, trails, paths, parks, recreation facilities, playgrounds, open space, etc., and such publicly owned land, infrastructure, or improvements being referred to herein as the “**Infrastructure**”) within or outside the MRF Project Area. The collection, allocation, use, and disbursement of funds that are part of the Development Fund less ten percent (10%) to pay for MIDA’s administrative, overhead, legal, and other operating expenses, described in Subsection 10(a) below, which are generated from the Hideout Zone shall be governed by this Section 10. (“**Development Fund**”).

- a. Monies for the Development Fund will come from the:
 - i. 75% of the Property Tax Allocation generated in the Hideout Zone in accordance with the MIDA Act for the 25-year period in which the property tax allocation may be collected as the same may be extended in accordance with the MIDA Act (“**Property Tax Allocation Period**”);
 - ii. point of sale portion of sales and use tax collected from the Hideout Zone, in accordance with the MIDA Act; and
 - iii. resort communities tax collected from the Hideout Zone, as authorized by the MIDA Act.
- b. Under the MIDA Act, MIDA may use the sales and use tax and the resort communities’ tax in either the Municipal Services Revenue Fund or the Development Fund. Both Parties agree that given the significant infrastructure costs associated with providing a high-quality development within the Hideout Zone, both taxes will be part of the Development Fund during the Property Tax Allocation Period. Following the Property Tax Allocation Period, the proceeds from such taxes may, if agreed by the MIDA Executive Director and Hideout Mayor, be included in the Municipal Services Revenue Fund, and failing such agreement, shall be used and / or allocated as provided in the MIDA Act.
- c. Thirty percent (30%) of the contribution to the Development Fund generated from each property in the Hideout Zone shall be used, consistent with the MIDA Act, to the extent justified and approved by MIDA to assist the landowners in the development of Infrastructure that will assist the landowners in the development of the landowner’s property.
- d. The remaining seventy percent (70%) of the contribution to the Development Fund shall be used to benefit the MRF Project Area and the surrounding Town of Hideout, as follows:
 - i. These funds shall be split equally by MIDA and Hideout to benefit the MRF Project Area, as determined by each Party in its sole discretion, consistent with the MIDA Act. This includes, but is not limited to, infrastructure and improvements available to the public and military personnel such as parks, trails, boat ramps, and other recreation facilities.

- ii. Each Party may fund the installation of UTOPIA fiber within the boundaries of Hideout and the MRF Project Area. This may include the pledging of that Party's one-half share of the 70% as collateral for bonds issued by the Utah Infrastructure Agency or MIDA, or to secure any other obligation of Hideout or MIDA under any agreement(s) they may enter into with the Utah Infrastructure Agency.
- iii. Hideout will identify the uses of the funds it controls as identified in Subsection (10)(d)(i) and submit them to MIDA each year, and MIDA shall include them within the MRF Project Area budget adopted each year pursuant to §63H-1-405 of the MIDA Act ("**Development Fund Budget**").
- iv. Annually, MIDA, in consultation with Hideout, shall include in its Development Fund Budget the estimates of the costs associated with the improvements described above and the budget year in which they may be needed.
- e. Pursuant to §63H-1-502(l)(e) of the MIDA Act, the MIDA Board finds that all of the Infrastructure to be constructed in the Hideout Zone and within the boundaries of Hideout which are outside of the MRF Project Area, are of benefit to the MRF Project Area and this finding is adopted by the resolution approving this Agreement.
- f. For purposes of § 63H-1-501(2) of the MIDA Act, to begin and calculate the property tax allocation designated by MIDA resolution for any specific parcel of property within the Hideout Zone, MIDA designates Hideout as the entity to issue any certificate of occupancy required for any improvements on that parcel.

11. RESERVED

12. REMEDIES. Nothing in this Agreement shall prevent the either party from seeking remedies available under applicable law or at equity for breach of the other party's duties and obligations hereunder.

13. NO SEPARATE ENTITY CREATED. No separate legal entity is created by the terms of this Agreement. There shall be no real or personal property jointly acquired by the Parties as a result of this Agreement.

14. NO THIRD-PARTY BENEFICIARIES. This Agreement and the covenants, promises, obligations and responsibilities contained herein are intended solely to establish the obligations and benefits of the respective Parties hereto. No third-party may enforce the terms of this Agreement or rely on this Agreement in any action against either of the Parties.

15. PARTIES AS GOVERNMENTAL ENTITIES. Both Parties are governmental entities subject to the provisions of the Utah Governmental Immunity Act and the substantive and procedural protections thereof. By execution of this Agreement, neither Party waives any of the substantive or procedural defenses or protections of the Act including specifically

without reservation the limitations on actions and the limitations on judgments contained therein.

16. GENERAL INDEMNITY. Subject to the provisions of this Section, each Party agrees to indemnify, release, hold harmless and defend the other party hereto from all claims, damages, liabilities, and judgments for injury to persons, loss of life, or damage to property occurring because of the negligent acts or omissions of the indemnifying Party, its officers, or employees in connection with this Agreement.
17. INTERLOCAL ACT REQUIREMENTS.
 - a. This Agreement shall be authorized by resolution or ordinance of the legislative body of each Party, pursuant to §11-13-202.5(l)(b) of the Interlocal Corporation Act;
 - b. The resolution or ordinance of a Party's legislative body approving this Agreement shall specify the effective date of this Agreement, pursuant to §11-13-202.5(2) of the Interlocal Corporation Act; and
 - c. A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each Party pursuant to §11-13-209 of the Interlocal Corporation Act.
18. CONTRACT REPRESENTATIVE. Each Party agrees to designate a contract representative responsible for matters involving contract interpretation and performance during the term of the Agreement. The initial contract representatives shall be:
 - a. For MIDA, the Executive Director, who is currently Paul Morris as the Acting Executive Director.
 - b. For Hideout, the Hideout Mayor, who is currently Phil Rubin.
 - c. The Parties agree to provide notice to the other Party of any change in designated contract representative prior to the effective date of the transfer of responsibilities.
19. NOTICE. Whenever a Party is required to give notice under this Agreement, it shall be given in writing by depositing it, postage pre-paid, with the U.S. Postal Service addressed to the other Party as follows:
 - a. If to MIDA: Military Installation Development Authority
Attention: Executive Director
450 Simmons Way, No. 400
Kaysville, UT 84037-6722

With a copy to: Military Installation Development Authority
Attention: General Counsel
5110 Ivybrook Circle
Murray, UT 84123

b. If to Hideout: Hideout Mayor
10860 N. Hideout Trail
Hideout, UT 84036

With a copy to: Daniel Dansie, Hideout Town Attorney
10610 S. Jordan Gateway, # 200
South Jordan, Utah 84095

The Parties may change the person or address where notice is given by providing written notice to the other Party.

20. AMENDMENT. The terms of this Agreement may be modified or amended at any time through execution by the Parties of a written amendment hereto. Any amendment of the Agreement shall specify the changes hereto and the effective date(s) of the changes.
21. WHOLE AGREEMENT. This Agreement, including the Exhibit hereto (which is hereby incorporated herein by reference), contains the entire agreement between the Parties. All promises, representations, understandings, warranties, inducements and agreements with respect to the matters described in this Agreement have been expressed herein. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect. Any terms not specifically defined herein but defined in the MIDA Act shall have the meanings set forth in the MIDA Act.

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as specified above.

Military Installation Development Authority

Paul Morris
Acting Executive Director

ATTEST:

MIDA Staff

Approved as to Form:

Paul Morris
General Counsel

Hideout

Name: _____
Title: _____

ATTEST:

Hideout Clerk

Approved as to Form:

Daniel Dansie
Hideout Town Attorney

Exhibit A

To

Hideout Interlocal Cooperation Agreement

Map of MRF Project Area; Hideout Zone; and Identification of Hideout Zone Parcels