

SERVICES LOAN-OUT AGREEMENT

THIS SERVICES LOAN-OUT AGREEMENT (“Agreement”) is made and entered into as of May 30, 2018 (“Effective Date”), by and between Mountain Regional Water Special Service District (“District”), whose address is 6421 Business Park Loop Rd, Park City, UT 84098, on the one part, and Snyderville Basin Special Recreation District (“Lender”) for the services of Melissa O’Brien (“Employee”), whose address is 5715 Trailside Dr., Park City, Utah 84098, on the other part. Individually, the District and Lender are referred to herein as a “Party,” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Lender and the District are each a special service district formed by Summit County pursuant to the applicable laws of the State of Utah; and

WHEREAS, Employee is currently employed by the Lender; and

WHEREAS, the position of General Manager of the District has recently been vacated and the District is proceeding to conduct a search for a new General Manager; and

WHEREAS, the District desires to engage an individual to fill the District’s General Manager position on an interim basis until such time as the position is filled pursuant to such search; and

WHEREAS, the District desires that the Lender furnish Employee’s services to the District on an interim basis and the Lender is willing to furnish Employee’s services on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the District and the Lender hereby agree as follows:

1. **Services.** The District hereby engages the Lender, and the Lender hereby accepts such engagement, to furnish Employee’s services as the Interim General Manager of the District during the Term (as hereinafter defined), subject to the terms and conditions of this Agreement. The District shall be the owner of all of the results and proceeds of Employee’s rendered for the District services during the Term of this Agreement. The Lender shall cause Employee to comply with all of the terms and conditions hereof of this Agreement and all of the District’s policies and procedures during the Term. During the Term, Employee shall exercise all powers and perform all duties of the General Manager specified in Summit County Code, Title 2, Chapter 9, and to perform other legally permissible and proper duties as the County Council or the Administrative Control Board of the District may from time to time assign not inconsistent with, or in conflict with, the provisions of this Agreement, the Summit County Code, or state or federal law.

2. **Term; Hours of Work; Termination.**

a. The term of this Agreement shall commence as of May 30, 2018 (“Effective Date”) and shall continue until such time as the District has hired a full time General Manager of the District and such General Manager has assumed his or her full-time employment with the District; provided, however, the term shall not extend beyond three (3) months after the Effective Date (“Term”).

b. The District hereby acknowledges that Employee will be on vacation from June 16, 2018 through June 24, 2018 and July 5, 2018 through July 6, 2018 and the District hereby approves such vacation periods.

c. It is recognized that the Employee must devote a great deal of her time outside normal office hours to business of the District, and to that end Employee will be allowed to take administrative time off as she shall deem appropriate during normal office hours.

d. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the District to terminate the services of Employee at any time, subject only to the provisions established by this Agreement. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from her position with the District upon thirty (30) days written notice to the County Council.

3. **Exclusivity of Employment.** The Employee agrees to remain in the exclusive employ of the District during the term of this Agreement; provided, however, the District acknowledges that, during the Term, the Employee may render occasional services from time to time for the Lender so long as the services rendered for the Lender do not materially interfere with the Employee's services for the District.

4. **Remuneration for Services.** For the performance of all of the Lender's obligations hereunder and for all rights granted by the Lender, and upon the condition that the Lender and Employee keep and perform all of the Lender's and Employee's respective obligations hereunder, the District shall pay the Lender the sum of THIRTEEN THOUSAND AND FORTY DOLLARS (\$13,040.00) per month during the Term, in accordance with the District's regular pay periods. The Lender agrees to perform all employer obligations in connection with Employee's services hereunder, including, without limitation, the payment to Employee of all compensation or other consideration required to be paid under any agreement between the Lender and Employee, and the payment of all withholding, employment and/or other taxes.

5. **Authority of Lender.** The Lender hereby represents, warrants and agrees that the Lender is free to enter into this Agreement, that the Lender has entered into an employment agreement with Employee – oral or written - pursuant to which Employee is obligated to render her services for the Lender for at least the full period of the Term and that under such employment agreement, the Lender has the right to control and lend Employee's services and grant the rights as herein provided, and that neither the Lender nor Employee is subject to any obligations or disability which will or might prevent or materially interfere with either the Lender or Employee from fully keeping and performing all of the agreements, covenants and conditions to be kept or performed hereunder, and the Lender and Employee have not made nor will make any agreement, commitment, grant or assignment, or will do, or omit to do, any act or thing which could or might interfere with or impair the complete enjoyment of the rights granted and the services to be rendered to the District hereunder.

6. **Indemnification; Hold Harmless.**

a. The Lender represents, warrants and agrees that the Lender is organized and validly existing under the laws of the State of Utah, or qualified and registered to do business in the State of Utah. The Lender shall indemnify and hold the District and its managers, directors, officers, agents, employees, and successors harmless from and against any and all liability, loss, damage, cost, charges, claims, actions, causes of action, recoveries, judgments, penalties and expenses, including reasonable outside attorneys' fees, (collectively, "Liabilities") which they may suffer by reason of: (a) any claims for compensation by Employee and/or claims for payment by any third party relating in any way to Employee's employment by the Lender; (b)

any failure by the Lender to make or pay the required deductions and/or withholdings from the compensation payable by the Lender to Employee; (c) any breach of any of the representations, warranties or agreements made by the Lender and/or Employee hereunder; and/or (d) any claim alleging facts which if true would constitute such a breach.

b. Beyond that required under federal, state or local Law, District shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties or resulting from the exercise of judgment or discretion in connection with the performance of those duties or responsibilities under this Agreement, unless the act or omission involved willful or wanton conduct. The Employee may request and the District shall not unreasonably refuse to provide independent legal representation at District's expense. Legal representation, provided by District for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The District shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, and court costs. In this regard, Employee recognizes that the District shall have the absolute right to settle any claims or lawsuits unless the settlement is of a personal nature to Employee, in which event the Employee may exercise her veto over the settlement. Further, District agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the District. Such expense payments shall continue beyond Employee's service to the District as long as litigation is pending. Further, District agrees to pay Employee's reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to District regarding pending litigation.

c. The District shall indemnify and hold the Lender and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the Lender arising out of, in connection with, or incident to the performance of Employee's duties as Interim General Manager under this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Lender, its agents, employees (not including the Employee in her capacity as the Interim General Manager), and officers, this indemnity provision shall be valid and enforceable only to the extent it is consistent with the principles of comparative negligence; and provided further, that nothing herein shall require the District to hold harmless or defend the Lender, its agents, employees (not including the Employee in her capacity as the Interim General Manager), and/or officers from any claims arising from the sole negligence of the Lender, its agents, employees, and/or officers.

d. The provisions of this section shall survive the expiration or termination of this Agreement.

7. **District's Supervisory Rights.** The District shall have all rights and remedies against Employee that the District would have if Employee had entered into this Agreement directly with the District as its employee. The District shall not be required to first resort to or exhaust any rights or remedies which we may have against the Lender before exercising our rights and/or remedies against Employee.

8. **Worker's Compensation.** For the purpose only of determining the applicability of workers compensation statutes to Employee's services under this Agreement, an employment relationship exists between Employee and the District, the District being Employee's "special employer" and Lender being Employee's "general employer." In this regard, the Lender agrees (a) that the rights and remedies of Employee and Employee's heirs, executors, administrators, successors, licensees and assigns against the District, its officers, agents and employees by reason of any injury, illness, disability or death of Employee that falls within the purview of applicable workers compensation statutes and that arises out of and in the course

of Employee's services under this Agreement will be limited to the rights or remedies provided under such workers compensation statutes; and (b) that the District, its officers, agents and employees will have no obligation or liability to the Lender by reason of any such injury, illness, disability or death. The Lender hereby agrees to defend, indemnify and hold the District, and any person or entity claiming under or through the District, harmless from and against all claims, demands, liabilities, losses, costs (including reasonable outside attorneys' fees), and expenses (other than any claims, demands, etc. under applicable workers compensation statutes) arising in connection with any such injury, illness, disability or death. The District and the Lender hereby make any election necessary to render workers compensation statutes applicable to this engagement of the Lender or to Employee's services under this Agreement.

9. **Bonding.** District shall bear the full costs of any fidelity or other bonds required of the Employee to serve as the Interim General Manger under law or ordinance.

10. **Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Utah applicable to agreements made and to be wholly performed within the State of Utah.

110. **Severability and Non-waiver.**

a. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If it should appear that any provision hereof is in conflict with any statutory provision of federal, state or local law, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

c. No failure of the District or Lender to exercise any power given to it under this Agreement, or to insist upon strict compliance by the other Party with any obligation, responsibility, or condition under it, and no custom or practice of the Parties at variance with its terms shall constitute a waiver of that Party's right to demand exact compliance with those terms upon any subsequent default. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving Party.

12. **Confidentiality.** The Parties agree that (a) all knowledge and information that either Party may receive from the other, including its employees or other consultants, or by virtue of the performance of services under and pursuant to this Agreement, relating to products, processes, apparatus, costs, technical data, business affairs of the Parties, and (b) all information provided by either Party in reports of work done, together with any other information acquired by or as a direct result of this Agreement and during the duration of such, shall for all time and for all purposes be regarded by the Parties as strictly confidential and held by each in confidence, and solely for the Parties' benefit and use, and shall not be used by either Party, or directly or indirectly disclosed by either Party to any person whatsoever outside the scope of this Agreement except with the other Party's prior permission. This provision does not apply to documents that are public records of either Party as defined in the Government Records Access and Management Act ("GRAMA"), UCA §63G-2-101 et seq.

13. **Entire Agreement.** The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both Parties recognize time is of the essence in the performance of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT

MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT

By: SUMMIT COUNTY COUNCIL, its governing body

By: SUMMIT COUNTY COUNCIL, its governing body

Kim Carson
Chair

Kim Carson
Chair

Approved as to form:

David L. Thomas
Chief Civil Deputy

EMPLOYEE'S INDUCEMENT

As an inducement to Mountain Regional Water Special Service District ("District") to enter into the foregoing agreement ("Agreement") with Snyderville Basin Special Recreation District ("Lender") and as a material part of the consideration moving the District to do so, and in consideration for the benefits I shall derive therefrom, I hereby represent, warrant and agree as follows:

1. That, while not a party thereto, I am familiar with each and all of the terms, covenants and conditions of the Agreement, and consent and agree to the execution and delivery thereof by the Lender; that I shall render all services, grant all rights and perform all other obligations to be performed by me as provided for in the Agreement, and that the District shall have all rights, privileges and remedies granted to the District thereunder;

2. That I shall comply with all of the terms, covenants and conditions of the Agreement on my part to be complied with, and that I am under no obligation or disability created by law or otherwise which would or might prevent or restrict me from so doing;

3. That I shall look solely to the Lender for all compensation to be paid to me for all services and obligations to be performed by me. I understand that as part of the total compensation paid by the District to the Lender in paragraph 4 of the Agreement, my personal salary shall be temporarily increased to \$105,000.00 per year for the term of the Agreement and that all other benefits shall remain as currently constituted under my employment with the Lender. By my acknowledgement, I hereby waive any claim against the District for wages, salary or other compensation of any kind for any services which I may render pursuant to the Agreement; provided, however, that in the event the District exercises its right to substitute me as a direct party to the Agreement in the place and stead of the Lender pursuant to Paragraph 5 of this Employee's Inducement, the District shall pay the compensation specified in the Agreement directly to me, provided that I shall use good faith efforts to deliver to the District a release signed by the Lender in a form reasonably satisfactory to the District waiving all claims by the Lender to the compensation specified in the Agreement;

4. That in no event shall any amendment or termination of the agreement which I now have or any agreement which I may hereafter have with the Lender or any breach of any such agreement by the Lender limit or affect any of my obligations or any of the rights, privileges or remedies of the District provided for in the Agreement and, in such event, I agree that I shall look solely to the Lender for any remedies arising out of such breach or the failure to perform, and I expressly agree that I shall continue to perform all services and obligations to be performed by me under the Agreement and the District shall continue to have all the rights, privileges and remedies specified therein; and

5. That if the Lender or its successors should be dissolved or should otherwise cease to be able, for any reason whatsoever, to perform and observe each and all of the terms and conditions of the Agreement, I shall, at the election of the District, be deemed to be substituted as a direct party to the Agreement, in the place and stead of the Lender, and I shall be deemed to be employed directly by the District for the balance of the Term (as defined in the Agreement) of the Agreement upon all the terms and conditions as set forth therein to the same extent and with the same force and effect as though I were a direct party to the Agreement in the first instance.

Dated as of May 30, 2018.

MELISSA O'BRIEN