

**LEASE/MANAGEMENT AGREEMENT BETWEEN
THE CITY OF DOUGLAS, WYOMING
AND DOUGLAS COMMUNITY CLUB, INC.**

1. PARTIES. This Agreement is made and entered into by and between City of Douglas, Wyoming, a Wyoming municipal corporation (hereinafter referred to as “City”), whose address is 101 N. 4th Street, P.O. Box 1030, Douglas, Wyoming 82633, and Douglas Community Club, a non-profit Corporation (hereinafter referred to as “DCC”), whose address is PO Box 332, Douglas, Wyoming 82633.

WHEREAS, pursuant to Wyo. Stat. §15-1-103(a)(xlv) the City is authorized to contract with nonprofit corporations to provide human services for persons within its jurisdiction; and

WHEREAS, the DCC provides support and/or services to the members of the public within the City and the City Council has agreed to provide public funding as outlined within the terms and subject to the conditions set out in this Agreement; and

WHEREAS, the City of Douglas is the owner of the property hereinafter described; and

WHEREAS, Douglas Community Club desires to lease the property hereinafter described under this agreement for use as a public golf course.

NOW, THEREFORE, in consideration of the promises, agreements and mutual covenants made herein, it is agreed by and between the City of Douglas and Douglas Community Club as follows:

2. PREMISES. For and in consideration of the sum to be deposited annually by DCC in the Golf Course Operating Account (“Operating Account”), and the provision of management services as hereinafter provided, City does hereby lease, let and demise unto DCC a non-exclusive right to the real property commonly described as the Douglas Community Golf Course, further described as Lot 1, Golf Course Addition, City of Douglas, Wyoming, together with the buildings and related improvements erected thereon, with all of the rights, privileges, easements and appurtenances thereto according to the terms and conditions of this agreement, and further described as follows:

2.01. Parties acknowledge that the three golf cart storage buildings are privately owned and maintained by DCC. City will assume no responsibility for maintenance or repair of such buildings and DCC shall not utilize city funds for their maintenance, repair or replacement.

2.02. Parties agree to the allowance of one (1) dwelling unit, trailer or mobile home, for a caretaker or groundskeeper and his or her family at a location to be approved by City. Any such construction or installation is subject to all city codes pertaining to zoning, development, building and utility connection. City assumes no responsibility for insurance, maintenance, repair, installation or removal of such dwelling unit.

2.03. Parties acknowledge that City has a 1.24 cfs water right from the North Platte River with a priority right of 26 May, 1965 (Permit #22594) to provide non-potable irrigation water to golf course surface. Pump structure at the North Platte River and water transmission line from river to golf course property are included in this lease agreement, under the terms and conditions for said irrigation right as implemented by the State Engineer’s Office

3. TERM. This Agreement shall be effective as of the 1st day of July, 2019, and shall continue until the 30th day of June, 2020 at which time the contract shall terminate. This Agreement may be renewed for additional one-year increments by mutual written agreement between the parties, unless otherwise cancelled by either party providing 30-day notice during the contract period.

4. COMPENSATION. City agrees to compensate DCC Sixty Thousand Dollars (\$60,000.00) during fiscal year 2019-2020 for to cover annual staffing, operating, repair and maintenance costs for facility not recovered through green fees, membership fees and other

sources of income in accordance with the provisions of Section 4.03. below, subject to receipt of annual funding request using the annual City budgetary appropriation process.

4.01. DCC shall prepare an annual operating budget covering all anticipated staffing and operating expenditures, repairs and capital outlay needs as well as a projection of anticipated revenue. Said budget shall be presented to City on or before April 1st of each fiscal year for approval by City during its annual budget appropriation process.

4.02. City shall not provide funding in excess of the adopted budgetary appropriation for the current fiscal year unless a budgetary amendment is approved by the City. Absent a request for an amended budget appropriation, any expenses in excess of approved amount shall be the sole responsibility of the DCC.

4.03. DCC hereby agrees that it will supplement the appropriations necessary to operate said facility from green fees, membership fees and other sources of income. DCC shall deposit all green fees, membership fees, appropriations by City, and other sources of income not related to the Pro Shop or Clubhouse in the Operating Account of DCC. All revenue, except those received from Clubhouse or Pro Shop functions in 4.06, shall be netted against the budget appropriation from City. All funds deposited in said Operating Account shall be subject to the terms of this agreement and shall be used only for the purposes set forth herein.

4.04 DCC shall submit to the Administrative Services Department, certified under penalty of perjury, a full itemized statement or invoice for payment in writing, including documentation verifying actual costs incurred for the invoiced period (e.g. receipts, expense report, financial statement, etc.). The City may require additional documentation which evidences that the performance measures under this Agreement have been achieved. Payment will not be made by the City unless and until satisfactory evidence of costs incurred have been submitted and approved. Subject to this Agreement, City will pay sum to Organization within 45 days of receipt of statement or invoice and other requested documents.

4.05 DCC shall provide upon request by the City detailed financial reports documenting all expenses incurred and revenue received at the facility to City in a form approved by City on an annual basis. DCC shall provide City with a copy of DCC's annual audited financial reports.

4.06. DCC shall use funds derived from appropriations by City, green fees and such other funds as are acquired by operation of the facilities or through gifts, devise or otherwise, for the operation of the golf course facilities. All such income and expenditures shall be accounted for as set forth above.

4.07. DCC shall operate independent concession functions at the clubhouse facility and golf pro shop, and is responsible for all purchase of concession items and shall be entitled to one hundred (100) percent of all revenues derived therefrom. Concession operations need not be included in financial reports provided to City.

5. OPERATION OF FACILITY. City grants DCC full authority to manage the above-described golf course premises for use as a public golf course. The parties agree that at all times pertinent hereto, the golf course is and shall be a public golf course, and DCC shall not deny or diminish the public's use of the golf course.

5.01. City shall have exclusive control of the general nature of the operation to insure the rights of the public and shall have the exclusive right to approve all operating rules, hours and/or days of operation, fees to be charged and procedures developed by or implemented by DCC.

5.02. DCC shall supervise and manage in a businesslike and professional manner the Douglas Community Golf Course and all related facilities and DCC agrees to follow all applicable federal, state, county and city laws and regulations pertaining to the operation of the golf course and covenants not to discriminate or engage in any practice that has the effect of discriminating against any person on the basis of religion, race, creed, color, national origin, sex, age or disability, in furnishing or by refusing to furnish to such person or persons the use of any

facility or participation in any program, including any and all services, privileges, accommodations and activities provided therein.

5.03. DCC shall operate, at DCC's own cost, risk, profit and expense, a quality golf shop at the golf course, provided that DCC may contract for the personal services of the Golf Pro and may make compensation of said Golf Pro from the Operating Account. It is expressly agreed that DCC shall receive all income and pay all expenses, including insurance, building maintenance and repair, from the operation of the pro shop, cart rentals, golf lessons, and its owned golf cart assessments arising from the operation and management of the demised golf course premises.

5.04. DCC agrees to take good care of the premises and to use said premises only in the operation of the regulation eighteen (18) hole golf course presently existing on said premises, along with the appurtenant structures thereto, and agrees not to use or permit the premises or any part thereof to be used for any other purpose without the prior written consent of CITY endorsed hereon.

6. MAINTENANCE AND REPAIR. DCC shall keep the premises in good condition and make repairs to structures and facilities thereon as may be found necessary to keep them in good repair. All equipment shall be maintained and replaced by DCC through the Operating Account. City agrees, when feasible, and upon request of DCC and authorization of City Administrator, to assist by providing equipment or labor for special projects involving maintenance or operation of the golf course.

6.01. DCC shall not make any major alterations, additions or improvements to said premises without the prior written consent of City, which shall not be unreasonably withheld. The following items, however, shall require no consent from City, written or verbal:

6.01.01. Repair and improvement of all tees; repair of sand traps and addition of sand, if required;

6.01.02. Fertilizing, tree and shrub planting, and seeding of all fairways;

6.01.03. Fertilizing greens and installation of new flagpoles;

6.01.04. Installation of new tee benches, markers and ball washers.

6.02. All erections, alterations, additions and improvements, whether temporary or permanent in character, which may be made upon the premises either by City or DCC, except furniture or movable trade fixtures installed at the expense of DCC, and caretaker private residence, shall be the property of City and shall remain upon and be surrendered with the premises in the event of termination, without compensation to DCC. DCC further agrees to keep said premises in a clean and sanitary condition, free from flammable materials and trash.

7. CHARGES AND TAXES. DCC shall pay all of the following, when due, during the term hereof:

7.01. All charges for utilities incurred at the premises including user fees, deposits, and repairs.

7.02. All taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes imposed as a result of operation of facility.

7.03. All personal property taxes assessed against personal property situated thereon.

8. GENERAL PROVISIONS.

8.01. Amendments. Any mutually agreed upon changes to the terms and conditions of this Agreement shall be effective only when incorporated in written amendments to this Agreement. Any verbal agreement or conversation shall be nonbinding on the City.

8.02. Applicable Law/Venue. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Eighth Judicial District, Converse County, Wyoming.

8.03. Compliance with Law. DCC represents and warrants that it has and shall continue to comply with all federal, state and local laws and regulations applicable to DCC's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment. DCC warrants that it possesses current valid appropriate licensure, including, but not limited to, driver's license, professional license, certificate of tax-exempt status, or permits, required to perform the work that is performed to qualify for funding under this Funding.

8.04. Entirety of Agreement. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

8.05. Force Majeure. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

8.06. Confidentiality. DCC shall abide by any and all applicable laws governing the confidentiality of information regarding clients served under this Agreement. DCC shall:

8.06.01. Prevent unauthorized disclosure of names and other client-identifying information, except for statistical information not identifying a particular client, to anyone other than the State or federal government pursuant to State or federal law.

8.06.02. Not use client specific information for any purpose other than carrying out their obligations under this Agreement.

8.07. Independent Contractor. DCC is an independent contractor and not an agent, officer or employee of City. The parties mutually understand that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association with the City. As an independent contractor, DCC is not subject to the direction and control of City except as to the final result under this Agreement. Any persons employed by DCC shall be under DCC's exclusive direction, supervision and control. DCC shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment. DCC shall assume sole responsibility for any debts or liabilities that may be incurred and for the payment of all federal, state and local taxes that may accrue in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing DCC or its agents and/or employees to act as an agent or representative for or on behalf of City, or to incur any obligation of any kind on the behalf of the City. City agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of DCC's agents and/or employees as a result of this Agreement.

8.08. Indemnification. DCC will indemnify, hold harmless and assume the defense of the City, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly accruing or arising as a result of or in connection with DCC's activities in relation to this Agreement.

8.09. Assignment. DCC shall not assign this Agreement or any interest therein, or any monies received pursuant hereto, either in whole or part, to any other entity, without the prior, express, and written consent of City. Any unauthorized assignment shall be void and shall, at the option of City, act as a termination of this Agreement.

8.10. Governmental Immunity. City does not waive sovereign immunity by entering into this Agreement, and specifically retains immunity and all defenses available to it as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

8.11. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties and obligations contained herein shall operate only between the parties and shall inure solely to their benefit. The provisions hereof are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties hereto intend and expressly agree that only signatories shall have any legal or equitable right to seek enforcement, any remedy arising out of a party's performance or failure to perform any terms or conditions hereof, or to bring an action for the breach of this Agreement.

8.12. Americans with Disabilities Act. DCC shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

8.13. Nondiscrimination. In rendering services under this Agreement, DCC shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, or other protected status.

8.14. Indemnification. DCC shall indemnify, defend and hold harmless the City, and its officers, agents, employees, successors and assignees from any and all claims, demands, cause of action, lawsuits, losses, damages, costs and expenses, including attorney's fees, arising out of or resulting from any injury to persons under this Agreement.

8.15. Kickbacks. DCC certifies and warrants that no gratuities, kickbacks or contingency fees were paid, nor were any fees, commissions, gifts, or other considerations made in connection with or contingent upon the award of this Agreement.

8.16. Liaison and Notice. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to all parties at the addresses provided in 7.16.01 and .02, either by regular mail, facsimile, e-mail, or delivery in person.

8.16.01. City's designated representative is the City Administrator, whose address is P.O. Box 1030, 101 N. 4th Street, Douglas, Wyoming 82633; telephone number (307) 358-3462 and facsimile (307) 358-6447.

8.16.02. DCC's designated representative is the DCC Board President, whose address is PO Box 332, Douglas, Wyoming 82633; telephone number (307) 358-4867; email breckwags22@hotmail.com.

8.16.03. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail or through another carrier (e.g., UPS or FedEx), notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

8.17. Default. Any one or more of the following acts or omissions of this Agreement shall constitute an event of default hereunder (Events of Default):

8.17.01. Failure to satisfactorily perform any required task or service;

8.17.02. Failure to submit any report or provide notice required hereunder;

8.17.03. Failure to perform any other covenant or condition;

8.17.04. Failure to meet or reasonable basis by City to believe that a prescribed assurances and/or commitments outlined in this Agreement may not be met;

8.17.05. Failure to use funds in accordance with this Agreement;

8.17.06. Bankruptcy or insolvency of the DCC; or

8.17.07. Acted fraudulently or negligently or has completed an application for funding to City in a manner which could be construed as being either fraudulent, materially incorrect or materially misleading.

Upon the commencement of any Event of Default, the City shall give the DCC a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice. City may upon notice, withhold payment of the funding (or any part of it) until the Event of Default is remedied. If the Event of Default is not timely remedied, the City may treat this Agreement as breached. The City shall be immediately entitled to recover all or part of the funding paid to DCC and DCC shall pay such amount on demand to the City forthwith and pursue any of its remedies at law or in equity.

8.18. Termination. This Agreement will terminate upon a breach, as defined in Paragraph 8.15 herein. Further, the Agreement will terminate upon DCC's receipt of the total amount of funds to be disbursed under this Agreement. The Parties by mutual agreement in writing may terminate this Agreement. Unless earlier terminated, this Agreement shall automatically terminate if subsequent legislation causes this Agreement to be in conflict with any law.

8.19. Insurance. It shall be the responsibility of DCC to carry the following insurance:

8.19.01. Comprehensive General Liability. DCC shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof and including underground, collapse, and explosion (XCU), products and completed operations, and automobile coverage in an amount not less than one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) in general aggregate. DCC shall provide the City Clerk with a copy of the certificate of commercial general liability insurance for the FSA and shall save and hold harmless the City and/or Assignee from any and all liability to persons for harm or injury resulting from the services performed under this Agreement.

8.19.02. Workers' Compensation or Employers Liability Insurance. DCC shall provide proof of workers' compensation coverage, for all its employees who are to work on the projects described in this Contract. DCC's coverage shall be under the Wyoming Workers' Safety and Compensation program, if statutorily required or such other workers' compensation insurance as appropriate. DCC's insurance shall include a Stop Gap coverage in the amount not less than five hundred thousand dollars (\$500,000.00) per employee for each accident and disease. DCC shall have also supply proof of workers' compensation and employer's liability insurance on each and every sub-consultant before allowing that sub-consultant on the job site.

8.19.03. Coverage. All policies required under this contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. DCC shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the City.

8.19.04. Additional Insured. All insurance policies required by this contract, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents and employees. DCC shall provide, upon request a copy of an endorsement providing this coverage.

8.19.05. City's Right To Reject. City reserves the right to reject a certificate of insurance if DCC's insurance company is widely regarded in the insurance industry as financially unstable. This would include but is not limited to insurance companies with no less than AVIII rating in the A.M. Best insurance rating guide.

8.19.06. Cancellation. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from DCC or their insurers to CITY. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to CITY and its division, officers and employees.

8.20. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect and either party may attempt to re-negotiate the terms affected by the severance.

8.21. Contingency. This Agreement is contingent upon the City's approval of this Agreement and the City continuing to have sufficient funding allocated to DCC in its budget.

8.22. Signature Authority. The parties executing this Agreement certify that they have the proper authority to bind their respective entities to all terms and conditions set forth herein.

8.23. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

8.24. Waiver. Any failure of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right or any provision hereof.

8.25. Time is of the Essence. Time is of the essence in all provisions of the Agreement.

8.26 Inspection. City shall have the privilege of inspecting the premises at any and all reasonable times without prior notice of such inspection.

8.27. Ethics. DCC shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. §9-13-101, et seq.), and any and all ethical standards governing DCC's profession.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the ____ day of _____, 2019.

DOUGLAS COMMUNITY CLUB

CITY OF DOUGLAS

By: _____

By: _____

Rene' Kemper, Mayor

Title: _____

State of Wyoming)
) ss.
County of Converse)

On this _____ day of _____, 2019, before me personally appeared Rene' Kemper, Mayor of the City of Douglas, personally known to me to be the person whose name is subscribed to the attached and foregoing Service Agreement with the Douglas Community Club, and acknowledged that she executed the same for the purposes therein expressed.

WITNESS my hand and official seal.

Notary Public

State of Wyoming)
) ss.
County of Converse)

On this _____ day of _____, 2019, before me personally appeared _____, as _____ of Douglas Community Club, personally known to me to be the person whose name is subscribed to the attached and foregoing Lease/Management Agreement with the City of Douglas, and acknowledged that he/she executed the same for the purposes therein expressed.

WITNESS my hand and official seal.

Notary Public