

**FUNDING AGREEMENT
BETWEEN CITY OF DOUGLAS, WYOMING
AND CANDO DBA THE ENTERPRISE**

1. **Parties.** This Funding Agreement (hereinafter referred to as “Agreement”) is made and entered into this ____ day of _____, 2019, by and between the City of Douglas, Wyoming , a municipal corporation, (hereinafter referred to as “City”) whose address P.O. Box 1030, Douglas, Wyoming and CANDO D/B/A The Enterprise a Wyoming non-profit corporation (hereinafter referred to as “Organization”), doing business in Douglas, Wyoming, whose address is 130 S. 3rd St., Douglas, Wyoming.

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 Organization 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.

NOW, THEREFORE, in consideration of the promises, agreement and mutual covenants made herein, it is agreed by and between the City and the Organization as follows:

2. **Purpose.** The purpose of this Agreement is to provide Organization funding in the amount of Eighty Five Thousand & 00/100 (\$85,000.00) Dollars to be utilized by Organization in accordance with the terms outlined herein.

3. **Term.** This Agreement will commence on July 1, 2019 and continue in force for a period of one year until June 30, 2020.

4. **Payment.**

4.1. City shall pay organization via monthly disbursements of funds, with the last disbursement to be requested on or before June 30, 2020. At that time, there is no continuing obligation on the part of City to provide additional funding to Organization.

4.2. Organization 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.

4.3. Payment of funding is conditional upon each and all of the following:

4.3.01. Organization has met each and every obligation imposed under this Agreement to the satisfaction of the City including but not limited to submitting reports to the City.

4.3.02. City continuing to have sufficient funding allocated to Organization in its budget;

4.3.03. In the event of a Default of this Agreement as outlined in Paragraph 7.17, City may withhold or suspend any payment, in whole or part, to this Organization.

4.4. Repayment of Funding: Organization must repay City:

4.4.01. In the event of a Default or Breach of this Agreement as outlined in Paragraph 7.17,

4.4.02. If, at any time during the term of or upon expiration or termination of this Agreement, there remains an amount of funding that has not been expended or acquitted to City’s

satisfaction in accordance with this Agreement, then this amount must be refunded by the Organization to City within twenty (20) business days of a written notice from City, or dealt with as directed in writing by City. Any amount owed to City under this paragraph will be recoverable as a debt due to City without further proof of the debt.

5. Responsibilities of Organization.

5.1. The organization shall operate an economic development office in order to facilitate business diversity and development, community enrichment, visitor interest, and historic preservation with dedication to economic growth and enriching and enhancing quality of life. The organization consists of three divisions: Business and Community Development; Converse Tourism & Visitor Center; and Main Street Douglas.

5.2. Use of Funding. You must use the funding solely for the stated purposes; only use the funding within the funding period; and not enter into any arrangements or commitments that are incompatible or inconsistent with the purpose of the funding.

5.2.01. Allowable Uses of Funds. These funds shall be used for services described in Section 5.1. Organization shall expend all funds received under this Agreement solely for program activities as identified in accordance with eligible program costs set forth below:

5.2.01(i). Direct costs (including salaries/benefits of employees assigned to the program and any services/supplies necessary for the program).

5.2.01(ii). Indirect costs (these costs are defined by federal standards and Generally Accepted Accounting Principles for the purpose of allocating allowable indirect costs to a program).

5.2.02. Unallowable Uses Of Funds. Organization shall not expend funds for:

5.2.02(i). Any costs outside the scope of the approved program;

5.2.02(ii). Personal injury compensation or damages arising out of or connected with the program;

5.2.02(iii). Fines and penalties due to violations or failure to comply with federal, state, or local laws and ordinances, and terms, provisions, conditions or commitments of this Agreement;

5.2.02(iv). Interest on bonds or other forms of indebtedness;

5.2.02(v). Any costs arising out of or attributable to the Organization's malfeasance, misfeasance, mismanagement, or negligence;

5.2.02(vi). "Buy out" of unused sick leave, vacation/administration leave time; or

5.2.02(vii) Funds shall not be used as investment funds or deposited into any type of savings account.

6. Special Provisions.

6.01. Records. Organization shall establish an official file for the program containing adequate documentation of all actions taken in the performance of the Agreement and maintain a system of accounts that complies with generally accepted accounting principles for government agencies.

6.02. Record Retention and Inspection. Organization shall retain financial, programmatic, client data and other service records for three (3) years from the date of the end of the Agreement award or for three (3) years from the date of termination, whichever is later. Authorized representatives of City, the state and/or the federal government may inspect and/or audit Organization's performance, place of business and/or records pertaining to this Agreement.

6.03. Access to Books and Records. Organization agrees to permit the City or its agents, access to any of the Organization's books, records and accounts for the purpose of ascertaining compliance with any statutes, regulation and order, and with the terms and conditions of this Agreement. City shall follow Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting acceptable to the City in recording financial transactions. When requested by the City, Organization at its own expense shall have its annual accounting reports audited or prepared by a licensed independent accountant acceptable to the City.

7. General Provisions.

7.01. 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.

7.02. 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.

7.03. Compliance with Law. Organization represents and warrants that it has and shall continue to comply with all federal, state and local laws and regulations applicable to Organization's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment. Organization 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.

7.04. 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.

7.05. 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.

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

7.06.01. 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.

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

7.07. Independent Contractor. Organization 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, Organization is not subject to the direction and control of City except as to the final result under this Agreement. Any persons employed by Organization shall be under Organization's exclusive direction, supervision and control. Organization shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment. Organization 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 Organization 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 Organization's agents and/or employees as a result of this Agreement.

7.08. Indemnification. Organization 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 Organization's activities in relation to this Agreement.

7.09. Assignment. Organization 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.

7.10. 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.

7.11. 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.

7.12. Americans with Disabilities Act. Organization 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.

7.13. Nondiscrimination. In rendering services under this Agreement, Organization 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.

7.14. Indemnification. Organization 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.

7.15. Kickbacks. Organization 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.

7.16. Liaison and Notice. Organization's and City's Designated Representatives. 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.

7.16.01. 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.

7.16.02. Organization's designated representative is Cindy Porter, Executive Director, whose address is 130 S. 3rd St, Douglas, Wyoming 82633; email: cporter@candowymoming.com; telephone number (307) 358-2000 and facsimile (307) 358-3299.

7.16.03. 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.

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

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

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

7.17.03. Failure to perform any other covenant or condition;

7.17.04. 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;

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

7.17.06. Bankruptcy or insolvency of the Organization; or

7.17.07. 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 Organization 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 Organization and Organization shall pay such amount on demand to the City forthwith and pursue any of its remedies at law or in equity.

7.18. Termination. This Agreement will terminate upon a breach, as defined in Paragraph 8.15 herein. Further, the Agreement will terminate upon Organization'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.

7.19. Insurance. It shall be the responsibility of Organization to carry a policy of commercial general liability insurance, with liability limits in an amount of not less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence, and shall provide the City Clerk with a copy of the certificate of commercial liability insurance for the Organization. Organization 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.

7.20. 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.

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

7.22. 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.

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

7.24. 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.

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

IN WITNESS WHEREOF, the Mayor of the City of Douglas and Organization has signed and executed this Contract, the day and year first written above.

CITY OF DOUGLAS, WYOMING

THE ENTERPRISE

By: _____
Rene' Kemper
Mayor

By: _____
Its: _____

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

Before me personally appeared Rene' Kemper as Mayor of the City of Douglas, known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same for the purposes therein expressed this ____ day of _____, 2019.

Witness my hand and official seal.

Notary Public

STATE OF WYOMING)
)
COUNTY OF CONVERSE)

Before me personally appeared _____, as _____ of The Enterprise, known to me to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed the same for the purposes therein expressed this ____ day of _____, 2019.

Witness my hand and official seal.

Notary Public