

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT is entered into February 8, 2016, between Pueblo, a Municipal Corporation, City Hall, 1 City Hall Place, Pueblo, Colorado, 81003, by and through its Honor Farm Enterprise (the "City") and Sky Corral R/C Club, a Colorado Nonprofit Corporation ("Manager").

RECITALS

1. City is the owner of certain real property located in Pueblo County, Colorado, commonly known as the Honor Farm Properties (the "Honor Farm").
2. Manager is desirous of entering into a management agreement to develop, operate, and maintain a recreational facility on a portion of the Honor Farm.
3. City is willing to enter into a management agreement with Manager upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing recital and mutual covenants contained herein, City and Manager agree as follows:

TERMS AND CONDITIONS

1. **GRANT.** City hereby grants to Manager, subject to the terms and conditions herein provided, the right and privilege to use, administer, and manage that portion of the Honor Farm described in attached Exhibit A together with all improvements thereon, whether now existing or hereafter installed (collectively, the "Property"). Manager accepts such grant and agrees to use, administer, and manage the Property in compliance with the terms and conditions of the Management Agreement.
2. **TERM.** The term of the Management Agreement is from February 8, 2016 to December 31, 2020, unless sooner terminated as herein provided. If not in default hereunder, Manager shall have the right of first refusal to renew the Management Agreement upon such terms, covenants, and conditions as Manager and City may then mutually agreed upon. If Manager desires to exercise this right of first refusal and renew the Management Agreement, Manager shall notify City in writing of its intention to do so no later than June 1, 2020. If Manager and City are unable for any reason to mutually agree upon the terms, covenants, and conditions for such renewal by September 1, 2020, Manager's right of first refusal hereby granted shall cease and terminate.
3. **ACTIVITIES AND USE.**
 - (a) Manager shall use the Property solely for the purpose of developing, operating, and maintaining a recreational model airplane facility.

(b) The scheduling of permitted recreational activities on the Property and the conduct of such activities, including the frequency and type of activities, shall be the responsibility of Manager and within its discretion.

(c) All activities conducted on the Property shall be open to the general public and, if applicable, shall be sanctioned by an appropriate sanctioning body. Manager may charge a reasonable fee or admission charge, provided, that all such fees and charges shall be used in the development of the Property and Manager shall submit to City at least annually an accounting of the revenue from such fees and charges including their expenditures.

(d) Manager shall not in the use or operation of the Property or activities conducted thereon discriminate on the basis of race, color, creed, national origin, handicap, sex, or age.

(e) All ordinances of the City of a regulatory or police nature, including without limitation, building codes and traffic ordinances shall apply to and govern the Property and activities conducted thereon the same as if the Property were located within the City. Manager shall control all noise and fugitive dust from roadways and activities conducted on the Property.

4. CONDITIONS OF USE AND MANAGER'S OBLIGATIONS. The grant contained in this Management Agreement and Manager's use of the Property is subject to the following conditions, which Manager agrees to perform and comply with:

(a) In the use, operation, and development of the Property, Manager shall comply with all applicable ordinances, laws, and regulations affecting the Property and the use thereof by Manager, including without limitation, environmental and hazardous waste laws, ordinances, and regulations.

(b) Manager shall maintain the Property in good condition, appearance, and state of repair regardless of cause of need for maintenance and repairs except those necessitated by reasonable wear and tear. Manager shall upon the termination or expiration of the Management Agreement deliver and surrender the Property in good condition, appearance, and state of repair.

(c) Manager shall not permit or create waste upon the Property.

(d) If the presence of Hazardous Materials on the Property caused or permitted by Manager or the activities conducted on the Property by Manager results in contamination of the Property, then Manager shall be responsible to remove, clean up, and remediate such contamination and Manager shall indemnify, defend, and hold the City harmless from all claims, judgments, damages, penalties, fines, costs, liabilities, or losses, including all expenses and reasonable attorney fees which arise, directly or indirectly, during or after the expiration or termination of the Management Agreement as a result of such contamination or the failure of Manager to comply with applicable federal, state, and local environmental and hazardous waste laws, ordinances, and regulations. The term "Hazardous Material" includes, without limitation, any material or substance that is (1) defined or designated as a "hazardous substance," "hazardous waste," or a "regulated substance" under applicable state or federal law or regulation, (2) petroleum products, or (3) asbestos.

(e) The City and its employees, agents, and independent contractors may, at any time during the term of this Agreement, in the City's sole and absolute discretion, and without any notice to Manager, enter and access any part of the Property, including but not limited to any time that any of Manager's events or activities are scheduled, being prepared, or occurring, to check Manager's activities, check the security of the Property, inspect the Property, perform maintenance, or make alterations and repairs. Such access and use shall not be considered a trespass or a breach of any right or covenant under this Agreement.

(f) City reserves the right to grant rights of way and easements on, over, and across the Property which do not materially interfere with Manager's use of the Property.

(g) City reserves the right to cross over the Property including the right to install, maintain, repair, remove, and relocate utilities, roads, roadways, trails, and trail systems over, under, and across the Property at such location or locations as City may determine.

(h) Manager shall operate the Property and all events and activities at Manager's sole expense.

(i) Manager shall provide and pay all employees, officials, and other labor and staff necessary to conduct and supervise all of Manager's events and activities and preparation for events, except as otherwise provided in this Agreement.

(j) Manager shall notify the City immediately of any accidents, injuries, or crimes that occur at the Property, any damage to the Property, and anything that poses a risk of damage to the Property, including but not limited to weather, fire hazards, flooding, water leakage, electrical problems, plumbing problems, and vandalism.

(k) Manager shall keep the Property and all equipment, supplies, buildings, and fixtures thereon in a clean, safe, orderly, and well maintained condition at all times during the term of this Agreement.

(l) Manager shall reimburse the City for the cost of any repairs to the Property caused by any of Manager's officers, directors, employees, agents, independent contractor, or guests.

(m) Manager shall conduct all activities and events in a safe and orderly manner in compliance with all laws and ordinances.

(n) Manager shall provide all equipment necessary to conduct the recreational activities and events at the Property.

(o) Manager shall at its own expense install, extend, and maintain all access roads and utility services to the Property and pay all charges for all utilities serving the Property.

(p) Manager shall pay, before same become delinquent, all taxes assessed, levied, or

imposed against the Property, Manager's personal property thereon, and all activities conducted on the Property.

(q) Manager understands and agrees that this Agreement and Manager's use of the Property is subject to the conditions and limitations of the Conservation Easement recorded July 2, 2001, as Reception No. 1390542 in the records of the Pueblo County Clerk and Recorder ("Easement"). Manager acknowledges receipt of a copy of the Easement. City makes no representation or warranty that Manager's intended use of the Property or the provisions of this Agreement are approved uses or allowed under the Easement.

5. MANAGER'S REPRESENTATIONS. Manager represents and warrants that:

(a) Manager is a nonprofit corporation duly organized and existing under the laws of the State of Colorado.

(b) Manager has approved and authorized, by all necessary actions and approvals, the Management Agreement and its execution and delivery by its undersigned officers.

(c) The Management Agreement constitutes the valid and legally binding obligations of Manager and is enforceable against Manager in accordance with its terms.

6. IMPROVEMENTS.

(a) The Property shall only be used and developed in accordance with a Master Plan submitted to and approved by the City.

(b) All buildings and other improvements of a permanent nature which Manager plans to construct on the Property must receive preliminary written approval from the City. In addition, the plans and construction drawings for all buildings and other improvements on the Property must be designed by a professional engineer or architect and submitted to the City for review and written approval prior to the commencement of construction. If the City does not approve the plans and drawings in writing within 60 days after receipt thereof, the plans and drawings shall be deemed to have not been approved.

(c) All buildings and improvements presently existing on the Property or hereafter constructed and installed on the Property shall be and remain the Property of the City, except, that if Manager constructs or installs any building or improvement on the Property without approval of the City as provided in this Management Agreement, City may, at its option, require Manager to remove such building or improvement and restore the Property to the condition existing prior to the construction or installation of such building or improvement.

(d) Manager shall not cause or permit any lien or encumbrance to be placed upon or asserted against the Property or any building or improvement thereon.

(e) Manager shall not raze, remove, structurally change, or substantially alter or

modify any building, structure, or improvement on the Property without first obtaining the written approval of the City.

7. RELEASE AND WAIVER OF LIABILITY.

(a) Manager shall be in control and possession of the Property as provided herein, and City shall not, in any event whatsoever, be responsible or liable for any injury or damage to any property or any person while on the Property or resulting from or arising out of the use of the Property by Manager or activities conducted thereon. As to the City, Manager agrees to assume the risk of all injuries, including death resulting therefrom, to persons, and damage to and destruction of property, including loss of use thereof resulting from or arising out of, directly or indirectly, wholly or in part, any activities or prosecution of work undertaken by Manager on the Property or the use of the Property by Manager or the use of the Property by others under Manager's supervision or control or with the permission of Manager.

(b) Manager shall obtain any releases or waivers of liability from persons entering the Property that Manager's insurance carrier may require. Manager shall retain these releases or waivers of liability for as long as their insurance carrier may require. Manager shall bear sole responsibility for full compliance with this Section.

8. INDEMNIFICATION: Manager shall defend, hold harmless, and indemnify, the City of Pueblo and the Honor Farm Enterprise, a Colorado Non-Profit Corporation, and their officers, directors, employees, independent contractors, and agents ("Indemnified Parties") against any liability for any damages, costs, attorney's fees, or restitution that may be imposed by any court or tribunal in any suit, action, or proceeding in law or equity, filed by any person or entity, based on contract, tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, or property damage or loss that Manager or any of its officers, directors, employees, agents, independent contractors, or guests may suffer, related to or caused by the Indemnified Parties, other persons, the Property, or any object, thing, or activity on the Property.

9. CERTIFICATES OF INSURANCE. Upon execution of this Agreement, Manager shall provide the following Certificates of Insurance. Coverage and limits enumerated in this insurance provision represent only the minimum insurance required by the City, and Manager should rely on its expertise and that of its own risk management experts to obtain any additional insurance coverage needed for the City and Manager in its performance under this Agreement:

(a) A Certificate of Insurance showing evidence of liability coverage for: (1) bodily injury, death, and property damage to any person and (2) Manager's obligation to indemnify the City of Pueblo and the Honor Farm Enterprise, a Colorado Non-Profit Corporation, and their officers, directors, employees, agents, and independent contractors under the terms of this Agreement. The insurance policy and certificate of insurance evidencing the policy shall have a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence, with a Three Million (\$3,000,000.00) annual aggregate, and shall be endorsed to add as additional insureds the City of Pueblo and the Honor Farm Enterprise, a Colorado Non-Profit Corporation, and their officers, directors, employees, agents, and independent contractors and its officers,

employees, agents, and independent contractors. Such policy shall state that the insurance is primary in coverage to any other insurance which may be available to City. Concurrent with the above mentioned Certificate of Insurance evidencing liability coverage.

(b) A Certificate of Insurance showing evidence of fire and extended coverage insurance naming the City as loss payee insuring all buildings and improvements on the Property, including but not limited to all bleachers, stands, seats, benches, platforms, fences, awnings, decks, sheds, and runways, to not less than 100% of their insurable value.

10. WORKER'S COMPENSATION INSURANCE.

(a) Manager represents and warrants that it has no employees of any kind, direct or indirect, formal or statutory, full-time, part-time, or piece-work, contract, or otherwise at the time this Agreement is signed and shall not hire, pay, or employ any such person in any form or manner to perform or provide any product, service, or work of any kind at any time during the term of this Agreement

(b) Manager shall not pay or compensate any person or entity whatsoever for any product, work, or service performed or delivered at the Property during the term of this Agreement, in any form whatsoever, including but not limited to compensation in the form of pay, products, services, discounts, trades, food, lodging, tickets, free or discounted participation in Manager's events, or free or discounted access, except as provided in this Section.

(c) In the event that Manager determines that it is necessary for Manager to arrange for any person or entity to perform any work or service of any kind at the Property or deliver any product of any kind at the Property, whether such person or entity is denominated an employee, an independent contractor, a day laborer, a delivery person, or any other label, and regardless how and by whom such person or entity is compensated, Manager shall, before permitting any such person or entity to perform such work or service or deliver such product: (1) notify the City in writing that Manager wishes to have such person or entity perform such work or service or deliver such product; (2) provide the City with a certificate of insurance showing that the person is covered by a worker's compensation policy; and (3) obtain written consent from the City for such person to perform such work or service or provide such product.

11. TERMINATION AND DEFAULT.

(a) If either party is in default hereunder, the non-defaulting party may give written notice describing the default to the defaulting party. If the defaulting party does not correct such default within twenty (20) days after receipt of said notice, or if the default cannot be corrected within said 20-day period and the defaulting party fails to commence action to correct the default within said 20-day period and thereafter diligently pursues corrective action, the non-defaulting party may upon an additional five (5) days' notice given to the defaulting party terminate this Agreement.

(b) Notwithstanding the foregoing, if Manager commits a material breach as defined in this Agreement, City may terminate this Agreement upon five (5) days' prior written notice to

Manager specifying the material breach and the date of termination. Except for accrued rights and liabilities and those covenants and provisions which survive termination hereunder, upon such termination each party shall be released from all future duties and obligations hereunder. These remedies shall be in addition to any other remedies provided in this Agreement.

(c) Notwithstanding the foregoing, the City may terminate this Agreement without cause on ninety day notice to Manager.

(d) Notwithstanding any other term in this Management Agreement, if the Property shall be taken by right of eminent domain, in whole or in part, for public purposes, the Management Agreement shall terminate and all damages which may be awarded for such taking shall belong to and be the sole property of City.

(e) Upon termination of the Management Agreement for any reason, all rights of Manager hereunder shall cease and terminate and Manager shall immediately and peacefully surrender and deliver possession of the Property to City.

(f) The provisions of this Management Agreement pertaining to insurance, indemnification, and liability shall survive the expiration of the term of this Agreement and termination of this Agreement and shall continue in effect for a period of five years following the termination of this Agreement and for such further time as it may take to completely and finally negotiate, settle, or litigate any claim or suit concerning the same.

12. NON-TRANSFERABLE. Manager shall not sublease, transfer, or assign to any other party this Agreement or any rights hereunder without the prior written consent of City. Any attempt to sublease, transfer, or assign this Agreement, or any of Manager's rights hereunder, without the prior written consent of City is void and shall constitute a material breach of this Agreement. In the event of any assignment, sublease, or transfer, Manager shall not be released from any responsibility hereunder and shall remain liable and responsible to City for such transferee, or assignee and its activities in accordance with the terms and conditions of this Agreement.

13. NO REPRESENTATION OR WARRANTY OF CONDITION OR FITNESS. The Property is provided on an "as is" "with all its faults" basis, and City makes no representation or warranty as to the condition or fitness of the Property for Manager's activities and events or for any particular use or purpose. Manager shall be solely responsible for personally inspecting the Property before execution of this Agreement and before admitting any officer, director, employee, agent, independent contractor, or guest before each day of each of Manager's activities or events. Manager's commencement of any activity or event shall constitute an express acknowledgement by Manager that the Property is safe and adequate for Manager's activities and events. Manager shall be responsible for all equipment and facilities located at the Property, and for adequate safeguards for the protection of Manager, its officers, directors, employees, independent contractors, agents, and guests. Notwithstanding any provision in this Agreement to the contrary or which may be construed to the contrary, City assumes no obligation or responsibility to keep or maintain the Property in good, safe, or suitable condition, appearance or state of repair, regardless of cause of need for maintenance and repair. Manager's sole remedy if

the Property and its equipment are not maintained in good and safe condition, appearance, or state of repair, is to terminate this Agreement.

14. RELATIONSHIP. Nothing in this Agreement is intended to or shall be deemed to constitute, a partnership or joint venture between the Parties, or to create any agency or partner relationship between the Parties. Neither Party shall hold itself out as a partner, joint venture, agent, or representative of the other under this Agreement.

15. JURISDICTION AND VENUE. This Agreement and all rights and obligations of the Parties shall be construed and governed in accordance with the laws of the State of Colorado. With respect to any claims or litigation associated in any manner with or arising out of this Agreement, the Parties agree to submit to the exclusive personal jurisdiction of the District Court in and for Pueblo County, Colorado. Exclusive venue for any such litigation shall be Pueblo County, Colorado.

16. ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that may be necessary to carry out this Agreement.

17. FORCE MAJEURE. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, storms, lightning strikes, labor strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

18. BINDING EFFECT. This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

19. NOTICES.

(a) Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the following address or at such other address as may be subsequently furnished in writing to the other party:

If to City:
City Manager
City of Pueblo
One City Hall Place

Pueblo, CO 81003

With an additional copy to:
City Attorney
City of Pueblo
One City Hall Place
Pueblo, CO 81003

If to Manager:
Larry Osborn, Secretary
106 Baylor St.
Pueblo, CO 81005

(b) Such notices shall be deemed to have been given when deposited in the regular United States mail.

20. SECTION CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

21. INTEGRATION, SEVERABILITY, AMENDMENT, AND COUNTERPARTS. This Agreement represents the entire agreement between the Parties and supersedes all prior discussions and written agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

22. NO THIRD PARTY BENEFICIARIES; NO WAIVER OF IMMUNITIES. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

23. WAIVER OF BREACH. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

24. AUTHORITY OF SIGNERS. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of such party and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

25. ATTORNEY'S FEES AND COSTS OF COLLECTION. In the event that it becomes necessary for the City to bring any action or proceeding to enforce any provision of this

Agreement, to recover damages for Manager's breach of this Agreement, or to seek specific performance of this Agreement, the City shall be entitled to collect its reasonable attorney's fees, costs of suit, and costs of collection as part of the judgment in such action or proceeding.

IN WITNESS WHEREOF, the parties have extended the Management Agreement in Pueblo, Colorado on the day and year first above written.

ATTEST:

PUEBLO, a Municipal Corporation, by and through this honor Farm Enterprise

City Clerk

By _____
President of the City Council

ATTEST:

SKY CORRAL R/C MANAGER

By _____

Title: _____

Address: _____

EXHIBIT "A"

The East 1/2 of the SW-1/4 of the SW-1/4 and the West 1/2 of the SE-1/4 of the SW-1/4, all being located in Section 17, T-20-S, R-65-W, of the 6th Principal Meridian, Pueblo County, Colorado.

ROADWAY EASEMENT TO SKY CORRAL

A 40.00' wide Roadway Easement being 20.00' on each side of the following described line:

Beginning at a point on the East-West centerline of Section 18, T-20-S, R-65-W, said point bearing N-88°56'07" West and 521.38' from the E-1/4 corner of said Section 18, and assuming that the East line of said Section 18 bears due North; Thence South 32°02'30" East, a distance of 123.78'; Thence South 88°06'30" East, a distance of 520.06'; Thence South 29°39'30" East to the North line of the East 1/2 of the SW-1/4 of the SW-1/4 of Section 17, Pueblo County, Colorado.