

MUTUAL MAINTENANCE AND USE AGREEMENT

City of Deadwood, South Dakota
and
Deadwood Days of '76, Inc.

This Mutual Maintenance and Use Agreement ("Agreement") is made and entered into effective as of _____, 20____ ("Effective Date"), by and between the **City of Deadwood, South Dakota**, a South Dakota municipality ("City"), and **Deadwood Days of '76, Inc.**, a South Dakota nonprofit corporation ("Days"). City and Days may each be referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Days owns or controls certain real property legally described as **TIF #9 M.S. 569 Lot 1 of the Days of 76 Tract, Plat 2010-01329** ("Days Property");

WHEREAS, City owns or controls certain real property legally described as **TIF #9 M.S. 569 & 840 Lot A, part of Lot A Revised Plat 2013-02127** ("City Property");

WHEREAS, City desires to use a mutually designated portion of the Days Property as a seasonal snow dump, and Days desires to use a mutually designated portion of the City Property as dry camping space associated with the Days of '76 Campground; and

WHEREAS, the Parties wish to establish the conditions of such reciprocal uses and allocate responsibility for damage, maintenance, and ordinary wear and tear.

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated below, the sufficiency of which is acknowledged, the Parties agree as follows:

1. PROPERTY AND DESIGNATED USE AREAS

1.1 Days Property. The portion of the Days property authorized for City's snow-dump use ("Snow Dump Area") is depicted on Exhibit A, which is incorporated into this Agreement.

1.2 City Property. The portion of the City property authorized for Days' dry-camping use ("Dry Camp Area") is depicted on Exhibit B, which is incorporated into this Agreement.

2. RECIPROCAL LICENSES

2.1 License to City. Days grants City a nonexclusive, revocable license to enter and use the Snow Dump Area solely for placement, storage, management, and removal of snow and incidental materials ordinarily collected with snow from City streets and public areas. City shall not knowingly deposit refuse, hazardous substances, contaminated soil, sewage, or other material not incidental to ordinary snow-removal operations.

2.2 License to Days. City grants Days a nonexclusive, revocable license to use the Dry Camp Area solely for temporary dry camping associated with the Days of '76 Campground. "Dry camping" means camping without permanent water, sewer, or electrical utility connections. Days shall not install permanent improvements or utilities without City's prior written approval.

2.3 Nature of Rights. Each license is personal to the receiving Party and may be suspended or terminated only as provided in Section 6. Neither license creates a leasehold, easement, tenancy, ownership interest, or right of adverse possession, and neither license may be assigned or sublicensed without the property-owning Party's prior written consent. Authorized campers and contractors may enter only as necessary for the permitted use and remain under the receiving Party's control.

3. OPERATIONS AND COMPLIANCE

3.1 Coordination. At least thirty (30) days before each anticipated season of use, or as soon as reasonably practicable if thirty (30) days' notice is not possible, the Parties' designated representatives shall coordinate boundaries, access routes, dates, operational conditions, drainage protection, and any temporary fencing or signage. Neither Party shall unreasonably interfere with the other Party's ownership, operations, emergency access, or scheduled events.

3.2 Days' Campground Duties. Days shall administer the Dry Camp Area, control occupancy, provide rules to campers, collect and remove trash, provide lawful sanitation arrangements, prevent open discharge of wastewater, and restore the area after use. No open fire is permitted except as expressly authorized by City and applicable fire restrictions.

3.3 City's Snow-Dump Duties. City shall manage snow placement to avoid unreasonable obstruction, erosion, flooding, contamination, or damage to improvements. City shall use reasonable care during loading, hauling, placement, grading, and removal. After the snow has melted sufficiently to permit inspection and access, City shall promptly remove non-snow debris attributable to its operations.

3.4 Legal Compliance. Each Party shall obtain permits required for its own activities and comply with applicable federal, state, and local laws, ordinances, environmental requirements, campground rules, and safety standards.

4. DAMAGE, MAINTENANCE, AND COST ALLOCATION

4.1 City-Caused Snow-Dump Damage. City shall bear the reasonable cost of repairing physical damage to the Days Property, including improvements, to the extent caused by City's snow-dump operations or by City personnel, vehicles, or contractors. This responsibility does not include ordinary wear and tear governed by Section 4.2. After consulting Days, City may either perform the repair using qualified personnel or contractors or reimburse Days for reasonable, documented repair costs. Repairs shall restore the affected property substantially to its condition immediately before the damage, subject to ordinary wear and tear.

4.2 Regular Maintenance and Ordinary Wear and Tear. City shall pay seventy-five percent (75%) and Days shall pay twenty-five percent (25%) of reasonable, necessary costs for regular maintenance and repair of the Snow Dump Area and Dry Camp Area when those costs result from ordinary wear and tear caused by the uses authorized under this Agreement. The cost-sharing allocation does not apply to damage caused by negligence, willful misconduct, unauthorized use, failure to comply with this Agreement, or failure to timely perform an assigned operational duty. The Party responsible for that conduct shall bear the resulting costs.

4.3 Approval and Accounting. Except for emergency work reasonably necessary to protect persons or property, maintenance subject to the 75%/25% allocation must be approved in writing by both Parties before work begins. The Party arranging the work shall provide invoices or other reasonable documentation. The other Party shall pay its allocated share within thirty (30) days after receipt of a complete written request. No capital improvement is cost-shared unless separately approved in writing.

4.4 Inspection and Notice. The Parties should jointly inspect each licensed area before and after seasonal use and document observable conditions. A Party discovering damage or a maintenance need shall notify the other Party promptly. Failure to conduct an inspection does not waive responsibility otherwise established by this Agreement.

5. RISK, LIABILITY, AND INSURANCE

5.1 Responsibility for Own Acts. To the extent permitted by law, each Party is responsible for claims, losses, liabilities, and expenses arising from its own negligent or

wrongful acts or omissions and those of its officers, employees, agents, contractors, invitees, or authorized users in connection with this Agreement. Nothing in this Agreement requires either Party to indemnify the other for the other Party's negligence or wrongful conduct.

5.2 Governmental Protections. Nothing in this Agreement waives any governmental immunity, statutory limitation, defense, or protection available to City or its officials and employees under South Dakota law. No obligation of City shall extend beyond authority and funds lawfully available and appropriated.

5.3 Insurance. During its use of the Dry Camp Area, Days shall maintain commercial general liability insurance in limits satisfactory to City and, upon request, provide evidence of coverage naming City and its officers and employees as additional insureds to the extent available for Days' operations. Each Party shall maintain workers' compensation and vehicle coverage as required by law for its own personnel and vehicles. The Parties may satisfy appropriate coverage requirements through lawful self-insurance or risk-pool participation.

6. TERM, SUSPENSION, AND TERMINATION

6.1 Term. This Agreement begins on the Effective Date and continues for five (5) years unless earlier terminated. It may be renewed by a written instrument approved and signed by both Parties.

6.2 Suspension. Either Party may temporarily suspend the other Party's use when reasonably necessary for public safety, emergency response, environmental protection, construction, maintenance, legal compliance, or a scheduled event. The suspending Party shall provide as much advance notice as reasonably practicable.

6.3 Termination. Either Party may terminate this Agreement without cause upon ninety (90) days' written notice. A Party may terminate for material breach if the breach is not cured within thirty (30) days after written notice; if cure reasonably requires more time, the breaching Party shall begin cure within that period and diligently complete it. Immediate suspension or termination is permitted for an imminent threat to health, safety, property, or the environment.

6.4 Survival. Provisions concerning damage, liability, restoration, dispute resolution, and governmental protections survive termination. Upon termination, each Party shall cease the licensed use, remove its personal property and debris, and complete required restoration within a reasonable time.

7. NOTICES AND ADMINISTRATION

7.1 Representatives. City's designated representative is the _____ or designee. Days' designated representative is its President or designee. Operational approvals under this Agreement may be given by email or other written communication, but amendments must comply with Section 8.2.

7.2 Formal Notices. Formal notice shall be delivered personally, by nationally recognized overnight service, or by certified U.S. mail, return receipt requested, to the following addresses, or to an updated address supplied by written notice:

City	Days
City of Deadwood Attn: _____ 102 Sherman Street Deadwood, SD 57732	Deadwood Days of '76, Inc. Attn: President _____ Deadwood, SD 57732

8. GENERAL PROVISIONS

8.1 Authority and Approval. Each signatory represents that the signatory is authorized to execute this Agreement. City's obligations are subject to approval by its governing body and all procedures required by law. Each Party shall obtain any corporate or governmental approvals required for execution and performance.

8.2 Entire Agreement; Amendment. This Agreement and its exhibits constitute the entire agreement regarding the subject matter and supersede prior oral or written understandings. An amendment or waiver is effective only if in writing and signed by authorized representatives of both Parties following any required approvals.

8.3 No Partnership; No Third-Party Beneficiaries. The Parties are independent entities. This Agreement creates no partnership, joint venture, agency, employment relationship, or third-party beneficiary right.

8.4 Dispute Resolution. The designated representatives shall first meet in good faith to resolve a dispute. If unresolved, the matter shall be presented to the City Mayor and the Days President or their designees before either Party initiates litigation, except when temporary or emergency relief is reasonably necessary.

8.5 Governing Law and Venue. South Dakota law governs this Agreement. Venue for an action arising from this Agreement shall lie in the state circuit court serving Lawrence County, South Dakota, unless applicable law requires otherwise.

8.6 Severability; Waiver. If a provision is held invalid or unenforceable, the remaining provisions remain effective to the fullest extent permitted by law. A failure or delay in enforcing a provision is not a waiver of that provision or any later breach.

8.7 Counterparts and Electronic Signatures. This Agreement may be signed in counterparts, each deemed an original. Electronic or reproduced signatures may be treated as originals to the extent permitted by law.

8.8 Recording. The Parties may record a memorandum of this Agreement, rather than the full Agreement, if mutually approved. Neither Party shall record this Agreement without the other Party's prior written consent.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives.

CITY OF DEADWOOD, SOUTH DAKOTA	DEADWOOD DAYS OF '76, INC.
By:	By:
_____	_____
Name:	Name:
_____	_____
Title: Mayor	Title:
Date:	Date:
_____	_____
ATTEST:	ATTEST:
_____	_____
Finance Officer	Name/Title:
APPROVED AS TO FORM:	_____

City Attorney	

EXHIBIT A

Snow Dump Area on Days Property

[Attach mutually approved map, aerial image, or survey depicting the authorized Snow Dump Area and access route.]

EXHIBIT B

Dry Camp Area on City Property

[Attach mutually approved map, aerial image, or survey depicting the authorized Dry Camp Area and access route.]