

## **GOLF COURSE MANAGEMENT SERVICES AGREEMENT**

This Golf Course Management Services Agreement (this “**Agreement**”) is entered into effective **July 1, 2024** (“Effective Date”) by and between the City of Douglas, an Arizona municipal corporation (“City”) and Douglas Public Facility MPC, an Arizona non-profit Municipal Property Corporation, (“MPC”) (each a “**Party**” and collectively the “**Parties**”).

### **WITNESS:**

WHEREAS, The City owns the golf course and facilities known as the Douglas Municipal Golf Course (the "Golf Course") located at 1372 E. Fairway Dr., Douglas AZ 85607 and is the holder of a Series 5 governmental liquor license known as Douglas Municipal Golf Course (the "License"), which permits the serving of spirituous liquor on the Golf Course premises as described in the License Application on file with the Arizona Department of Liquor Licenses and Control ("DLLC");

WHEREAS the MPC provides management services related to the management, oversight, contracting and general administration of the Golf Course;

WHEREAS, the City desires that the MPC provide management services to assist the City in the oversight of the Golf Course and the MPC agrees to provide such services on the terms set forth below; and

WHEREAS, the Parties desire to enter into this Agreement as of the Effective Date;

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits, covenants and agreements herein, the Parties agree as follows:

### **ARTICLE 1 APPOINTMENT AND TERM**

1.1 Appointment. The City hereby engages the MPC to provide, and the MPC shall provide, management, operational, regulatory, accounting and related services to the City in connection with its ownership of the Golf Course, subject to the terms and conditions of this Agreement.

1.2 Term. This Agreement shall have an initial term of one (1) year commencing on the Effective Date and thereafter shall be automatically extended for subsequent one (1) year terms (the initial term and each such extension period hereinafter referred to as a “**Term**”). Either Party may terminate this Agreement by providing thirty (30) days’ written notice to the other Party.

### **ARTICLE 2 PERFORMANCE OF SERVICES**

2.1 Agreement to Provide Management Services. The MPC shall provide, or cause to be provided, the personnel and support services necessary for the routine or normal management of the Golf Course, excluding the position of Golf Course Superintendent, including without

limitation, management, administration and of all oversight of budgets, and participation with City management in the review of the day-to-day operation and maintenance (collectively and individually referred to as “**Management Services**”). Without limiting the generality of the foregoing, unless otherwise instructed by the City Manager for the City of Douglas, the MPC shall:

- (a) operate a golf course, equipment rental and sales and other golf related commercial purposes to the public at all times that reasonable demand for such services exist. The hours of operation shall be in accordance with sound business practices associated with operating a golf facility of similar size;
- (b) offer food and dining at such times as deemed appropriate by the MPC. Additionally, the MPC may allow catering services for events held at the Clubhouse and may also provide snack foods, including but not limited to candies, chips, nuts, soft drinks, beef jerky and associated snack products;
- (c) keep the Premises adequately stocked with merchandise, and with sufficient staff to care for the patronage, and to conduct said business of the Golf Course in accordance with sound business practices associated with operating a golf course;
- (d) provide input and make recommendations for the maintenance of the Golf Course, at the oversight of the Golf Course Superintendent, including the maintenance of the greens, fairways and practice ranges;
- (e) create, provide and maintain all, financial reports, budgeting, accounting and other reports necessary for the operation of the Golf Course;
- (f) take any steps necessary for the continued operation of the License and ensure that all employees, agents and other persons engaging in activities which are the subject matter of this Agreement are fully advised and aware of any and all laws, rules and regulations relating to the purchase, handling, inventory control, sale and service of spirituous liquors. To that end, all bar employees of the MPC shall have basic liquor training provided by a trainer approved by the Arizona Department of Liquor Licenses and Control and all managers of the MPC shall have basic and management training from a like trainer. Certificates of Liquor Training shall be available for inspection at all times by the City; and
- (g) maintain such records, reports and other documents in connection with performing the services hereunder as are required by applicable federal and state laws and regulations.

Subject to the terms of this Agreement, the MPC shall perform all services hereunder with the same degree of diligence and care that it would exercise if managing its own property, and in accordance with all applicable laws, rules and regulations of the appropriate governmental authorities. The City shall, in its sole and absolute discretion maintain and repair the plumbing, HVAC, electrical, roof, windows and foundations of the Clubhouse and any adjoining buildings or premises (collectively, “Clubhouse”) as well as all Golf Course equipment, machinery, plumbing and related water delivery systems.

2.2 No Partnership. Nothing in this Agreement will be deemed to create a partnership, joint venture or similar relationship between the City and the MPC, and neither the City nor any of its Affiliates has any power to bind the MPC. The MPC shall act as an independent contractor in the performance of its duties hereunder.

### **ARTICLE 3 EMPLOYMENT OF PERSONNEL; MANAGEMENT FEE**

3.1 MPC Personnel. The MPC shall obtain, whether as employees or independent contractors, such personnel as may be required to perform the Management Services. All such personnel, whether full or part-time, shall at all times remain employees or independent contractors of the MPC, an MPC Affiliated Entity or a Third Party and shall not become or be deemed to be employees of the City.

3.2 Personnel Qualifications. The MPC will use commercially reasonable efforts to establish and confirm that any such personnel utilized under this Agreement are qualified to perform the Management Services in accordance with the standards customarily exercised by reputable managers of similar services utilized in the management of similar golf course operations.

3.3 Golf Course Superintendent. The City shall employ a Golf Course Superintendent, who's job description is attached hereto as Exhibit A, for the purpose of ensuring proper maintenance of the greens, fairways, bunkers, and surrounding grounds including the RV Park of the Golf Course. All MPC personnel that provide maintenance to the Golf Course, including the greenskeepers shall take direction from the Golf Course Superintendent. In the event that the Golf Course Superintendent believes that adequate services are not being performed by MPC personnel, the City, through the Golf Course Superintendent may request alternate personnel provide the Management Services. The MPC may provide feedback of the Golf Course Superintendent through the evaluation process followed by the City.

3.4 Management Fee. In exchange for the Management Services provided by the MPC, the City shall pay in equal monthly installments an amount equal to the MPC Personnel salaries and employee related expenses ("**Management Fee**"). The Management Fee may be adjusted annually, through written agreement between the parties.

### **ARTICLE 4 BUDGETS AND EXPENDITURES**

4.1 Operating and Capital Budgets. Annually, the City and the MPC shall mutually agree upon a comprehensive budget and operations plan relating the Management Services. The City and the MPC shall agree to all operating and capital expenditures and the responsibility for any such payments. At least quarterly, the City and the MPC, shall meet to make adjustments, if any, necessary for the continued operation of the Golf Course.

4.2 Emergency Expenditures. In cases of emergency, the City Manager on behalf of the City may authorize expenditures for required work when such is necessary in MPC's good faith judgment to respond to the emergency or to mitigate damage or danger to persons, property or the environment, without the necessity of submitting such proposed expenditures in advance for

approval by City. In such event, the MPC shall, as soon as practicable, by telephone notice or otherwise, inform the person designated by the City of the existence or occurrence of the emergency, the full particulars thereof, the corrective action being taken or proposed and the estimated cost, if known. Such notice shall be confirmed in writing as soon as practicable. The MPC shall directly charge the City for its costs and expenses, including those costs and expenses attributable to Affiliates or Third-Party contractors utilized by the MPC.

## **ARTICLE 5 ACCOUNTING**

5.1 Records. The MPC will prepare and preserve a complete set of operating, tax and financial records in accordance with all applicable legal and industry standards. The MPC shall follow internal controls cash handling policies as established by the City. Such records will reflect any and all operating, tax and financial matters related to the Golf Course and shall be kept separate from the MPC's internal records and in a form and in a manner so that they are readily identifiable. The MPC shall furnish all such information and reports as may be required for the City's internal purposes, the City's third party auditing firm, and by any federal or state agency having appropriate jurisdiction. The City and its duly authorized representatives may, at City's option and at its sole expense at all reasonable times, but not more often than once in any calendar year, audit the books and records of the MPC with respect to the Management Services. Nothing herein shall limit the City's ability to have full access, at all reasonable times, to the MPC's books, accounts, records and all other documents, of whatever nature, in the possession or control of the MPC whether prepared by the MPC or otherwise.

5.2 Revenues. The MPC shall set all fees for the golf course, bar and event hall operations. The MPC shall use a point-of-sale system to process all sales transactions and keep inventory. All revenue collected shall be deposited with the City according to accepted cash handling procedures established by the City. Revenues include cash, checks and credit card payments from all associated operations of the golf course and facilities.

5.3 Expenditures. All expenses except those associated with MPC personnel, shall be paid by the City. Items or services must be authorized by the Superintendent and/or by City officials before purchase occurs. The City's procurement policies and procedures must be followed with all expenditures paid by the City.

## **ARTICLE 6 INDEMNIFICATION**

6.1 Indemnification by the MPC. To the fullest extent permitted by law, the MPC, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City and its elected and appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses, penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or

resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by the MPC, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to , any injury or damages claimed by any of MPC's and subcontractor's employees. This section shall survive the expiration or early termination of the Agreement.

6.2 Indemnification Procedures. Notwithstanding anything to the contrary hereunder, no cause of action, dispute or claim for indemnification may be asserted against any Party or submitted to arbitration or legal proceedings which accrued more than two (2) years after the later of (a) the occurrence of the act or event giving rise to the underlying cause of action, dispute or claim and (b) the date on which such act or event was, or should have been, in the exercise of reasonable due diligence, discovered by the Party asserting the cause of action, dispute or claim.

## **ARTICLE 7 TERMINATION**

7.1 General. This Agreement shall terminate, and the obligation to provide all Management Services shall cease, on the earlier to occur of (a) the date on which the provision of all Management Services has been terminated by the Parties pursuant to Section 7.2 and (b) the date on which the Term of this Agreement has ended pursuant to Section 1.2.

7.2 Termination. The City may terminate this Agreement without cause by giving the MPC thirty (30) days written notice. Such termination shall not prejudice any other right or remedy the City may have under this Agreement. If this Agreement is terminated without cause, the MPC shall be paid for work performed to the date of receipt of such termination notice.

7.3 Effect of Termination. Upon termination of this Agreement, all rights and obligations of the Parties hereunder shall cease, provided, however, that such termination shall not excuse any Party's breach of this Agreement prior to termination; and that Indemnification under Section 6.1 shall survive the Termination of this Agreement.

## **ARTICLE 8 INSURANCE**

8.1 The City agrees to maintain insurance covering the Golf Course. The City shall determine, in its sole and absolute discretion, the limits to of coverage for the Golf Course. The MPC may provide recommendations on the types and limits of coverage to be provided.

8.2 Workers' Compensation Insurance. The MPC shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of The MPC 's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

**ARTICLE 9  
MISCELLANEOUS**

9.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, discussions, understandings and commitments, written or oral, between the Parties with respect to such subject matter.

9.2 Choice of Law; Mediation; Jurisdiction.

(a) This Agreement shall be construed and enforced according to the laws of the State of Arizona without regard to principles of conflict of laws. The parties agree that should any court action be commenced relating to this Agreement, that the Cochise County Superior Court shall be the appropriate and exclusive venue therefore. The parties expressly waive any and all provisions of law providing for a change of venue to any other state or federal court.

(b) Neither party shall commence any litigation in any court concerning a dispute arising out of or related to this Agreement unless such party shall first give a written notice to the other party setting forth the nature of the dispute. If the parties cannot resolve the dispute between themselves, the parties agree that there shall be a sixty (60) day moratorium on litigation during which time the parties will agree to attempt to settle the dispute by non-binding arbitration. The matter in dispute shall be submitted to an arbitrator mutually selected by the City and MPC. In the event that the parties cannot agree upon the selection of an arbitrator within ten (10) days, the parties shall request that the presiding judge for the Superior Court in and for the County of Cochise, State of Arizona, assign an arbitrator from a list of arbitrators maintained by the American Arbitration Association or similar association. If the dispute has not been resolved by arbitration as provided above within sixty (60) days after delivery of the dispute notice, then either party may proceed to litigation. The cost of such arbitration shall be divided equally between City and MPC. Notwithstanding the above, the duty to arbitrate disputes hereunder shall not prevent a party from seeking preliminary judicial relief if such action is necessary to avoid irreparable damage during the pendency of the arbitration.

9.3 Amendment. This Agreement may only be amended, modified or supplemented by a written instrument signed by an authorized representative of the parties.

9.4 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any Party, it is in writing signed by an authorized representative of such Party. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No single or partial exercise of any right or remedy under this Agreement precludes any simultaneous or subsequent exercise of any other right, power or privilege. The rights and remedies set forth in this

Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity or by statute.

9.5 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

9.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns; provided, however, that the rights and obligations of any Party under this Agreement shall not be assignable by such Party without the prior written consent of the other Party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

9.7 Third Party Beneficiaries. Except to the extent otherwise provided in this Agreement, the provisions of this Agreement are solely for the benefit of the Parties and their respective successors and permitted assigns and shall not confer upon any Third Party any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

9.8 Notices. All notices, requests and other communications required or permitted hereunder shall be in writing and shall be deemed duly given or delivered (i) when delivered personally, (ii) if transmitted by facsimile when confirmation of transmission is received or by email when receipt of such email is acknowledged by return email, (iii) if sent by registered or certified mail, postage prepaid, return receipt requested, on the third business day after mailing or (iv) if sent by private courier when received; and shall be addressed as follows:

If to City:

City of Douglas  
Attn: Ana Urquijo, City Manager  
425 10<sup>th</sup> Street  
Douglas, AZ 85607

If to MPC:

Douglas Public Facility Municipal Property  
Corporation  
Attn: James Selchow, President  
1372 E. Fairway Drive  
Douglas, AZ 85607

or, to such other address as such Party may indicate by a notice delivered in accordance with this Section 9.8.

9.9 Uncontrollable Forces. City and MPC shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

9.10. Conflict of Interest. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

9.11 Americans With Disabilities Act. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The MPC shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The MPC shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

9.12 Federal Regulations. Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. MPC acknowledges, by signature to this agreement, that: MPC is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; MPC's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

9.13 Undocumented Workers. MPC understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, MPC hereby warrants to the City that the MPC and each of its subcontractors ("Subcontractor") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23- 214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the MPC to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any MPC or Subcontractor employee who works on this Agreement to ensure that the MPC or Subcontractor is complying with the Immigration Warranty. MPC agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the MPC and any of subcontractors to ensure



compliance with Immigration Warranty. MPC agrees to assist the City in regard to any random verification(s) performed.

Neither the MPC nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract the MPC enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

9.14 No Kick-Back Certification. MPC warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the MPC’s firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid MPC hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

9.15 Boycott Of Israel. In signing this Agreement, MPC certifies pursuant to ARS §35-393.01 that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel.

9.16 Forced Labor Of Ethnic Uyghurs Prohibited. Pursuant to A.R.S. § 35-394, MPC hereby certifies to the City as follows: that it is not currently using, and agrees for the duration of this Agreement to not use: (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (3) any contractors, subcontractors, or suppliers that use the forced labor of ethnic Uyghurs in the People’s Republic of China. The MPC further acknowledges and agrees that: (1) if the MPC becomes aware during the term of this Agreement that it is not in compliance with this certification that the MPC will notify the City within five (5) business days after becoming aware of the noncompliance; and (2) if the MPC does not provide the City with a written certification that the MPC has remedied the noncompliance within one hundred eighty (180) days after giving notice thereof, the same shall constitute a material breach of this Agreement, which shall then terminate automatically, except that if the Agreement termination date occurs before the end of the remedy period, this Agreement terminates on the Agreement’s termination date. The City retains the legal right to inspect the records of the MPC to ensure compliance with this certification for the duration of this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their authorized representatives as of the date first above written.

MPC:  
Douglas Public Facility MPC,  
an Arizona non-profit Municipal Property Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF DOUGLAS  
an Arizona municipal corporation

\_\_\_\_\_  
Ana Urquijo  
City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Alma Andrade  
City Clerk

\_\_\_\_\_  
City Attorney