

**Parker-Fitzgerald Cuchara Mountain Park Operations  
Memorandum of Understanding**

This Memorandum of Understanding regarding the operation of the Parker-Fitzgerald Cuchara Mountain Park (this “**Agreement**” or “**MOU**”) is made as of this 20<sup>th</sup> day of November, 2023 (the “**Effective Date**”) by and between the following entities:

- A. Huerfano County, a political subdivision of the State of Colorado (the “**County**”)
- B. Panadero Ski Corporation, a Colorado Non-Profit Corporation (“**PSC**”)

The above-listed parties may be referred to individually as “Party” and collectively as “Parties.”

**RECITALS**

WHEREAS, PSC has raised significant public funding in the form of Grants and Donations to restore operation of the Parker-Fitzgerald Cuchara Mountain Park for public use and enjoyment; and

WHEREAS, the County, acknowledging the public desire to use and enjoy the Parker-Fitzgerald Cuchara Mountain Park, desires to enter into a concessionaire agreement for the operation of the Park; and

WHEREAS, the County has the duty to seek all options and explore all possibilities to bring the Park to a sustainable and viable status and to that end has issued an RFQ to seek qualified operators for the Park; and

WHEREAS, the County’s RFQ envisions a potential operator assuming Park Operations on or about April 15, 2024; and

WHEREAS, the Parties agree that continuing their relationship around the Park is in the public interest; and

WHEREAS, the Parties each desire to see the Park operate as an attraction that boosts the quality of life of Huerfano County Residents and strengthens the County’s economy;

**AGREEMENT**

In consideration for the promises herein, the recitals, and other good and valuable consideration, the Parties agree as follows.

**Section 1. Park Operations**

- A. PSC will operate the Park for and on behalf of the County as a public adventure park including overseeing the maintenance, renovation, repair, replacement, and operation of the Park together with activities customarily associated with operating a public park, community center, or adventure park.
- B. PSC agrees that the Park shall be operated and maintained in such a manner as to be a credit to the County, and shall be made available to all members of the public regardless of race, color, gender, sexuality, creed, national origin, religious preference, or any other classification protected by state, local, or federal law.

- C. PSC will have sole administrative and creative control only over the events and activities originating through the initiatives and operations of PSC that are conducted within and on the premises of the Park, with the exception of when the PSC rents the Park, or a portion thereof, to an outside group or entity.
- D. PSC will maintain the Park for public enjoyment and benefit. PSC may not charge for general access to the pump track and disc golf course, except for tournaments, special events, and private reservations.
- E. The Park may not be used by PSC for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan, but PSC shall not be precluded from renting all or part of the premises to persons or entities for political activities.

## **Section 2. Lift Operations**

- A. PSC is prohibited from performing any work whatsoever to Lift 4 without the express written consent of the Colorado Passenger Tramway Safety Board.
- B. Upon express written consent of the Colorado Passenger Tramway Safety Board, PSC is authorized to make such repairs, upgrades, and improvements that may be necessary to bring Lift 4 into good working order, provided however that all maintenance on the lift must be conducted and overseen by a qualified lift technician guided by an engineer experienced in cable-propelled transit. Work on the lift will be done in a manner in keeping with the best practices and advice of the Colorado Passenger Tramway Safety Board, industry standards, and all rules and regulations applicable to other such lifts.
- C. PSC will give the County 72 hours' notice before any work period for Lift 4. For the purposes of this provision, a work period is defined as any plan day or continuous series of days where PSC will be performing maintenance on or testing of Lift 4. Notices must be sent to [Administrator@huerfano.us](mailto:Administrator@huerfano.us) and [Commissioners@huerfano.us](mailto:Commissioners@huerfano.us).
- D. PSC must provide the County with copies of all engineering reports or plans within 7 days of PSC receiving said reports.
- E. The County understands and agrees that PSC will use their own technicians for the actual work on Lift 4. PSC certifies to the County that their technicians are qualified in keeping with Colorado Tram Board Rules and Industry best practices. PSC agrees to pay the entirety of any and all fines, fees, and penalties issued by the Tram Board related to Lift 4 and incidents having occurred between October 25, 2022 and the expiration or termination of this agreement. The parties agree that this provision will remain in full force and effect for up to 5 years after the expiration or termination of this agreement.
- F. PSC is authorized to operate Lift 4 once it has an approved license from the Colorado Passenger Tramway Safety Board and appropriate insurance. This includes operations, maintenance, upgrades, and improvements related to snowmaking equipment servicing Lift 4, specifically, or located on the Park.
- G. Work on any other existing lift is prohibited, except with prior approval of the County and/or the USFS as appropriate.

**Section 3. Compliance with Laws, Rules, Regulations and Policies.**

- A. PSC shall comply with all applicable laws, rules, regulations and orders existing during the term of this MOU, including obtaining and maintaining all necessary permits and licenses.
- B. PSC acknowledges and warrants that it is or will make itself knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Park

**Section 4. Public and County Use**

- A. The County will have the right to use the Park, or any portion thereof, with reasonable notice and availability for governmental purposes.
- B. At the direction of the County, and with reasonable advance notice and subject to availability, PSC shall provide the use of the Park, or any portion thereof, to non-profits, local civic groups, and other entities that the County believes will have a positive economic impact on the region at reduced rates.

**Section 5. Park Maintenance**

- A. PSC shall be responsible for general maintenance and cleaning of the grounds and structures of the Park.
- B. At PSC's own cost and expense, PSC shall maintain and operate the Park, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. PSC shall remedy without delay any defective, dangerous, or unsanitary conditions.
- C. Should PSC fail, neglect, or refuse to undertake and complete any required maintenance, the County shall have the right to perform such maintenance or repairs for PSC. In this event, PSC shall promptly reimburse the County for the cost thereof provided that the County shall first give PSC ten (10) days written notice of its intention to perform such maintenance or repairs. The County shall not be obligated to make any repairs to or maintain any improvements at the Park.
- D. The County has made no representation respecting the condition of the Park.
- E. PSC will notify the County of any maintenance issues that exceed their capabilities or constitute an emergency or hazard, including any repair that could lead to an insurance claim. The County may assist either with staff or financially, subject to the approval of the appropriate authority, with any such issues.
- F. The Parties will collaborate and plan to address non-emergency repairs that exceed \$3000 in cost.

**Section 6. Other Capital Improvements**

- A. PSC may propose other capital improvements over the term of this MOU. The County must review and may either approve or reject any such project.

- B. For the purposes of this MOU capital improvement is defined as any item or project that is permanently affixed to the Park or structures erected thereon with a value in excess of \$3000.
- C. The County will notify PSC of any capital improvement or project that involves the Park and will work to schedule any such work with PSC to minimize impact on PSC's operations. The County will invite PSC to participate in any County-led planning project that involves the Park.

**Section 7. Financial Considerations.**

- A. Utilities. The County will pay the cost of all utilities for the Day Lodge for the term of this MOU. The County will also pay for the servicing of the vault toilets and the current garbage dumpster. The PSC will pay the cost of all utilities solely associated with the operation of Lift 4 and for any additional utilities to be activated beyond the Day Lodge.
- B. Operating Reserve. PSC will maintain an operating reserve of at least \$5,000.
- C. Financial Records. PSC shall keep separate true and accurate books and records showing all of PSC's business transactions under this MOU in a manner that conforms to industry standards and practices and in a manner acceptable to the County. PSC shall keep all records for a period of at least four years.

The County shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine a copy of PSC's books and records. PSC hereby agrees to make all such records and books available to the County upon the County's request thereof. PSC further agrees to allow interviews of any employees who might reasonably have information related to such records.

**Section 8. Insurance.**

- A. The County will maintain the same standard property insurance for the Park as it does for all County facilities.
- B. PSC must maintain general liability insurance and all insurance related to lift operations as well as any ski operations and name the County as also insured. PSC will maintain minimum insurance coverage of \$2 Million in aggregate and \$1 Million per occurrence.

**Section 9. Oversight and Inspection.**

- A. PSC shall hire a project manager experienced in mountain park management and approved by the County to oversee all operations of the Park.
- B. PSC shall submit copies of all hired and/or internal reports made regarding the Park including engineering and maintenance.
- C. The County, through the Administrator or his designee, will review and monitor the operations and performance of PSC under this agreement, through periodic inspections of facilities, equipment, services, programs, financial records, management procedures, and maintenance agreements.
- D. The County reserves the right of ingress and egress without notice to inspect operations for the purpose of evaluating PSC's performance of the terms and conditions of this MOU; to inspect,

investigate, and/or survey the Park; and to do any work thereon of any nature necessary for preservation or maintenance of the Park.

- E. The County shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the County's entry in the Park as provided herein.

**Section 10. Hold Harmless Agreement**

- A. PSC hereby waives all claims and recourse against the County, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this MOU, except claims arising from, and to the extent of, the sole gross negligence or willful misconduct of the County, its officers, agents or employees.
- B. PSC shall protect, indemnify, hold harmless, and defend the County, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, attorneys fees, expert costs and fees, or liability costs arising out of the development, construction, operation, or maintenance of the Park described herein, except for liability arising out of, and to the extent of, the sole negligence or willful misconduct of the County, its officers, agents, or employees or other wrongful acts for which the County is found liable by a court of competent jurisdiction.

**Section 11. Term and Termination.**

- A. Term. This Agreement shall be in full force and effect from the Effective Date, subject to any amendments, until 12:01 AM on May 1, 2024 or as provided herein.
- B. Early Termination. This Agreement may be terminated at any time upon the written agreement of both Parties.
- C. Immediate Termination. Safety violations and any violation of the terms of this agreement shall be grounds for immediate termination at the sole discretion and option of the County. For the purposes of this agreement, safety violation refers to the breach of a particular workplace safety standard, regulation, policy, or rule. The Parties agree that violations of Colorado Tram Board Rules or OSHA Standards constitute a safety violation.
- D. Extension. This Agreement may be extended at any time with the agreement of both Parties.
- E. At the expiration or sooner termination of this MOU, PSC, at its own expense, shall remove all personal property brought onto the Park premises by PSC. PSC, at its own expense, shall restore and repair the Park, and any of PSC's improvements or fixtures remaining thereon, to a good, clean, safe and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the premises.
- F. Surrender. On expiration or within thirty (30) days after earlier termination of the MOU, PSC shall surrender the Park to the County with all fixtures, improvements and alterations in good condition, except for fixtures, improvements and alterations that PSC is obligated to remove. PSC shall remove all of its personal property and shall perform all restoration required by the terms of this MOU within the above stated time unless otherwise agreed to in writing.

## **Section 12. General Provisions.**

- A. Amendments. Any amendment or addition to this Agreement must be in writing, approved and signed by both Parties to this Agreement.
- B. Waiver of Contract Terms. Unless otherwise provided by this MOU, no waiver by either party at any time of any of the terms, conditions, or covenants of this MOU shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the County to re-enter the Park or to exercise any right, power, privilege, or option arising from any breach, shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein.
- C. Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
- D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- E. Venue. Venue to any action arising from this Agreement shall lie in the state courts in Huerfano County, Colorado. Each Party submits to the jurisdiction and venue of this court and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue and any right it may have to remove an action to federal court.
- F. Waiver of Right to Jury Trial. Each party waives any right it has or may have to a jury trial in any action, suit, or proceeding arising out of or in connection with this Agreement.
- G. Independent Contractors. The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. No Party will be liable for the debts, liabilities, or obligations of the other Parties. No Party is acting as the agent or partner of the other Parties or any of them and no Party will hold itself out as such. No Party has the authority to bind the other Parties or any of them.
- H. No Landlord-Tenant Relationship. No provision of this agreement is intended by the parties to constitute or be construed as creating a landlord-tenant relationship between the County and PSC. PSC shall not receive any property interest in the Park under and pursuant to this Agreement, but rather PSC is solely receiving the contractual right to operate the Park on behalf of the County subject to the provisions of this Agreement and to undertake and oversee the maintenance, operation, and repair of the Park as contemplated by this Agreement.
- I. Force Majeure. No Party will be considered in default under this Agreement to the extent that such performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disaster, pandemic or other state or county declared health emergency, riot, war, terrorism, labor disputes, or civil strife.
- J. Entire Agreement. This Agreement states the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements.
- K. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.
- L. Counterparts. This Agreement may be executed and delivered in counterparts (including by means of electronic signature), all of which taken together will constitute one and the same agreement.

[Remainder of page intentionally left blank.]

The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

**Huerfano County, Acting by and through its Board of County Commissioners**

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

Date Signed: \_\_\_\_\_

Name: John Galusha

Title: Chairman, Board of County Commissioners

*Attest:*

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

Date Signed: \_\_\_\_\_

County Clerk and Recorder

**Panadero Ski Corporation**

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

Date Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Attest:*

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

Date Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_