

# AGENDA ITEM #6.

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Gary Suiter, City Manager  
Dan Foote, City Attorney

**DATE:** March 13, 2018

**ITEM:** Update: Howelsen Hill Joint Use Agreement negotiations.

**NEXT STEPS:** Motion to direct staff to schedule an ordinance to approve a Winter Operating Agreement with the Steamboat Springs Winter Sports Club.

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DIRECTION  
 INFORMATION  
 ORDINANCE  
 MOTION  
 RESOLUTION

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### **I. REQUEST/ISSUE & BACKGROUND INFORMATION:**

The purpose of this hearing is to review a draft Winter Operating Agreement (“WOA”) that interprets certain terms and provisions of the 1987 Joint Use Agreement (“JUA”) between the City and the Steamboat Springs Winter Sports Club (the “Club”). Staff seeks direction as to whether to schedule an ordinance to approve the WOA for review on April 3 and 17.

The WOA results from a review of the City's obligations under the JUA that began after a major landslide on the face of Howelsen Hill on April 24, 2014. Initial estimates for the repair of the slide ranged from hundreds of thousands to millions of dollars. These numbers combined with the long history of slope instability at Howelsen Hill prompted a long term and comprehensive review of the City's goals for the management of Howelsen Hill and the City's obligations pursuant to the JUA.

The City's review identified a number of ambiguities in the JUA relating to the growth of the Howelsen Hill Ski Area, the scope of the parties' rights and obligations, maintenance standards, services levels, event and training schedules,

and City budget procedures. The parties begin exploring ways to resolve these ambiguities in June of 2016 with a goal of providing a framework for the restoration and improvement of the Howelsen Hill Ski Area, encouraging increased use of the Howelsen Hill Ski Area by the general public, and accommodating the Club's historic use of the Howelsen Hill Ski Area pursuant to the JUA.

Since then, staff and the Club have negotiated the terms of the WOA, a copy of which is attached. The agreement does not alter or modify the terms of the JUA. Instead, the purpose of this document is to interpret the JUA and guide the parties' performance for a ten year term that will expire on October 31, 2027. The parties anticipate negotiating an extension of the WOA beginning May 1, 2026. If the parties are unsuccessful, the WOA will terminate, but the JUA will remain in effect in its current form.

The WOA addresses the growth of the Ski Complex and the Howelsen Hill Ski Area in two ways. First, it ratifies and acknowledges the Club's right to use the entire Howelsen Hill Ski Area. Second, it identifies a baseline funding level necessary to operate the Howelsen Hill Ski Area while proposing the continued funding of services at the Howelsen Hill Ski Area at historic levels, subject to the City Council's budgetary discretion.

The WOA formalizes certain operational issues that had previously been addressed on an ad hoc basis. It establishes maintenance standards for Ski Complex facilities and equipment. And it creates a process for the parties annually to execute an operating agreement governing scheduling, allocation of budgeted funds, and pricing of lift tickets for the Club.

Finally, the WOA addresses the improvement of Howelsen Hill by creating discretionary funds for capital improvements, slope stabilization, and replacement of facilities and equipment.

## **II. ALTERNATIVES:**

If Council wishes to proceed with approval of the WOA as drafted, the next step would be to direct staff to schedule an ordinance approving the WOA. The next available dates for reviewing the ordinance would be April 3 and April 17.

If Council is not satisfied with the terms of the WOA, Council may propose revisions or may elect to terminate negotiations and address the management of Howelsen Hill via the terms of the JUA.

## **III. STAFF RECOMMENDATION:**

Staff recommends scheduling the WOA for approval. This document is the culmination

of almost two years of between the City and the Club. It is a substantial step towards clarifying the parties' rights and responsibilities that assures the Club of continued City support for Club operations while acknowledging the limitations on the City's ability to fully address landslide issues and to appropriate funds in future fiscal years.

This document is limited in term to ten years, which will give the parties a full opportunity to evaluate whether the WOA provides an effective framework for managing the parties' respective rights, interests, and obligations. If the document proves not to be effective, it can be re-negotiated or terminated in 2027.

#### **IV. FISCAL IMPACTS:**

The WOA contemplates an ongoing commitment by the City to continue to operate the Howelsen Hill Ski Area at current funding levels and to fund capital improvements. These commitments are subject to the annual appropriation of funds in the City's budget process.

#### **V. LEGAL ISSUES:**

The Club's approval of the WOA is subject to review and approval by the Winter Sports Club Board and the Steamboat Springs Winter Sports Club Foundation Board. These bodies and/or their executive committees will review the WOA on Monday, March 12.

The WOA does not directly address ongoing tower instability affecting the City's ability to operate the Barrows Lift. The parties have agreed that condition of the Barrows Lift will be addressed by subsequent agreement.

The Barrows Lift is essential to the performance by the City of its obligations pursuant to the 2002 Community Slide Agreement. The City has given the Club notice of termination of that agreement due to concerns regarding the City's ability to perform. The Club disputes the effectiveness of that notice of termination. The parties have agreed to continue to work towards establishing the terms for the replacement of the Barrows Lift and the operation of the new lift.

#### **VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

N/A

#### **VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES**

The proposed WOA directly addresses the Council's goal of working with the Club to clarify the JUA in the context of the community vision and strategic plan for the Howelsen Hill Ski Area.

**ATTACHMENTS:**

Attachment 1: Winter Operating Agreement.

# Attachment #1

## HOWELSEN HILL SKI AREA WINTER OPERATING AGREEMENT

This **HOWELSEN HILL SKI AREA WINTER OPERATING AGREEMENT**

("Agreement") is made by and between the City of Steamboat Springs, a Colorado home rule municipal corporation (hereafter "City") and the Steamboat Springs Winter Sports Club (hereafter "Club").

**A. WHEREAS**, the City is the owner of real property located in Routt County, Colorado known as the Howelsen Hill Ski Area, which has been used for Nordic jumping and other winter sports uses since 1914, and which until October 1, 1977 was operated by the Club with financial support from the City; and

**B. WHEREAS**, on October 31, 1977 the City and the Club entered into an agreement titled Sale and Agreement Between the City of Steamboat Springs and the Steamboat Springs Winter Sports Club ("1977 Agreement") pursuant to which the Club conveyed to the City buildings and personal property owned by the Club and used by the Club for the purpose of operating the Ski Complex, including the Howelsen Hill Lodge, poma lift, Thiokol snow cat, and other equipment, and the City agreed to pay the Club \$30,000 and to assume responsibility for operating and maintaining the Ski Complex; and

**C. WHEREAS**, since 1977 the City has operated the Howelsen Hill Ski Area and the parties acknowledge that the City is authorized to operate a ski area by Article XX, Section 6 of the Colorado Constitution and C.R.S. Sections 31-25-201, 29-7-101, and 33-41-102; and

**D. WHEREAS**, on November 25, 1987 the parties entered into a new Joint Use Agreement dated November 1, 1987, a copy of which is attached hereto as Exhibit "A" (hereafter "1987 JUA"), which amended and restated the terms of the 1977 Agreement; and

**E. WHEREAS**, the 1987 JUA is written in general terms and provides for the right for the Club to use the real and personal property referred to as the Ski Complex for Club operations, training, and events; provides for the division of revenues from Ski Complex operations; and obligates the City to operate and maintain the Ski Complex; and

**F. WHEREAS**, the parties acknowledge the historic and cultural significance of the Howelsen Hill Ski Area to the City of Steamboat Springs and the Club and its membership and wish to enter into this Agreement to set forth certain terms of the parties' use of the Howelsen Hill Ski Area in order to provide for the sustainable operation and evolution of the Howelsen Hill Ski Area in a manner that accommodates all of its user groups.

**G. WHEREAS**, the parties wish to agree upon a) the scope and extent of the City's obligation to maintain and operate the Ski Complex for winter sports uses; b) whether the City is responsible for the construction of improvements to mitigate soil instability and slides; c) performance standards for the maintenance and operation of the Ski Complex for winter sports uses; d) scheduling procedures for Club and public use of the Ski Complex for winter sports uses; and

**H. WHEREAS**, the City wishes to continue and affirm its support of the Club and the training and competitive services and opportunities that it provides to its athletes and the Steamboat Springs and Routt County community.

### **COVENANTS**

**NOW, THEREFORE**, in consideration of the following mutual covenants and promises, the parties agree as follows:

**1. PURPOSE OF AGREEMENT.** The purpose of this Agreement is to interpret certain terms and provisions of the 1987 JUA. The provisions of the 1987 JUA shall continue in full force and effect as of the date of the 1987 Joint Use Agreement; provided, however, that during the term of this Agreement, neither Party shall interpret or seek to enforce the 1987 JUA in a manner that is inconsistent with this Agreement.

**Section 1.1** The term "Ski Complex" for purposes of the 1987 JUA consists of the real and personal property owned by the City and used in the winter sports operations of the Howelsen Hill Ski Area as of November 1, 1987. It shall also include buildings and equipment that later replaced elements of the Ski Complex existing on November 1, 1987. The Ski Complex consists of the following real and personal property:

- a) The real property located between Mile Run and Wren's Run;
- b) The ski jumping complex, including the ski jumps, outruns, the unnamed judging tower adjacent to the 45 meter jump, and Fetcher tower;
- c) The Howelsen Hill Lodge, and Alpine start shack;
- d) The parking lot located to the east of the Howelsen Hill Lodge;

- e) The Poma lift, the Boardwalk surface lift, and associated structures (the “Lifts”);
- f) Snowmaking equipment and facilities necessary for operations described in Sections 3 and 4;
- g) The alpine grooming snow cat owned by the City;

**Section 1.2** The Howelsen Hill Ski Area consists of the Ski Complex and all other real and personal property owned by the City on Emerald Mountain and used for alpine and Nordic skiing, ski jumping, snowboarding, and other winter sports. The Howelsen Hill Ski Area generally consists of the real property between Mile Run and Long John and the Nordic trails located on the Howelsen Hill softball fields, rodeo grounds, and the real property described in the records of the Routt County Assessor by Property Identification Nos. 936172001 (“Baxter Property”), 228600002 (“Combs Property”), and 936174009 (“Combs Property”) and portions of the real property described in the records of the Routt County Assessor by Property Identification Nos. 936173003 (“Murri-Gooding Property”) and 936172003 (“Howelsen Hill Property”).

## **2. CLUB USE OF THE HOWELSEN HILL SKI AREA.**

**Section 2.1** The parties acknowledge that the City and the Club have individually and jointly funded acquisition of real property, trail improvements, snowmaking and snow grooming equipment, trail lighting, and other improvements to enhance and expand the Howelsen Hill Ski Area for the benefit of Club members and the general public.

**Section 2.2** The Club shall have the right to use the entirety of the Howelsen Hill Ski Area on the same terms set forth in the 1987 JUA for Club use of the Ski Complex. The Club acknowledges the City's use of the Howelsen Hill Ski Area for Nordic, snowshoeing, fatbiking, and other events and that the City may continue such uses.

**Section 2.3** The Club acknowledges that the City is engaged in master planning for Howelsen Hill Park.

### **3. OPERATION OF HOWELSEN HILL SKI AREA**

#### **Section 3.1 Snowmaking.**

a. The City shall continue to operate the existing snowmaking system to the extent funds are authorized pursuant to Section 6 of this Agreement. The foregoing notwithstanding, the City may decline to make snow in locations, amounts, or at times that are identified in as contributing to slope instability by geotechnical experts hired by the City.

#### **Section 3.2 Grooming.**

a. The City and the Club (and its donors and supporters) have since November 1, 1987 expanded the geographic scope and capacity of the jumps and snowmaking facilities at the Howelsen Hill Ski Area and the City has increased the size of the grooming fleet from one to three vehicles.

b. The City shall operate the current grooming fleet to the extent funds are authorized for such operations pursuant to Section 6 of this Agreement.

#### **Section 3.3 Lifts**

- a. The City shall at a minimum operate the Lifts during the periods established for Club use by the parties in accordance with the provisions of Section 5 of this Agreement.
- b. The City shall operate other lifts as necessary to provide redundancy during competitive events scheduled by the Club in accordance with Section 5 of this Agreement and shall also operate other lifts during periods scheduled for Club ski instruction and training if one or more of the Lifts is not operational. The obligation under this Agreement to operate other lifts shall apply only to the extent those lifts are operational. The City shall have no obligation under this Agreement to maintain, repair, or replace lifts other than the Lifts.
- c. The parties acknowledge that the Barrows lift is verging on obsolescence due to the limited availability of replacement parts, the location of the loading terminal, and the location of lift towers in areas of slope instability. Tower six is located in an area of repeated slope instability and has reached the limit of its tolerances for slope movement. Any further movement of tower six will likely impair the City's ability to operate the Barrows lift. In the event the City determines that it is unable to operate the Barrows lift, and in addition to any obligations the City may have under the Alpine Slide Agreement (defined below), City shall provide the Club immediate written notice of that determination.

The parties agree to work together to review and identify options to address the condition of the Barrows lift including replacement and relocation of the Barrows lift. Except as may otherwise be required under that certain Howelsen Hill Alpine Slide and

Lease Agreement dated October 16, 2002 between the City and Community Slide, Inc. ("Alpine Slide Agreement"), replacement and relocation of the Barrows lift shall be subject to the discretionary appropriation of funds by the City Council pursuant to Section 6 of this Agreement.

This Agreement shall not affect the rights or obligations of either party pursuant to the Alpine Slide Agreement or the validity or enforceability of those rights or obligations.

### **Section 3.4 Lodge**

a. The Club shall operate its areas of the Lodge, which are described as follows: offices, locker rooms, and storage. Club areas do not include Olympian Hall, the Fireplace Room, Ski Patrol offices, and restrooms. Club use of other areas of the Lodge shall be in accordance with general City policies, including Club execution on an annual basis of standard use agreements and deposits. For the avoidance of doubt, and consistent with past practice, the Club shall have access to Olympian Hall, the Fireplace Room and restrooms for all Club activities without cost of use other than costs associated with failure to adhere to standard use agreements or for damage or cleaning required that would be withheld from applicable deposits.

## **4. MAINTENANCE, REPAIR, CONSTRUCTION, RECONSTRUCTION, AND REPLACEMENT OF SKI COMPLEX.**

### **Section 4.1 Maintenance**

Except as may otherwise be required under the Alpine Slide Agreement, the City's maintenance obligations shall extend to maintenance and replacement of facilities that are part of the Ski Complex to the extent that the facilities continue to be used by the parties. Maintenance standards shall be as follows:

- a) Snowguns – Annual inspection and service per manufacturer's recommendations;
- b) Snowmaking water lines – Annual flush and repair of leaks as necessary;
- c) Snow cats – Maintenance in accordance with City Fleet maintenance standards;
- d) Lifts – Compliance with Tramway Board regulations and manufacturer best management practices (BMPs);
- e) Ski runs – Pruning of woody vegetation as needed;
- f) Jump structures and outruns – Inspection of fastening systems, electrical systems, and irrigations systems, wood treatments, mowing;
- g) Signs – Inspection and replacement as needed;
- h) Lodge – Cleaning, pest control, inspection for safety hazards, with repairs as necessary, planned maintenance in accordance with City Facilities standards. Janitorial services for Club areas to be performed by Club.
- i) Parking lot/sidewalks – Snow removal and asphalt maintenance; and
- j) Slope Maintenance and Repair. The City's obligation to maintain, repair, etc. in the event of landslides shall, to the extent practical, be to repair affected areas or facilities to useable condition with due consideration given to the

operational characteristics of the slope (is it an improved run, what degree of difficulty, skill level of expected users, maintenance of FIS certification of Face runs, etc.). The City may, but shall not be obligated to, restore landslides to pre-existing grades or conditions.

The City shall be responsible for maintaining the Ski Complex. The City's responsibility to maintain, repair, construct, reconstruct and/or replace the Ski Complex shall not include the obligation to install soil nails, ground anchors, bridges, gabion boxes, retaining walls, vegetation or landscaping, drainage facilities, or other capital improvements to stabilize Ski Complex slopes. Such improvements may be installed by the City in its sole discretion.

#### **Section 4.2 Replacement schedule**

a. Replacement F&E. The City's obligation to maintain the Ski Complex shall include the obligation to replace facilities and/or equipment that have reached the end of their service life ("Replacement F&E"). The parties shall work together to identify Replacement F&E that have reached or are nearing the end of their service life and plan for their replacement. The parties shall review the replacement schedule on an annual basis during preparation of the Annual Operation Agreement pursuant to Section 5 of this Agreement.

b. Maintenance of new facilities and/or improvements (other than Replacement F&E). In addition to Replacement F&E, the City may also install new facilities, improvements, and/or equipment, such as snow grooming machines, to the Ski Complex and Howelsen Hill Ski Area in its sole discretion. New facilities and

improvements shall be maintained, repaired, constructed, reconstructed, and/or replaced in the City's sole discretion or as agreed to in a separate maintenance agreement.

## **5. ANNUAL OPERATING AGREEMENT.**

**Section 5.1** The parties shall on an annual basis execute an operating agreement governing scheduling of the parties' respective uses of the Howelsen Hill Ski Area, pricing for season and other Howelsen Hill Ski Area passes, planning for snowmaking, grooming, and other operations, the costs of services to be charged by the City, allocating the funds anticipated to be available for use at the Howelsen Hill Ski Area, and other operations issues. City shall consult with the Club regarding pricing, cost of services, and allocation of funds, but the City shall retain final decision making authority regarding those issues. Discussions regarding the annual operating agreement shall commence between the City Parks, Open Space, and Recreational Services Department and Club representatives no later than May 15 each year and be concluded by June 15 of each year. During that time, the Club will present a proposed event schedule for the season. The City acknowledges that the Club may not have a final list of athletic events until September 1<sup>st</sup> and agrees to work with the Club in good faith to accommodate athletic events that have not been identified until after May 15. If the parties' representatives are unable to agree on a schedule, the matter shall be referred for final resolution to the City Council.

**Section 5.2** The Club shall identify its event schedule to the extent the schedule is known to the Club. The parties acknowledge that scheduling of winter sports events is subject to weather conditions and other circumstances outside the control of the parties. The parties shall use their best efforts to accommodate adjustments to the event schedule.

**Section 5.3 Training and Events**

a. The City and the Club shall on an annual basis schedule the time periods during which the Club shall be entitled to exclusive use of Howelsen Hill Ski Area for training purposes and events.

b. To the extent reasonably possible, the Club shall provide the City twenty-one (21) days' advance notice of training activities or events that require increased staffing or the performance of snowmaking or grooming activities to create or improve training or competition conditions or features. Unless otherwise agreed by the City, requests for staffing or services made after the notice period set forth above will be honored only with the Club's written agreement to compensate the City for the actual expenses incurred by the City in honoring the request.

c. To the extent reasonably possible, the Club shall provide the City with seven (7) days' advance notice in the event the Club wishes to cancel staffing or snowmaking/grooming requests. Unless due to weather, snow levels or circumstances outside of the Club's reasonable control, requests cancelled after the notice period set forth above will result in a charge to the Club for actual expenses incurred by the City.

**Section 5.4 Public use**

- a. Club members are encouraged to use Howelsen Hill Ski Area during periods that are not reserved for exclusive use by the Club. However, the Club shall not schedule competitive events, instruction, or training sessions during public use periods unless agreed to in advance by the City Manager.
- b. The Club may schedule events or instruction that are open to the public.

## **6. DISCRETIONARY SUPPORT**

**Section 6.1** The parties acknowledge that the Club membership has grown since the parties entered into the 1987 JUA, that the Club has expanded its services to provide training in new competitive disciplines, and that the City's costs of operating the Ski Complex and the Howelsen Hill Ski Area have increased. The parties further acknowledge that increased costs to the City are partially offset by increased operating revenues from Club member pass purchases. The City may, in its discretion and subject to the annual appropriation of funds, provide services not required by the 1987 JUA and may acquire real property or install facilities and improvements at the Howelsen Hill Ski Area. The provision of such services and the acquisition or installation of such real property or facilities and improvements that do not constitute Replacement F&E shall not create or impose upon the City any obligation under the 1987 JUA.

**Section 6.2** The baseline cost of operating the Ski Complex at minimum service levels is approximately \$300,000 in 2017 dollars. The parties agree that the City administrative staff shall propose in the City's annual budget process to appropriate funds for the purpose of defraying the City's cost of maintaining and operating the Ski

Complex and to provide additional services for the purpose of supporting Club activities and operations. The annual budget proposal shall be subject to approval of the City Council. The total proposed budget, net of City Howelsen Hill revenues, for providing services at the Howelsen Hill Ski Area shall be structured as follows:

- a. \$550,000 for general operational expenses (adjusted based on CPI increases), which shall be inclusive of all costs relating to operation of the Howelsen Hill Ski Area, including snowmaking, snow grooming, lift operations, utility expenses, repair to buildings or equipment, snow removal, replacement of snow cats and other equipment.
  
- b. At least \$50,000 for use for capital improvements as outlined in the City's Howelsen Hill Preservation Plan, as the same may be amended from time to time)

**Section 6.3** During the term of this Agreement, and subject to the City's continuing commitment to operating the Howelsen Hill Ski Area in a manner that supports the then-current year-round activities of the Club, the Club agrees to use reasonable commercial efforts to restrict funds, or provide \$100,000 annually for capital improvements (and not Replacement F&E or maintenance). Additionally, in the event the Club raises and makes available funds in any one year under this Agreement that exceed \$100,000, such funds will be applied to offset future year obligations with a maximum cap of 5 years, which shall be contributed by the Club to the City for capital improvements to the Howelsen Hill Ski Area, subject to the availability of funds.

“Capital improvements” as used in this paragraph means real and personal property with an expected useful life of five years or more.

**Section 6.4** The City has commissioned a comprehensive geotechnical study of the Ski Complex and the Howelsen Hill Ski Area. The parties anticipate the study may recommend the construction of improvements to stabilize Ski Complex slopes. The parties further acknowledge that future studies, cost estimates, or other information may similarly recommend the construction of improvements to stabilize Ski Complex slopes.

During the term of this Agreement, the parties agree that neither will seek to interpret or enforce the 1987 JUA in a manner that obligates the City to install capital improvements to stabilize Ski Complex slopes or to restore landslides. The City agrees that the City's administrative staff shall include a request for the appropriation of funds in the City's annual budget process to create a capital fund to be used for slope or structure stabilization purposes. If appropriated, these funds shall be used for capital improvements as defined above, and not for maintenance, such as cleaning drains, managing vegetation, etc. The request shall be subject to approval in the discretion of the City Council and shall be structured as follows:

\$50,000 contribution per year (to be adjusted annually based on CPI increases).

**7. TERM.** The term of this Agreement shall commence on November 1, 2017 and shall run for a period of ten years until October 31, 2027. This Agreement shall thereafter terminate and be of no further force or effect. The parties agree to

commence good faith negotiations to extend the term of this Agreement or to replace this Agreement no later than May 1, 2026. Termination of this Agreement does not affect the existence or terms of the 1987 JUA.

## **8. MISCELLEANOUS PROVISIONS.**

**Section 8.1.** Instruments of Further Assurance. To the extent allowed by law, the City and Club will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations under this Agreement.

**Section 8.2.** Recorded Copy. At any time, the City or the Club may record at the Routt County Clerk and Recorder's office a copy of this Agreement.

**Section 8.3.** Public Record. This Agreement is a public record of the City and may be disclosed for inspection and copying as provided in the Colorado Open Records Act and applicable City ordinances, rules, and regulations.

**Section 8.4.** Remedies on Occurrence of a Default. Upon the occurrence of a default, after 30 business days advance written notice of default given by the non-defaulting party and the defaulting party's opportunity to cure within such 30 business days or to commence cure within the 30 business day period and diligently proceed with the cure if such cure cannot be completed within 30 business days, if the cure is not completed, then the non-defaulting party shall have the right to protect and enforce its rights under this Agreement and any provision of law by such suit, action, or special proceedings as the non-defaulting party shall deem appropriate, including, without limitation, any

proceedings for the specific performance of any covenant or agreement contained in this Agreement or the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages caused by breach of this Agreement, including reasonable attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

**Section 8.5.** Delay or Omission No Waiver. No delay or omission of a party to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence in the default.

**Section 8.6.** No Waiver of One Default to Affect Another; All Remedies Cumulative; Notice and Opportunity to Cure. No waiver of any default under this Agreement by a party shall extend to or affect any subsequent or any other then-existing default or shall impair any rights or remedies available for such other default. All rights and remedies of the parties whether or not provided in this Agreement, may be exercised following notice and an opportunity to cure such default within the time provided by Section 8.4 hereof, shall be cumulative, may be exercised separately, concurrently, or repeatedly (but in each case, without duplicate recovery for any damage or loss), and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

**Section 8.7.** No Effect on Rights. No recovery of any judgment by a party shall in any manner or to any extent affect any rights, powers, or remedies of the parties under

this Agreement, but such rights, powers, and remedies of the City or the Club shall continue unimpaired as before.

**Section 8.8.** Discontinuance of Proceedings on Default; Position of Parties Restored. In case a party shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to a party, then and in every such case the parties shall be restored to their former positions and rights hereunder, and, except as may be barred by res judicata, all rights, remedies, and powers of the parties shall continue as if no such proceedings had been taken.

**Section 8.9.** Effective Date. Upon the execution by both Parties of this Agreement, this Agreement shall be in full force and effect and be legally binding upon each Party.

**Section 8.10.** Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any Person other than the City and the Club, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions hereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the City and the Club shall be for the sole and exclusive benefit of the City and the Club. The covenants, terms, conditions, and provisions contained herein and all amendments of this Agreement shall inure to and be binding upon the heirs, personal representatives, successors and assigns of the Parties hereto.

**Section 8.11.** Assignment. Neither party shall assign their respective rights or obligations (in whole or in part) under this Agreement without the prior written consent

of the other party. Any other assignment of this Agreement without written consent shall be void.

**Section 8.12.** Notices. Except as otherwise provided herein, any notice or other communication required to be given hereunder will be in writing and delivered personally, sent by United States certified mail, return receipt requested, by reputable overnight courier, or by facsimile, in each case addressed to the Party to receive such notice at the following addresses:

If to City: \_\_\_\_\_

With a copy to:

If to Club:

With a copy to:

Any notice delivered personally will be deemed given on receipt; any notice delivered by mail will be deemed given three business days after the deposit thereof in the United States mail with adequate postage prepaid; any notice delivered by overnight courier will be deemed given one business day after the same has been deposited with the courier, with delivery charges prepaid; and any notice given by facsimile will be deemed given on receipt by the recipient's facsimile facilities.

**Section 8.13.** Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained in this Agreement, the intention being that such provisions are severable.

**Section 8.14.** Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for Routt County, Colorado.

**Section 8.15.** Amendment. This Agreement may be amended from time to time by agreement between the City and Club; provided, however that no amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding upon the City or Club unless the same is in writing and duly executed by the City and Club.

**Section 8.16.** Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

**Section 8.17.** Attorneys' Fees. Should any action be brought in connection with this Agreement, including, without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees. The provisions of this Section shall survive the termination of this Agreement.

**Section 8.18.** Automatic Termination. This Agreement shall terminate, without further action of the Parties, on October 31, 2027. In the event of such termination,

both Parties shall be relieved of all rights, duties, and obligations arising from this Agreement.

**Section 8.19.** 1987 JUA. On and after the expiration of the ten year term of this Agreement, the 1987 JUA will remain in effect.

**Section 8.20** Approval Procedure. The City will approve this Agreement by ordinance regardless of whether an ordinance is required for such purpose.

**Section 8.21** Other Seasons. This Agreement does not apply to the Summer, Spring, or Fall seasons.

**Section 8.22** Colo. Const. Art. X, Sec. 20. If a court of competent jurisdiction determines that any term of this Agreement violates Colo. Const. Art. X, Sec. 20 ("TABOR"), any other Constitutional provision, the City Charter, or other applicable law, then the Parties shall substitute an alternative term to avoid the violation and that will, to the extent possible, accomplish the purposes of this Agreement.

**Section 8.23** Headings. The headings and section titles herein are provided for convenience of reference only and are not intended to limit or define the scope of any term hereof.

CLUB:

STEAMBOAT SPRINGS WINTER SPORTS CLUB

a Colorado \_\_\_\_\_

By:

Name:

Title:

CITY:

CITY OF STEAMBOAT SPRINGS,

a Colorado home rule municipal corporation

By:

City Council President

ATTEST:

By:

City Clerk

# Exhibit A

## JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT is made and entered into by and between the CITY OF STEAMBOAT SPRINGS, COLORADO, a home rule municipality ("City") and the STEAMBOAT SPRINGS WINTER SPORTS CLUB, a Colorado nonprofit corporation ("Club").

### R E C I T A L S:

1. City is the owner of the real property and improvements known as the Howelsen Hill Ski Complex ("Ski Complex") which consists of ski runs, ski jumps, lifts, snowmaking equipment, Howelsen Hill Lodge and other real and personal property, buildings and equipment necessary for the operation of the Ski Complex. The improvements to the ski complex now existing were made over many years by a combined effort of the Club, the City and the Steamboat Springs Community generally. In 1977, pursuant to an agreement entitled Sale And Agreement Between The City Of Steamboat Springs And The Steamboat Springs Winter Sports Club dated October 1, 1977, the Club agreed to convey all its right, title and interest in the Ski Complex to the City, subject to certain rights reserved to the Club.

2. Since 1914 the Club has, among other things, been organized to create, develop, educate and interest the Steamboat Springs community in the sport of skiing and ski jumping, and other winter sports; to promote junior skiing and educate the students in the sport of skiing; to develop, maintain and train teams for amateur skiing competition; to arrange amateur competitions in Steamboat Springs and elsewhere; to organize, conduct and maintain ski facilities and centers for instructional, educational and recreational purposes; to organize, equip and operate a ski area for the pleasure and recreation of the public as a whole and in connection therewith to maintain a lodge, ski and ski jumping facilities and such other related facilities which the directors and the City have considered advisable; to give and promote public entertainment, competition, lectures, social affairs, celebrations, games and amusements.

3. The Club and the City desire to clarify and set forth their respective rights and liabilities with respect to the joint use by them of the Ski Complex.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. City Responsibilities. The City shall, at its sole cost, be responsible for the operation, maintenance, repair, construction, reconstruction and replacement of the Ski Complex including all trails, slopes, lifts, buildings, structures, snow making equipment, grooming equipment, utilities and parking areas. The Ski Complex shall be operated and maintained in

accordance with all applicable laws and regulations. The City shall be responsible for the cost of personnel necessary to discharge its obligations under this paragraph including, without limitation, all Federal and State wage and social security withholdings, unemployment, workmen's compensation contributions, wages and salaries. The City may open Howelsen Hill to general recreational skiing by the public during time periods scheduled for City use, but the City shall not conduct or permit others to conduct ski instruction or training during such periods or at any other time, nor shall the City sponsor competitive events or permit others to conduct competitive events except with the approval of the Club. The Club shall have the exclusive use of Howelsen Hill for ski instruction and training and for competitive events during all time periods not reserved for general recreational skiing by the public as hereinabove provided. The City shall indemnify and save harmless the Club from and against any and all loss, damage, liability, costs and attorney's fees occasioned by, growing out of, or arising or resulting from any default on the part of the City hereunder or any tortious or negligent acts on the part of the City, its members, agents, employees or invitees.

2. Club Responsibilities. The Club agrees to sponsor competitive events, training and instruction in skiing and ski jumping at the Ski Complex. The Club agrees to assume responsibility for soliciting, scheduling, organizing and coordinating such competitive events, training and instruction. The scheduling of use of the Ski Complex for Club competitive events, training and instruction shall be mutually agreed upon by the City and the Club. The approval of the City shall not be unreasonably withheld. The Club agrees to obtain public liability and property damage insurance approved by the City protecting the Club for accidents or occurrences arising out of Club sponsored events and instruction and training. The Club shall be responsible for the cost of personnel necessary to discharge its obligations under this paragraph including, without limitation, all Federal and State wage and social security withholdings, unemployment, workmen's compensation contributions, wages and salaries. The Club shall indemnify and save harmless the City from and against any and all loss, damage, liability, costs and attorney's fees occasioned by, growing out of, or arising or resulting from any default on the part of the Club hereunder or any tortious or negligent acts on the part of the Club, its members, agents, employees or invitees.

3. Howelsen Hill Lodge. The Club shall have the exclusive right to the use of the office, locker room and storage facilities now occupied by the Club and shall have the right to use of the Lodge area in accordance with the City's standard practices for the use of this area for its business and activities. The City shall not charge the Club rent for the use of Howelsen Hill Lodge. If in the future the Howelsen Hill Lodge is replaced, comparable space will be provided to the Club in any new facility.

4. Lift Tickets. The City shall be responsible for the sale of all lift tickets and setting of rates therefor, and shall receive all revenues generated therefrom.

5. Other Revenues. All revenues, excluding lift ticket revenues, derived from competitive events, training and instruction held at or upon the Ski Complex, including all entry fees, promotional and advertising revenues and all television and radio sponsorship revenues from Club sponsored events shall be retained by the Club.

6. Term. The initial term of this Agreement shall be for a period of ten (10) years from the date hereof. This Agreement shall be automatically renewed for successive ten (10) year terms.

This Agreement may be terminated by the City for cause if and only if:

(a) The Club has failed to perform its obligations hereunder in substantial conformity with the terms hereof,

(b) Not less than one year prior to the date of termination, the City has given the Club written notice setting forth with specificity the obligations that the Club has failed to perform, and

(c) During such one year period, the Club has continued to fail to perform its obligations as set forth in such notice in accordance with this Agreement.

In addition to the foregoing, the City may terminate this Agreement at the end of the initial term hereof or any ten year renewal term if the City, not less than twelve (12) months nor more than eighteen (18) months prior to the end of such term, (1) certifies to the Club that the operation of the Ski Complex by the City is being permanently discontinued, (2) offers to convey to the Club, or other organization acceptable to the Club, all of the personal property and equipment necessary for the operation of the Ski Complex, and (3) agrees to permanently lease or otherwise make permanently available to the Club, or such other organization acceptable to the Club, without cost, the real property and improvements then constituting the Ski Complex.

7. Miscellaneous. This Agreement contains the entire agreement of the parties and supercedes all prior written and oral agreements between the parties hereto; provided, however, that the effective date of this Agreement shall be November 1, 1987, and provided further that nothing in this Agreement shall be construed to affect the legal relationship between the City and the Club for matters which occurred prior to its effective date. This Agreement shall not be amended except in an instrument in writing approved by the parties hereto.

CITY OF STEAMBOAT SPRINGS,  
a home rule municipality

Date: 11/3/87

By: *Rita Fendley Valentine*

[S E A L]

ATTEST:

*Sara Amberson*  
City Clerk

STEAMBOAT SPRINGS WINTER SPORTS  
CLUB, a Colorado nonprofit  
corporation

Date: 11/25/87

By: *Peggy Grayson*  
President

ATTEST:

*Chas. R. Houghton*  
Secretary

[MISC23]