

**MANAGEMENT AGREEMENT BETWEEN
BOARD OF COUNTY COMMISSIONERS
FOR ALBANY COUNTY, WYOMING,
AND
PILOT HILL, INC.
FOR OPEN SPACE SITE**

1. **Parties.** This Management Agreement is made and entered into this 24th day of August, 2020, by and between the Board of Commissioners of Albany County, Wyoming, a body corporate and political subdivision of the State of Wyoming, (hereinafter referred to as "County") whose address is 525 Grand Avenue, Suite 202, Laramie, Wyoming 82070 and Pilot Hill, Inc. a nonprofit Wyoming corporation (hereinafter referred to as "Pilot Hill") whose principal address is 1114 Fetterman Dr., Laramie, Wyoming 82072 and mailing address is P.O. Box 487, Laramie, Wyoming 82073 and hereinafter collectively referred to as "Parties."

WHEREAS, the State of Wyoming by through the Board of Land Commissioners (hereinafter referred to as the "Board") is the owner of land commonly referred to as Pilot Hill Open Space Area and land commonly referred to as the "School Yard" adjoining the Pilot Hill Open Space Area both located in Albany County, Wyoming and more fully described in Paragraph 3 of this Management Agreement and collectively referred to as the "Open Space Site."

WHEREAS, the County entered a special use lease with the Board for a term of twenty-five (25) years commencing on July 1, 2020 for the use of the Board's land within the Pilot Hill Open Space Area for the purpose of developing a non-motorized multi-use trail system, an open-space non-motorized recreation park and a Wildlife Habitat Management Area subject to the terms and conditions of the lease.

WHEREAS, the County entered a special use lease with the Board for a term of ten (10) years commencing on April ~~1~~, 2017 for the use of the Board's land adjoining the Pilot Hill Open Space Area commonly described as the "School Yard" to develop a non-motorized recreational trail system subject to the terms and conditions of the lease. Currently, the County has an agreement with Laramie Bicycling Network, Inc. to develop a multi-use trail system on the "School Yard" and upon approval of this Management Agreement for the Open Space Site which includes the "School Yard," Laramie Bicycling Network will assign their responsibilities to Pilot Hill.

WHEREAS, the County desires to enter a Management Agreement with Pilot Hill for the development and operation of the Open Space Site for community and public recreation and education.

NOW, THEREFORE, in consideration of the promises, agreements and mutual covenants made herein, it is agreed by and between the County and Pilot Hill as follows:

2. **Purpose.** The purpose of this Management Agreement is to authorize Pilot Hill to develop and manage a non-motorized multi-use trail system, an open-space non-motorized recreation park, and a Wildlife Habitat Management Area on the Open Space Site and any future County lease of adjoining lands subject to the terms and conditions of this Management Agreement.

3. **Location.** This Management Agreement is applicable to the Open Space Site that includes the leased lands by the County as described in the Special Use Lease with the Board for the Pilot Hill Open Space Area which is marked Exhibit A and is attached hereto and incorporated herein and the Special Use Lease with the Board for the “School Yard” which is marked Exhibit B and is attached hereto and incorporated herein.

4. **Term.** This Management Agreement shall commence upon the day and date when last signed and executed by the duly authorized representatives of the parties to this agreement and when approval of Laramie Bicycling Network, Inc. to assign its management of the “School Yard” is received and shall remain in full force and effect for twenty-five (25) years or until terminated pursuant to the termination provision contained within this Agreement, whichever is earlier. The performance of this Management Agreement is made in good faith and in the public interest and may extend beyond the terms of the County elected officials.

5. **Payment.** Pilot Hill agrees to pay County all costs associated with the leasing of the Open Space Site by County from the Board on an annual basis and any increase in costs which are set by the Special Use Leases in Exhibit A and B. County agrees to pay the Board said costs for the leasing of such land.

6. **Open to the General Public.** The Open Space Site shall be open to the general public. When applicable, Pilot Hill is authorized to coordinate and schedule events among user groups and to schedule work and maintenance of the Open Space Site, during which times Pilot Hill may post notice and restrict uses to those events, site work or maintenance.

7. **Pilot Hill Land Use Plan.** In July 2020, Pilot Hill submitted to County a land use plan for the Open Space Site along with adjoining properties owned by the University of Wyoming and Bureau of Land Management. The purpose of the Pilot Hill Land Use plan is to establish the scope of the Open Space Site and the respective locations of the non-motorized multi-use trail system, open-space non-motorized recreation park, and Wildlife Habitat Management Area, along with the means and methods by which Pilot Hill shall develop, manage, and maintain the Open Space Site under this Management Agreement. Pilot Hill agrees to comply with spirit of the Pilot Hill Land Use Plan and will obtain the County’s approval should Pilot Hill substantially revise the direction of the Pilot Hill Land Use Plan.

8 Rules, Regulations and Safety.

8.01. Pilot Hill shall promulgate usage rules and regulations necessary to promote safe and orderly use of the Open Space Site by the general public and subject to Exhibit A and B. Further, Pilot Hill shall determine any rates or fees to be set for operations of Open Space Site including any user or service fees and all fees will belong to Pilot Hill.

8.02. Pilot Hill shall periodically assess conditions of the Open Space Site and is authorized to restrict or close use if conditions are determined to be unsafe or that use during such conditions would potentially cause damage to the Open Space Site, or to close portions of the Open Space Site for protection of wildlife habitat or other fragile sites as needed whether or not explicitly stated in the Pilot Hill Land Use Plan.

8.03. Pilot Hill shall post signs or signals necessary to guide safe use of the Open Space Site by the general public.

8.04. The Open Space Site under this Management Agreement is authorized to be regulated by Pilot Hill to non-motorized use only, except allowance for authorized maintenance vehicles, emergency vehicles and pursuant to the Americans with Disabilities Act (ADA) as appropriate and described in the Pilot Hill Land Use Plan.

8.05. Pilot Hill shall remove trash, litter, and debris on a regular basis, and keep the Open Space Site in a neat, clean, sanitary, and in a safe condition which includes the removal of noxious weeds in compliance with Exhibit A and B.

8.06. Pilot Hill shall comply with all the special provisions applicable to County under the Special Use Lease with Board for the Pilot Hill Open Space Area and "School Yard" in Exhibit A and B.

8.07. If Pilot Hill engages a contractor to design the improvements on the Open Space Site, such a contractor shall carry sufficient professional liability insurance to cover claims for damages due to inadequate or negligent design of trails or improvements.

9. Annual Reporting Required. In performance of this Management Agreement, Pilot Hill will provide an annual report to the County summarizing 1) Open Space Site development, 2) Open Space Site use or availability of use, and 3) maintenance activities. Annual reports are due by April 15th of each year.

10. Fundraising. Pilot Hill may conduct all fundraising efforts for the Open Space Site and may keep all funds for the construction, maintenance and operation of the Open Space Site.

11. Support of Grant Opportunities. County agrees to assist and support Pilot Hill in securing grants for the improvement or maintenance of Open Space Site under this Management Agreement and the Pilot Hill Land Use Plan.

12. Naming Rights. The County will allow naming rights to be associated with certain improvements on Open Space Site, including, but not limited to, the multi-use non-motorized trail system, the open-space non-motorized recreational areas, and the Wildlife Habitat Management Area. The County agrees to delegate to Pilot Hill the right to designate third party naming rights associated with Open Space Site so as to permit Pilot Hill to raise funds necessary to fund the leasing and maintenance and expenses under this Management Agreement. Pilot Hill will provide in writing to the County a list of designated third-party naming rights, and Pilot Hill shall use such names in connection with all signage, maps, publicity, and descriptive materials related to the Open Space Site. Such third-party naming rights will remain in effect until the expiration of this Management Agreement.

13. Inspections. Agents or representatives of the County shall have access to Open Space Site at all times.

14. Waste. Pilot Hill shall not commit any waste or injury upon the land.

15. Reservations & Other Property Interests Retained.

15.01. Nothing contained in this Management Agreement creates or implies any property interests, including easements or rights-of-way beyond the terms and conditions of this Management Agreement.

15.02. Use of the Open Space Site shall be subject to all valid, existing rights, including leases, permits, easements, rights-of-way, covenants and restrictions or other interests in the real property as outlined in Exhibit A & B.

15.03. Should circumstances warrant, this Management Agreement may be modified or suspended in writing by the County to protect resources, health, safety or the environment.

16. General Conditions.

16.01. Amendments. Either party may request changes to this Management Agreement. Any changes, modifications, revisions or amendments to this Management Agreement which are mutually agreed upon by and between the parties to this Management Agreement shall be incorporated by written instrument, and effective when executed and signed by all parties to this Management Agreement.

16.02. Compliance with Laws. The Pilot Hill agrees to comply with all applicable federal, state and local laws and regulations including but not limited to rules and regulation of Wyoming Game and Fish and Office of State Lands and Investments.

16.03. Applicable Law. The construction, interpretation and enforcement of this Management Agreement shall be governed by the laws of the State of Wyoming. The court of the State of Wyoming shall have jurisdiction over any action arising out of this Management Agreement and over the parties, and the venue shall be the Second Judicial District of Albany County, Wyoming.

16.04. Limitations.

16.04.01. Pilot Hill shall not develop, manage, or maintain beyond what is consistent with the spirit of the Pilot Hill Land Use Plan. If needed, County agrees to assist Pilot Hill to obtain any necessary permits or certificates as required by County Zoning regulations.

16.04.02. The County assumes no obligation to commit funds or other resources for improvements or maintenance associated with the Open Space Site or its continuation.

16.05. Enforcement of Agreement & Termination.

16.05.01. Termination. Violation of this Management Agreement subjects the Management Agreement to termination sixty (60) days after delivering notice of violation, when correction is not made to resolve the violation.

16.05.02. Performance of Duties. The Pilot Hill Land Use Plan shall be considered a duty under this Management Agreement. Failure to materially perform according to the Pilot Hill Land Use Plan may be considered a violation and subject this Management Agreement to termination in whole or in part.

16.05.03. Unauthorized Uses. Uses of the land other than those authorized under this Management Agreement may be considered a violation and subject this Management Agreement to termination in whole or in part.

16.05.04. Breach of Conditions. A breach of any conditions of this Management Agreement will be considered a violation of the agreement.

16.05.05. Suspension. Violation of this Management Agreement subjects the agreement to immediate suspension by Notice of Suspension for violations that create a significant human safety or that are counter to the public purposes for which this Management Agreement is intended to serve.

16.05.06. Notice of Violation and Suspension. Notice of violation and notice of suspension shall be in writing and shall serve to identify the violation and the standards under which a correction will be considered to resolve the violation.

16.05.07. Cancellation. At any time that this Management Agreement is in good standing it may be cancelled in whole or in part upon mutual written agreement by the Parties.

16.06. Condition of Property Vacated.

16.06.01. Removal and Cleanliness. On or before the expiration date of this Management Agreement, or within sixty (60) days of early termination, Pilot Hill shall leave the Open Space Site in a neat, clean and sanitary condition, and shall remove all trash, waste, and other personal property that Pilot Hill has placed on the Open Space Site. Subject to agreement between the parties.

16.06.02. Final Report. Any previously unstated matters between the parties must be reported in writing to the other party within sixty (60) days of expiration or termination to be considered valid interests under this Management Agreement or all claims or right to claims shall cease for the purpose of this Management Agreement.

16.07. Independent Contractor. Pilot Hill shall function as independent contractor for the purposes of this Management Agreement and shall not be considered an employee of County for any purpose. Pilot Hill shall assume sole responsibility for any debts or liabilities that may be incurred by Pilot Hill in fulfilling the terms of this Management Agreement and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Use Agreement. Nothing in this Management Agreement shall be interpreted as authorizing Pilot Hill to incur any obligation of any kind on the behalf of County or its staff. Pilot Hill agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to County employees will inure to the benefit of Pilot Hill or Pilot Hill's agents and/or employees as a result of this Management Agreement.

16.08. Nondiscrimination. Pilot Hill shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), and the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq. Pilot Hill shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Management Agreement.

16.09. Governmental Immunity. The County and its respective governing body does not waive their governmental immunity by entering into this Management Agreement, and the County fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Management Agreement as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.

16.10. Third Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this Management Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Management Agreement shall operate only between the parties to this Management Agreement and shall inure solely to the benefit of the parties to this Management Agreement. The provisions of this Management Agreement are intended only to assist the parties in determining and performing their obligations under this Management Agreement. The parties to this Management Agreement intend and expressly agree that only parties signatory to this Management Agreement shall have any legal or equitable right to seek to enforce this Management Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Management Agreement, or to bring an action for the breach of this Management Agreement.

16.11. Force Majeure. Neither party shall be liable for failure to perform under this Management Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

16.12. Assignment or Sublease. Neither party shall assign, or sublease or otherwise transfer any of the rights or delegate any of the duties set forth in this Management Agreement without the prior written consent of the other party.

16.13. Entirety of Agreement. This Management Agreement, consisting of nine (9) pages, along with Exhibit A entitled the Special Use lease between the County and Board for the Pilot Hill Open Space Area consisting of _____ (_____) pages, and Exhibit B entitled the Special Use Lease between County and Board for the "School Yard" consisting of _____ () pages, represents the entire and integrated Management Agreement between the parties and supersedes all prior negotiations, representations and Management Agreements, whether written or oral.

16.14. Notices. All notices arising out of, or from, the provisions of this Management Agreement shall be in writing and given to all parties at the address provided under this Management Agreement, either by regular mail, facsimile, email, or delivery in person.

16.14.01. County's designated representative is Jackie R. Gonzales, County Clerk, whose address is 525 Grand Avenue, Suite 202, Laramie, Wyoming 82070; phone number is (307) 721-5533; and facsimile is (307) 721-2544; and email address is jgonzales@co.albany.wy.us.

16.14.02. Pilot Hill's designated representative is Sarah Brown Mathews, whose mailing address is Pilot Hill Project, P.O. Box 487, Laramie, Wyoming 82073; phone number is (307) 399-4479; and email addresses are sarah.brown.mathews@gmail.com and pilothillproject@gmail.com.

16.14.03. All notices and invoices required in this Management Agreement shall be in writing, properly addressed to the liaison above, and mailed first-class, postage pre-paid. All notices sent via the U.S. Postal Service are deemed effective on the date of the postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

16.15. Severability. Should any portion of this Management Agreement be judicially determined to be illegal or unenforceable, the remainder of the Management Agreement shall continue in full force and effect, and either party may negotiate the terms affected by the severance.

16.16. Waiver. The waiver or any breach of any term or condition in this Management Agreement shall be deemed a waiver of any prior or subsequent breach.

16.17. Titles Not Controlling. Titles of paragraphs are for reference only and shall not be deemed a waiver of any prior or subsequent breach.

16.18. Binding Effect. It is agreed that all covenants, terms, and conditions of this Management Agreement shall be binding upon the successors, heirs and assigns of the original Parties hereto.

16.19. Time is of the Essence. Time is of the essence in all provisions of this Management Agreement.

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IN WITNESS WHEREOF, the County has caused this Agreement to be signed and executed in its behalf by its Chairperson, and duly attested by its County Clerk, and the Chairperson of Pilot Hill, Inc, has caused this Agreement to be signed and executed in its behalf by its Corporation, and duly attested by its Secretary the day and year first written above.

BOARD OF COMMISSIONERS OF THE COUNTY OF ALBANY, WYOMING:

By: *Terri Jones*
Terri Jones, Chairperson

Attest: *Jackie R. Gonzales*
Jackie R. Gonzales, County Clerk

PILOT HILL, INC.

By: *Christopher Rothfuss*
Christopher Rothfuss, Chairperson

Attest: *Marilyn S. Kite*
Secretary