

## AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, by and between the following parties:

- a. The City of Marshall, a municipal corporation, organized and existing under the State of Minnesota, hereinafter referred to as "City", and
- b. Marshall Golf Club Inc., a non-profit corporation under the laws of the State of Minnesota, hereinafter referred to as "Golf Club".

WHEREAS, The City and the Golf Club have previously entered into an agreement for the construction, operation and maintenance of a golf driving range in the City of Marshall, Minnesota, on property owned by City, legally described as follows, to-wit:

The South three Hundred Thirty (330) feet of the West Half of the Northeast Quarter of the Northwest Quarter (W<sup>1/2</sup>NE<sup>1</sup>NW<sup>1/4</sup>) of Section Eight (8), in Township One Hundred Eleven (111) North of Range Forty-one (41) West of the Fifth Principal Meridian, containing five acres, more or less, subject to existing lease and easements of record. Excepting therefrom that part owned by the City of Marshall, Minnesota, and filed in Book 100 Pages 488 and 489 in the office of the County Recorder in and for Lyon County which reads as follows:

Commencing at the Northwest corner of the above described tract, thence Easterly along the North line of said above described tract seven and one tenth (7.1) feet, thence South sixty-six (66) feet, thence right on a curve of Eleven Hundred Ninety and Sixty-nine One Hundredths (1190.69) feet radius to a point on the West line of said tract, thence Northerly along said Sixteenth line to a point of beginning. (Containing 0.02 acres more or less.) Said parcel contains 4.99 acres more or less, and

WHEREAS, the parties hereto agree that it would be in the best interest of the citizens of Marshall and the users of said Golf Range, that said range be operated by the Golf Club and not by the City, and

WHEREAS, the Golf Club is willing to assume all legal responsibility for the future operation and maintenance of the Golf Range.

NOW, THEREFORE, It is hereby agreed by and between the parties as follows:

1. The City does hereby contract with the Golf Club for the operation and maintenance of a golf driving range on the following described property, to-wit:
  - i. The South Three Hundred Thirty (330) feet of the West Half of the Northeast Quarter of the Northwest Quarter ( $W^{1/2}NE^{1/4}NW^{1/4}$ ) of Section Eight (8), in Township One Hundred Eleven (111) North of Range Forty-one (41) West of the Fifth Principal Meridian, containing five acres, more or less, subject to existing lease and easements of record. Excepting therefrom that part owned by the City of Marshall, Minnesota, and filed in Book 100 Pages 488 and 489 in the office of the County Recorder in and for Lyon County which reads as follows:

Commencing at the Northwest corner of the above described tract, thence Easterly along the North line of said above described tract seven and one tenth (7.1) feet, thence South Sixty-six (66) feet, thence right on a curve of Eleven Hundred Ninety and Sixty-nine One Hundredths (1190.69) feet radius to a point on the West line of said tract, thence Northerly along said Sixteenth line to a point of beginning. (Containing 0.02 acres more or less.) Said parcel contains 4.99 acres more or less, under the following terms and conditions:

- a. That as long as the Golf Club is operating the Golf Range it shall be open, in perpetuity to the general public at reasonable rates and at the same rates as said Golf Range is available to members of the Golf Club.
- b. The Golf Club shall assume all future legal responsibility and liability for the operation and the maintenance of said Golf Range and agrees to indemnify and hold the City harmless for any loss arising from, or based in the whole, or in any part, on any negligent act or omission by the Golf Club, its officers, employees, subcontractors, and agents, or any other person engaged by the Golf Club in the performance of work or services pursuant to this Agreement. In no event shall the City be liable to the Golf Club for consequential, incidental, indirect, special, or punitive damages. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise.

- c. That the parties hereto agree to enter into this agreement for a fifteen (15) year period of time, commencing on January 1, 2025 and terminating on December 31, 2039.
- d. The parties agree that annual lease payments are due from the Golf Club to the City according to the following lease payment schedule:
  - i. Golf Club shall immediately pay to the City, upon the execution of this agreement, the sum of \$1,500, for rental payment due for the year 2025.
  - ii. Golf Club shall pay the City, on an annual basis:
    - The sum of \$1,500 per year due on or before January 31 of each and every year commencing 2026 and continuing each and every year thereafter through 2029.
    - The sum of \$1,750 per year due on or before January 31 of each and every year commencing January 31, 2030 and continuing each and every year thereafter through 2034.
    - The sum of \$2,000 per year due on or before January 31 of each and every year commencing January 31, 2035 through 2039.
  - iii. In addition, the Driving Range property is subject to a personal property tax per MN Statutes. Said personal property tax shall be due and payable directly from Golf Club to Lyon County. Said Golf Club shall be solely responsible for annual payment of personal property taxes, in addition to the lease payments as set forth above.
- e. Any loss on the operation of said Golf Range shall be born by the Golf Club and not by the city. The Golf Club agrees that before any of the services can be performed hereunder, the Golf Club shall procure at a minimum:
  - i. Worker's compensation insurance as required by Minnesota state law.
  - ii. Commercial general liability in an amount of not less than \$1,500,000.00 per occurrence and
  - iii. \$2,000,000 annual aggregate, for damages for bodily injury, including death, and property damage.
  - iv. Umbrella automobile liability insurance covering owned, non-owned and hired vehicles used regularly in the provision of services under this Agreement, in an amount of not less the \$1,500,000 per accident for property damage, \$1,500,000 for bodily injuries, damages, and/or death

to any one person, and \$2,000,000 aggregate, for total bodily injuries, damages, and/or death arising from any one occurrence.

To meet the commercial general liability requirements, the Golf Club may use a combination of excess and umbrella coverage. The Golf Club shall provide the City with a current certificate of insurance listing the City as an additional insured with respect to the commercial general liability and umbrella or excess liability. Such certificate of liability insurance shall contain a statement that such policies shall not be canceled or amended unless 30 days' written notice is provided to the City, 10 days' written notice in the case of non-payment. The Golf Club agrees to keep in force the above provisions at all times during the term of this Agreement

- f. The Golf Club shall have the right at any time to cease operating the range if it determines that it is not to the economic benefit of the Golf Club to maintain said range. If the service is terminated, all capital improvements and equipment shall be liquidated and shall become the property of the Golf Club.
- g. This agreement shall be subject to the right of the City at any time to terminate this agreement for reasons that the activity being conducted on the property described above has been determined by any governmental agency to be detrimental to the operation of the Marshall Municipal Airport. If the City exercises said right to terminate this agreement, all capital improvements and equipment shall be liquidated and shall become the property of the Golf Club.
- h. MISCELLANEOUS PROVISIONS.
  - i. Entire Agreement. This Agreement shall constitute the entire agreement between the City and the Golf Club and supersedes any other written or oral agreements between the City and the Golf Club. This Agreement can only be modified in writing signed by the City and the Golf Club.
  - ii. Data Practices Act Compliance. Data provided, produced or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. The Golf Club will immediately report to the City any requests from third parties for information relating to this Agreement. The Golf Club

agrees to promptly respond to inquiries from the City concerning data requests.

- iii. **Audit.** Pursuant to Minnesota Statutes, Section 16C.05, Subd. 5, the Golf Club agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Golf Club and invoice transactions relating to this Agreement. Golf Club must retain all records pertaining to its services to the City for a minimum of six years after termination of this Agreement.
- iv. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the parties waive any objections to jurisdiction.
- v. **No Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- vi. **Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
- vii. **Waiver.** Any waiver by either party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
- viii. **Compliance with Laws.** The Golf Club shall exercise due care to comply with applicable federal, state, and local laws, rules, ordinances, and regulations in effect as of the date the execution of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their hands the date and year first above written.

CITY OF MARSHALL

BY: \_\_\_\_\_

Its: Mayor

BY: \_\_\_\_\_

Its: City Administrator

MARSHALL GOLF CLUB, INC.

BY: \_\_\_\_\_

Its: President

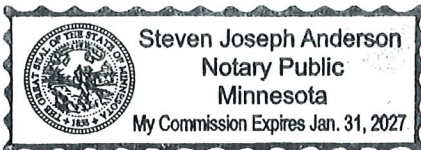
STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF LYON        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, by Robert J. Byrnes and Sharon Hanson, the Mayor and City Administrator for the City of Marshall, a municipal corporation under the laws of the State of Minnesota, on behalf of the City of Marshall.

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF LYON        )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December *by Jesse Thordson*, the President for the Marshall Golf Club, Inc., a non-profit corporation under the laws of the State of Minnesota, on behalf of the corporation.



*Jesse Thordson*  
SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT