

07/29/20 DRAFT
Subject to further negotiation by the Parties

**LICENSE AND MANAGEMENT AGREEMENT
BETWEEN
WESTERN ADA RECREATION DISTRICT
AND
THE CITY OF MERIDIAN
FOR MAINTENANCE AND OPERATION OF
LAKEVIEW GOLF COURSE**

THIS AGREEMENT (the “Agreement”) made and entered into this _____ day of _____, 2020, by and between the Western Ada Recreation District, a Recreation District created and organized under Title 31, Chapter 43 of the Idaho Code (“District”), and the City of Meridian, an Idaho municipal corporation (“City”).

WHEREAS, City owns real property located at 4200 W Talamore Boulevard in Meridian, which is currently developed as an 18 hole public golf course, driving range, pro shop, restaurant and related facilities known as the Lakeview Golf Course (the “Facility”).

WHEREAS, the Facility is currently under lease by the City to Lakeview Meridian Investors, LLC, (the “Leasehold Owners”).

WHEREAS, the Leasehold Owners’ use of the Facility is pursuant to a certain Agreement of Lease between the City of Meridian and Cherry Lane Recreation, Inc. dated August 13, 1999, which was assigned to the Leasehold Owners in an Assignment of Lease and Amended Lease Agreement between Leasehold Owners, as Lessee, and the City of Meridian, as Lessor, dated May 17, 2005 (all collectively referred to as the “Lease”).

WHEREAS, District is currently under contract or will be under contract to purchase the assets of the Leasehold Owners, including their interest in the Lease, the leasehold improvements, and certain assets, properties and contractual rights used in connection with the operation of the golf course.

WHEREAS, City intends to agree to an assignment of the Lease to District at such time that the purchase of the assets of the Leasehold Owners is completed.

WHEREAS, City has proven experience at successfully and efficiently operating, maintaining, and programming public recreation facilities across the City.

WHEREAS, District is interested in entering into a partnership with City to support the efficient operation of Lakeview into the future.

WHEREAS, District is willing, upon certain terms and conditions, to license the Facility to City for the purposes stated herein for a period of time defined within this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

A. GRANT OF LICENSE

For and in consideration of promises contained herein, and other good and valuable consideration, District hereby gives and grants to City the non-exclusive right, privilege and license to maintain and operate the Facility.

B. TERM OF AGREEMENT

The term of this Agreement commences on October 9, 2020 and ends on September 30, 2023 unless the parties mutually agree on an extension or early termination of this Agreement. City's agreement to continue its obligations under this Agreement shall be contingent on the City Council's appropriation of the funds necessary to operate and maintain the Facility.

C. MASTER PLAN FOR OPERATIONS, IRRIGATION AUDIT, AND WATER RIGHTS RESEARCH

City and District will endeavor to retain the services of a consultant or consultants to prepare (1) a Master Plan for the Operation of the Facility, (2) an Audit of the state of the Irrigation System including recommendations for extent and timing of any required repair or replacement of the irrigation system, and (3) Water Rights Research and filing of paperwork with the Idaho Department of Water Resources as necessary to assure that the water rights associated with the facility are fully secured. District agrees to contract directly with the mutually selected consultant(s) and District agrees to pay up to a combined total of \$65,000 for such consulting services and deliverables. Subject to mutual agreement, the parties may negotiate for additional funds based on actual quotes for the work.

D. USE OF LICENSED PREMISES

City or its assignee(s) shall be licensed to operate and maintain the Facility in a manner consistent with other municipal golf course facilities.

E. MAINTENANCE AND OPERATION OF THE FACILITY

City's maintenance and operation of the Facility during the term of this Agreement shall be consistent with the terms of the Lease agreement dated May 17, 2005 referred to in the premises (the "whereas clauses") and incorporated herein by this reference. Specifically, City's (or City's assignee(s)) obligations shall include but are not limited to the following Service Obligations:

1. Golf Services.

City is hereby authorized to grant tee times to the general public on a fair and equitable basis, sell, rent, store and/or repair golf equipment; sell golf related clothing and supplies; provide instructional services in the playing of golf; rent power-driven golf cars and manually operated golf carts.

2. Junior Golf Program.

City shall participate in the promotion of a Junior Golf Program. The City will coordinate with schools for instructional use, team practice, matches and tournaments.

3. Food and Beverage Services.

City or its assignee is hereby authorized to sell food and beverages, including alcoholic beverages, within the restaurant. City or its assignee must obtain and maintain all City, State and Federal licenses and certificates necessary to operate the food and beverage services in accordance with business and health standards. All employees must be able to meet such associated standards as well. City or its assignee may operate the restaurant facility so as to maintain hours of service in conjunction with all regular golf course activities, including regularly or specially scheduled tournaments. The restaurant may be operated at additional times, so long as it complies with all laws and regulations applicable thereto. City or its assignee may install and maintain, at their own expense, all equipment necessary to operate a food and beverage service. City or its assignee shall provide and maintain the necessary inventory of food and beverage products required to satisfy the public demand thereof.

4. Liquor License.

The Idaho State Retail by the Drink License to be included in the sale of golf course assets to District shall be retained in the ownership of the District during the term of this Agreement unless otherwise agreed by the Parties. District shall cooperate with City or City's assignee to utilize the License in connection with the food and beverage services at the Facility.

5. Building and Equipment Maintenance Services.

City shall, at his expense, keep and maintain the premises and all buildings, structures, improvements, fixtures, trade fixtures, golf course maintenance equipment and use equipment, including power-driven golf cars and manually operated golf carts, office equipment, and utility systems which may now or hereinafter exist thereon, in good, operable, usable and sanitary order and repair and in a good, safe condition, ordinary wear and tear excepted, throughout the term of this Agreement. City's obligation to maintain equipment shall apply whether the equipment is owned by City or District, including equipment subject to lease agreements held by District. At such time that equipment owned by District has reached the end of its useful life, City shall cooperate with District to declare such items as surplus equipment or otherwise lawfully dispose of such depleted equipment. City, at its sole expense, shall be responsible for replacing any depleted equipment and City shall be responsible for procuring any additional equipment that City deems necessary to meet its maintenance and operations requirements under this Agreement.

6. Grounds Maintenance Requirements.

City is hereby required to provide grounds maintenance services, including, but not limited to, the obligation to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, topdress, raise divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder; as well as to provide weed, disease and pest control, tree maintenance, maintenance of irrigation system including mainlines, pumps, boosters and controllers, keep swales in good repair and to provide the necessary maintenance of any appurtenant structures and equipment, and other duties as deemed necessary by City.

7. Irrigation System.

City shall use its best efforts to maintain and operate the golf course irrigation system in its current state. Upon receipt of the Irrigation System Audit, City and District shall confer and agree upon the best course of action for the long term maintenance and repair of the irrigation system. Neither City nor District have any obligation for the long term maintenance and repair of the irrigation until agreed to in writing.

8. Staff and Employment Practices.

During the term of this Agreement, City intends to maintain an adequate and proper staff to support its maintenance and operations obligations under this Agreement. City may hire staff directly as City employees, or City may manage staff employed by an independent staffing agency, or some combination thereof.

9. Utilities and Irrigation Assessments.

At the commencement of the term of this Agreement, the City shall provide for the transfer of all applicable utility and telephone accounts to City accounts, and thereafter shall provide and pay for any necessary utilities, telephone service, and irrigation assessments at the golf premises.

F. PAYMENT OF RENT

In consideration for the obligations agreed to by City under this Agreement, and the benefit provided to the public, City shall not owe any monetary rent to District as rent during the term of this Agreement. City shall be entitled to retain any net profits from golf course operations, and City shall have the obligation to incur any net losses from golf course operations.

G. INDEMNIFICATION AND INSURANCE

City hereby agrees to indemnify and hold District harmless from any loss, liability, claim or action from damages or injuries to persons or property in any way arising out of or resulting from the maintenance, use, and/or occupancy of the Facility by City, its agents, assignees, employees, guests, or business invitees. If any claim, suit or action is filed against District for any loss or claim described in this paragraph, to the extent allowed by law City shall defend District and assume all costs, including attorney's fees, associated

with the defense or resolution thereof, however District shall not be relieved hereby from liability for its own negligent or willful acts or omissions or that of its employees.

In addition, City shall maintain, and specifically agrees to maintain throughout the term of this Agreement, liability insurance in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code, and such amount shall be deemed to be the limit of City's covenant to indemnify and save and hold harmless District. In the event the insurance minimums of the Idaho Tort Claims Act are changed, City shall immediately submit Proof of Compliance with the changed limits.

H. **TERMINATION**

TERMINATION UPON DEFAULT: If either party is in breach or default of any terms, covenants, or conditions of this Agreement and fails or refuses to cure such breach or default within 180 days of written notice thereof, this Agreement, and all rights conferred by this Agreement, at the non-breaching party's option, may be deemed terminated and forfeited without further notice or demand. Termination action by the non-breaching party shall be tolled as long as the party in breach is actively pursuing reasonable efforts to cure the breach.

TERMINATION UPON MUTUAL AGREEMENT: The parties may mutually agree to terminate this agreement in writing at any time.

I. **ASSIGNMENT OR TRANSFER**

City shall not assign, sublet or transfer the City's interest in the licensed premises pursuant to this agreement, or any portion thereof, or cause or suffer any alterations thereto, other than as specified in this Agreement, without the express written consent of District, which consent shall not be unreasonably withheld.

J. **NOTICES**

1. All notices or other communications required or permitted under this Agreement shall be in writing and may be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by overnight courier, or by delivering the same in person to such party, addressed as follows:

To District: **Western Ada Recreation District**
By Mail at: P.O. Box 566
Meridian, ID 83680
By Delivery at: 30 E. Franklin Rd
Meridian, ID 83642

