

**VOLLRATH PARK DISC GOLF  
USE AND SERVICES AGREEMENT  
BETWEEN  
CITY OF SHEBOYGAN  
AND  
RIVERSIDE DISC GOLF, LLC**

THIS USE AND SERVICES AGREEMENT is made as of the date of final party execution by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin (hereinafter the “City”), and Riverside Disc Golf, LLC (hereinafter “Vendor”), collectively, the “Parties.”

**RECITALS**

WHEREAS, City desires to engage Vendor’s services for the operation of a disc golf concession facility at Vollrath Park; and

WHEREAS, Vendor desires to offer such services and to have the exclusive right to occupy the Vollrath Park concession building to support Vendor’s services; and

WHEREAS, City finds that Vollrath Park disc golf concession services will support the public health and well-being by increasing recreational opportunities and enjoyment and by increasing interest in Vollrath Park such that entering into a Service and Use Agreement is in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and subject to the terms and conditions set forth herein, the parties hereto agree as follows:

1. Grant and Description of Premises. Subject to the terms and conditions of this Agreement, City hereby grants Vendor permission and right to occupy the Vollrath Concession Building located at Vollrath Park for use as a disc golf concession facility, hereinafter referred to as the Premises. Vendor shall have access to the Premises upon Agreement execution and ending on December 31, 2027. It is expressly understood and agreed that this Agreement is not a lease or conveyance of realty, but merely a granting to Vendor the right to conduct certain activities and to provide certain services on City property for the benefit and convenience of the public.
2. Use of Premises. Vendor’s use of the Premises is for the purpose of offering a disc golf shop and concession stand, which is understood to include offering disc golf equipment rentals and sales, offering lessons for disc golf, and selling snacks and beverages. Outdoor storage of equipment is expressly authorized around the Premises while concession operations occur but no outdoor storage is authorized outside of concession hours. Vendor’s operational season shall be April 1 – October 31. To support Vendor’s operations and to encourage engagement with the Vollrath Park Disc Golf Course, Vendor may coordinate with other entities for fundraising, tournaments, and other disc golf-related events and activities. Vendor understands that the City’s Special Events Permit regulations or other permit and/or licensing regulations may apply to such activities, and that Vendor is solely responsible for obtaining all necessary permits or licenses prior to engaging in such activity. Vendor shall conform their activities and services to applicable state and local laws and regulations and to industry standards. Vendor shall not allow the Premises to be used for other commercial activities without the City’s prior written approval. Vendor will be allowed to host on a monthly basis

one PDGA C Tier 1 Round FleX Event that is open to the public and does not close the course. Event fees will be waived by the city for these events.

3. Personnel. Vendor shall provide all personnel reasonably necessary for Vendor's activities and services. Such personnel shall be employees or contractors of Vendor. Vendor shall be solely responsible for all aspects of hiring and employment of Vendor's personnel, including without limitation, retirement and welfare plans, conduct policies, workers compensation insurance and compensation. The sales and consumption of alcohol by Vendor or Vendor's employees is strictly prohibited on the Premises or surrounding grounds. Vendor staff shall be knowledgeable on items being sold and shall provide excellent customer service that caters to players of all skill levels.
4. Term and Termination. This Agreement shall be effective upon final party execution and shall expire December 31, 2027, unless renewed by agreement of the Parties. This Agreement may be renewed for twelve-month terms until December 31, 2029, at which time further renewals shall be accomplished by Agreement amendment or by new agreement.
  - a. Termination for Cause. This Agreement may be terminated at any time for cause by the party indicated below upon fifteen days' written notice to the other party:
    - i. Bankruptcy. By either party, if the other party files a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, or take advantage of any insolvency law.
    - ii. Breach. By either party, if the other party defaults in the performance of this Agreement and the default continues for fifteen days after written notice of default is provided by the non-defaulting party.
    - iii. Transfer of Business. By City, if Vendor is acquired by, or substantially transfers its assets or business to any third party.
  - b. Termination for Convenience. This Agreement may be terminated at any time for any reason by either party upon forty-five days' written notice to the other party.
  - c. Effect of Termination. Expiration or termination of this Agreement for any reason shall not release any Party from its obligations hereunder that have accrued prior to the termination date. After any termination of this Agreement, Vendor shall promptly deliver to City all of City's property and facilities in Vendor's possession.
5. Fees. Upon Agreement execution, Vendor shall pay City a \$500 security deposit, which will be returned to Vendor upon Agreement termination less any moneys necessary for repairs. Vendor shall pay City a \$50 utility fee and a \$100 user fee monthly from April through October.
6. Property Maintenance. Vendor shall be responsible for maintaining the Premises and grounds around the Premises in a clean and presentable condition, including ensuring that

garbage and recycling generated by Vendor's activities is properly handled. Vendor assumes responsibility for any damage caused directly or proximately to City property arising out of Vendor's use of the Premises. City and Vendor have come to terms with improvements to the concession stand building. Once terms have been fulfilled, Vendor will take responsibility for the building. City will be responsible for lawn maintenance.

7. Security and Safety. Vendor is solely responsible for securing Vendor's property. Vendor may install such security measures as appropriate to secure Vendor's property provided that such measures do not alter or damage City property. Except for emergency situations, City will only enter Premises when accompanied by Vendor or Vendor's staff. Vendor shall implement and maintain reasonable safety measures and procedures related to Vendor's activities.
8. Insurance. Vendor agrees to obtain and maintain, at its sole cost and expense, commercial general liability insurance coverage in an amount not less than \$1,000,000 with respect to its activities and services, for the benefit of both the City and Vendor and agrees to name the City as additional insured. Each party shall obtain and maintain property insurance coverage on their respective assets.
9. Independent Parties. Nothing in this Agreement shall be construed to constitute any party as a partner, agent, or joint venturer of the other party. Neither party shall make any contract or representation, or incur any liability or obligation whatsoever, on behalf or in the name of the other party, except as set forth in this Agreement, or as may be stated otherwise in other agreements between the Parties. Except as otherwise provided herein, each Party shall be responsible for its own operational expenses incurred in the performance of this Agreement.
10. Non-assumption of Liabilities. Neither Party shall assume or become liable for any of the existing or future obligations, liabilities, debts of the other party by entering into and performing this Agreement.
11. Indemnification. Vendor agrees that it shall hold harmless and defend and indemnify the City from and against any and all claims, liabilities, losses, damages or expenses including reasonable attorneys' fees and expenses, which may arise during the Term of this Agreement as a result of the use and/or occupancy of the Premises by Vendor, their employees, and agents, or others acting by, through or under the express or implied authority of Vendor including, but not limited to, any such claims, liabilities, losses, damages, or expenses which may arise as a result of any personal injury, death, or property damage occurring on or about the Premises or through activities occurring with equipment rented from Vendor, except to the extent caused by the negligence or willful misconduct of the City. City agrees to defend, indemnify, and hold harmless Vendor and its employees and agents against any and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses including reasonable attorneys' fees and expenses, and costs of investigation, resulting from or arising out of or in connection with any claim made as a result of the City's ownership of the Premises unrelated to Vendor's activities and services set forth in this Agreement, provided however, that the City shall not defend, indemnify or hold Vendor harmless from and against, and Vendor shall not be exculpated from any claim, action, damage, expense, loss or liability directly or

indirectly cause by or arising from bad faith, recklessness, gross negligence, gross misconduct, or willful misconduct of Vendor, or arising out of any breach of representations or any of its obligations pursuant to this Agreement. The Parties shall notify each other of the existence of claims relating to the Premises or services provided under this Agreement and shall cooperate with each other in defense of third-party claims.

12. Assignment. The benefits, rights, and obligations set forth herein are personal to the Parties, and except as provided for herein, may not be assigned or transferred to a third party without the other Party's prior written consent. Any attempted assignment in violation of this section shall be void. Without in any way limiting the foregoing, this Agreement shall be binding upon, enforceable by, and inure to the benefit of the Parties, their permitted successors, and assigns.
13. Notice. Any notice, consent, approval, request, or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, postage prepaid, to the address each of the Parties keeps on record for the other Party, or to such other address as either Party may give notice of from time to time in accordance with this Agreement. Delivery shall be deemed effective upon personal delivery or deposit in the United States mail. Routine business correspondence may be conducted via email, telephone, or in-person.
14. Entire Agreement. This Agreement contains the entire understanding between the Parties on the subject matter hereof and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This Agreement supersedes any other oral or written agreement entered into between the Parties on the subject matter hereof.
15. Amendment. This Agreement may be amended only by a writing signed by both Parties.
16. Waiver. No failure or delay of any party in exercising any right or power given to it under this Agreement shall operate as a waiver thereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach. No waiver of any breach or modification of this Agreement shall be effective unless contained in writing executed by both Parties.
17. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their permitted successor and assigns, and subject to the terms of this Agreement, any corporate successors by merger, consolidation or other corporate reorganization, without limitation.
19. Force Majeure. Neither Party shall be deemed to be in violation of this Agreement if such Party is prevented from performing any of its obligations for any reason beyond its reasonable

control, including without limitation, acts of God or of any public enemy, elements, flood, strikes, statutory or other law, regulation, or rule of the federal, state, or local government or any agency thereof.

20. Governing Law and Dispute Resolution. This Agreement shall be construed and interpreted in accordance with Wisconsin law. Parties agree to negotiate disputes in good faith and when such negotiations fail, the Parties agree to jurisdiction of the Sheboygan County Circuit Court.
21. Counterparts. This Agreement may be executed in two or more counterparts, including by signature pages provided by fax or in PDF format. All such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date noted below.

VENDOR:  
Riverside Disc Golf, LLC

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

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

CITY:  
City of Sheboygan

By: \_\_\_\_\_  
Ryan Sorenson, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Meredith DeBruin, City Clerk

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