

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 3/23/20

AGENDA ITEM:	
Amendment to Golf Management Agreement	
PREPARED BY:	DIRECTOR APPROVAL:
Tara Mizell	
DEPARTMENT:	
Parks, Culture and Recreation	
ATTACHMENTS:	
Yes	
BUDGET CODE:	AMOUNT:
SUMMARY: The City of Marysville approved a contract with Premier Golf Centers, LLC in February of 2015. Staff worked with Premier to develop a few brief amendment items to the contract. Changes are recommended to update the effective date and term of the agreement. In addition, it clarifies some items including golf course maintenance, annual budget approval, fees, base management fee and annual growth incentive fees.	

RECOMMENDED ACTION: Staff recommend approval of the amendments to the City of Marysville Cedarcrest Golf Course Management Agreement.



AGREEMENT RENEWAL | AMENDMENT #1

Golf Course Management Agreement, dated 2/23/2015, between the City of Marysville and Premier Golf Centers, LLC is hereby amended as follows:

Exercise Contract Renewal Option:

Amend: 1.19 Effective Date:

“Effective Date” shall mean December 31, 2015 at 11:59 p.m.

To Read: 1.19 Effective Date:

“Effective Date” shall mean March 1, 2020 at 11:59 p.m.

Amend: 4.1 Term of Agreement

The initial term of this agreement shall be for five (5) years, with two (2) five (5) year renewals at the City’s option, beginning on the Effective Date of March 1, 2015.

To Read 4.1: Term of Agreement

The term of this agreement shall be for five (5) years, with one (1) five (5) year renewal at the City’s option, beginning on the Effective Date of March 1, 2020.

Amend: 5.1(F) Golf Course Maintenance

(Full paragraph) Within sixty (60) days of the execution of this agreement, operator will commence year round maintenance services which shall include, but not be limited to, maintenance staff management, turf management, natural areas, landscaping, tree maintenance, irrigation system, environmental compliance, record keeping and reporting and other miscellaneous maintenance within the golf course property. Maintenance of the golf course will be in accordance with the standards set forth in Exhibit C of this Agreement. The City may delay the commencement of the Operators assumption of maintenance responsibilities by giving the Operator written notice that the City will continue providing maintenance services for the Golf Course. Such notice shall be given to the Operator within forty-five (45) days of the execution of this Agreement. If the City elects to delay commencement of the Operator’s assumption of maintenance responsibilities, the City shall provide written notice to the Operator for the duration of the delay. The duration of the delay shall be no more than sixty (60) days unless otherwise agreed by the parties. The City shall be responsible for all Golf Course maintenance until the end of the stated delay.

To Read: 5.1(F) Golf Course Maintenance

(Full paragraph) The Operator shall provide year-round maintenance services which shall include, but not be limited to, maintenance staff management, turf management, natural areas, landscaping, tree maintenance, irrigation system, environmental compliance, record keeping and

reporting and other miscellaneous maintenance within the golf course property. Maintenance of the golf course will be in accordance with the standards set forth in Exhibit C of this Agreement.

Amend: 6.1 Budget

(Sentence one-three) The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year after the first Operating Year of this Agreement. The Budget for the first Operating Year will be provided by the City. Beginning in 2016, the operator will submit a proposed Budget no later than a date to be determined each year under the Agreement for the upcoming calendar year (by way of example, the proposed Budget for Operating Year/Calendar year 2016, by June 1 of 2015)

To Read: 6.1 Budget

(Sentence one-three) The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year. The operator will submit a proposed Budget no later than a date to be determined each year under the Agreement for the upcoming calendar year (by way of example, the proposed Budget for Operating Year/Calendar year 2021, by June 1 of 2020)

Amend: 6.2 Budget

(Sentence one) Beginning the date to be determined and on or about February 2016th of each Operating Year during the term...

To Read: 6.2 Budget

(Sentence one) Beginning the date to be determined and on or about February 20th of each Operating Year during the term...

Amend: 6.2 Fees

(Sentence one-two) Initially all Fees and Charges shall be the Current Fees and Charges schedule that have been approved by the City. Beginning with the Operator's submission of the proposed 2016 Budget on a date to be determined.

Eliminate: 6.2 Fees

(Eliminate Sentence one-two)

Add: 7.1 - R: Procurement Benefit

“Operator shall arrange for the procurement, as a Direct Cost, of all operating supplies, operating equipment, inventories and services as are deemed necessary to the normal and ordinary course of operation of the Golf Course in accordance with the operating procedures. In purchasing operating supplies, operating equipment, inventories (including merchandise to be sold in the golf shop) and services for the Golf Course, Operator may utilize its purchasing procurement services and/or other group buying techniques involving other affiliated golf courses managed by Operator, provided that the cost thereof shall be competitive with that which would be charged by non-affiliated third

party vendors in an arms-length transaction. In connection therewith, City shall be entitled to receive any and all price discounts or credits that are available under such programs of the specific item or services provided to the Golf Course; provided that Operator may receive and retain a fee or other compensation from vendors and service providers based on aggregate purchases of such items or services in exchange for Operator's services in making the benefit of volume purchases available to the Golf Course or negotiating and implementing the arrangements with such vendors or providers, provided that the cost shall be competitive as aforesaid. City shall have the option to opt out of Operator's procurement program at any time by providing written notice to Operator of its intent to opt out."

Amend: 8.1 Base Management Fee

(Sentence one) During the term of the agreement, the City shall pay the Operator and annual fee of Ninety-Six Thousand Dollars and No Cents (\$96,000.00) per year or on a monthly basis, a fixed amount of Eight Thousand Dollars and No Cents (\$8,000.00) per month ("the Management Fee")

To Read 8.1: Base Management Fee

(Sentence one) During the term of the agreement, the City shall pay the Operator and annual fee of One Hundred Seven Thousand, One Hundred and Twelve Dollars and No Cents (\$107,112.00) per year or on a monthly basis, a fixed amount of Eight Thousand Nine Hundred and Twenty Six Dollars and No Cents (\$8,926.00) per month ("the Management Fee")

Amend: 8.1 Base Management Fee

(Last sentence) Starting in year two, any increase to the Management Fee shall be based on the Seattle-Tacoma-Bremerton Consumer Price Index (CPI-W) for June with no less than zero percent (0%) and no greater than three percent (3%).

To Read: 8.1 Base Management Fee

(last sentence) Starting in year two, any increase to the Management Fee shall be based on the Seattle-Tacoma-Bellevue Consumer Price Index (CPI-W) for June with no less than zero percent (0%) and no greater than three percent (3%).

Amend: 8.2: Annual Growth Incentive Fee

(full paragraph) During the course of this contract, the City shall pay the Operator an Annual Growth Incentive based on the financial performance of the golf course. The City shall pay the operator a five percent (5%) annual growth incentive if Total Net Revenues exceed base level adjusted annually for inflation as the CPI identified in Section 8.1 of this Agreement. Total Net Revenues is total revenues excluding sales tax, admission tax and cost of goods sold from Merchandise and Lessons. The following table depicts a sample to be used to calculate the annual growth incentive. For calculation of the Annual Growth Incentive direct operating expenses will not exceed the approved annual budget.

To Read: 8.2: Annual Growth Incentive Fee

(full paragraph) During the course of this contract, the City shall pay the Operator an Annual Growth Incentive based on the financial performance of the golf course. The City shall pay the operator a five percent (5%) annual growth incentive if Total Net Revenues exceed base level adjusted annually for inflation as the CPI identified in Section 8.1 of this Agreement. Total Net Revenues is total revenues excluding sales tax, admission tax and cost of goods sold from Merchandise and Lessons. Also excluded are revenues associated with the initial \$1,500 in tent rentals and the initial \$2,500 (amount of annual subscription paid by City) in revenues received annually for Golf Genius. The inclusion or exclusion (in the calculation of Total Net Revenues) of “new” revenue streams will be mutually agreed upon by the City and Premier Golf. The following table depicts a sample to be used to calculate the annual growth incentive. For calculation of the Annual Growth Incentive direct operating expenses will not exceed the approved annual budget.

Amend: Example Table of Incentive Program as seen in original agreement

To Read: Example: See 8.2.2 for calculation formula

CEDARCREST INCENTIVE PROGRAM				
	2017-2019			Example
Category	(3) Year Avg	% Net	Base	Based on 2019
Green Fees	\$ 722,761	100%	\$ 722,761	\$ 833,430
Golf Cart Rentals	\$ 225,274	100%	\$ 225,274	\$ 265,364
Merchandise	\$ 141,695	35%	\$ 49,593	\$ 61,632
Lessons	\$ 5,143	20%	\$ 1,028	\$ 819
Total	\$ 1,094,873		\$ 998,656	\$ 1,160,426
Net Revenue Growth				\$ 161,770
Annual Growth Incentive				\$ 8,088.48

The actual numbers will vary slightly as calculations are reconciled with city year-end numbers.

Amend Cost of Goods Assumptions (located under example of 8.2)

Merchandise 35%
Lesson Commissions 80%

Amend Cost of Goods Assumptions (located under example of 8.2)

Merchandise 65% COGS | 35% Net Revenue
Lesson Commissions 80% COGS | 20% Net Revenue

Eliminate: 8.2.1: Annual Growth Incentive Fee

(final sentence) Between Effective Date of the Contract and calendar year 2015, the Contractor will not receive an incentive payment. It will only receive its management fee (in addition to reimbursement of direct costs and merchandise cost of goods sold).

Amend: 8.2.2: Annual Growth Incentive Fee

(first sentence) Incentive payments are based on the prior year Net Revenue

To Read: 8.2.2: Annual Growth Incentive Fee

(first sentence) Incentive payments are based on the three-year (2017-2019) average of Net Revenue. The defined three-year (2017-2019) average of Net Revenue will serve as the baseline throughout the entire five-year agreement.

All other terms, conditions and language within the original contract shall remain the same

THE CITY OF MARYSVILLE CEDARCREST GOLF COURSE MANAGEMENT AGREEMENT

This Golf Course Management Agreement ("Agreement") is entered into by and between the City of Marysville ("City"), a municipal corporation of the State of Washington, with principal address at 1049 State Avenue, Marysville, WA 98270 and Premier Golf Centers, LLC, and its subsidiary, PGC Interbay, LLC ("Operator") with principal address at 2466 Westlake Avenue North #8, Seattle, WA 98109.

RECITALS:

WHEREAS, the City owns the Cedarcrest Golf Course and related facilities ("Golf Course"); and

WHEREAS, the City desires to enter into an agreement with an experienced public and/or municipal Golf Course Operator to provide for the overall management and operation of golf services and the collection of fees therefrom to ensure the highest quality of golf programs and related benefits for the public while operating within the budget approved by the City; and

WHEREAS, the City issued a Request for Proposal in order to select a Golf Course Operator and Operator submitted the successful proposal; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

- 1.1 "Adjusted Gross Revenue" means Gross Revenue earned from the operation of the City's Golf Course reduced only by a) Washington State sales taxes and other tax imposed by any government agency on sales, b) admissions taxes collected, and c) revenue collected from the sale or surplus of equipment associated with golf course maintenance.
- 1.2 "Annual Budget" means the annual budget for the Golf Course. The proposed Annual Budget shall be delivered by the Operator to the City by June 1st of each year.
- 1.3 "Approved Annual Budget" means the Golf Course budget that is approved by the City.
- 1.4 "Capital Expenditure" means any expenditure for new or replacement capital equipment or improvements to the Golf Course that have an anticipated useful life equal to or greater than one (1) year and a cost of 5000 (Five Thousand Dollars) or greater
- 1.5 "City" means the City of Marysville, a municipal corporation, and its elected officials and any department or subdivision thereof.
- 1.6 "Dark" means ½ hour after sunset until ½ hour before sunrise.
- 1.7 "Department" means the City of Marysville's Department of Parks and Recreation.
- 1.8 "Direct Cost" means any cost which is directly related to the normal and ordinary staffing, operations, or routine maintenance of the Golf Course as approved by the City in the Annual Budget as further defined in Section 7.1.
- 1.9 "Director" means the Director of the Parks and Recreation responsible for the management of the Golf Course Management Agreement and the overall operations of the City Golf Course.
- 1.10 "Cost of Goods Sold": "Cost of goods Sold" shall mean annual cost of Pro Shop merchandise sold, plus actual cost of food and beverage sold, plus the commissions paid on Lessons given.
- 1.11 "Effective Date" means the date listed in Section 4.1 of the Agreement.

- 1.12 "Executive" means any person who has a financial interest in Premier Golf Centers, LLC or any officer of the company with the title of Chief Executive, Chief Financial, or Director.
- 1.13 "Fees and Charges" means the fees and charges for use of the Golf Courses (greens fees and cart rental fees) as approved by the City for the applicable Operating Year.
- 1.14. This section left intentionally blank.
- 1.15 This section intentionally left blank.
- 1.16 "Golf Course" means all of the buildings, grounds, fixtures, structures, restrooms, equipment, computers, tools, vehicles, fencing, utilities and all appurtenances thereto.
- 1.17 "Golf Lessons" means the professional golf instruction given at the Golf Courses by either the Class "A" PGA Golf Professional or qualified golf instructors as approved by the City, the Department and employed or subcontracted by the Operator.
- 1.18 "Gross Revenue" means any and all income received from the operation of the City's Golf Course and business conducted from or at the Golf Course, including but not limited to the proceeds from all retail and wholesale sales and fees. The term "Gross Revenue" does not mean or include the amount of money refunded to, and not merely credited to the account of, customers who return or do not accept merchandise sold by Operator; any exchange of merchandise between locations or the central warehouses where such exchange is made solely for the convenient operation of Operator's business; returns to shippers or manufacturers; any discount allowed by Operator to customers; or business conducted by Operator from the Operator Offices or Premises on behalf of non-City entities.
- 1.19 "Operating Year" means:
- A. The first Operating Year shall commence on the Effective Date and end on December 31, 2015 at 11:59 p.m.
 - B. Each Operating Year thereafter shall comprise the period of twelve (12) full calendar months.
- 1.20 "Operator" means Premier Golf Centers, LLC and its subsidiary, PGC Interbay, LLC (the professional golf course operating company selected to operate the City's Golf Course.)
- 1.21 "Operator Offices" means space located at the Cedarcrest Golf Course.
- 1.22 "Prepays" means money received on account as a credit available towards customers or groups. Gift cards are accessed by a physical card and good for any item. Credit books are designated by number and are generally for golf merchandise only unless they are temporary accounts set up for prepaid deposits on banquets or tournaments.
- 1.23 "Pro Shop" means the golf and merchandise facilities located at the Golf Course.
- 1.24 "Restaurants" means the food and beverage dining facilities located at the Golf Course. Vending machines, remote food carts, and other food-related activities on the Golf Course are included in the definition of "Restaurants."
- 1.25 "Property" means the real property upon which the Golf Course is located. The Property is described in Exhibit A hereto.

1.26 "Standard Operating Procedure Manual" means the Operating Procedures Manual as recognized in Exhibit "D" which will be updated and supported by Operator through the length of the Agreement.

2. RETENTION OF OPERATOR.

The City hereby retains the Operator for the management and operation of the Golf Course and all related facilities and services, including, but not limited to, the Golf Course, Pro Shop, Golf Cart Rentals, on course restrooms and all other Buildings located at the Golf Course, excluding the Golf Restaurant building. The City's Request for Proposal/Request for Information dated November, 2014 and the Operator's response to this Request for Proposal/Request for Information dated December 18, 2014 are incorporated into this Agreement by reference.

2.1 INDEPENDENT CONTRACTOR STATUS

The services and deliverables shall be furnished by the Operator as an independent Operator, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the City with respect to payments to Operator. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of Operator's status as an independent Operator hereunder, no workers' compensation insurance has been or will be obtained by the City on account of Operator. Operator may be required to provide the City proof of payment of these said taxes and benefits. If the City is assessed or deemed liable in any manner for those charges or taxes, the Operator agrees to hold the City harmless from those costs, including attorney's fees.

3. ACCEPTANCE.

Prior to the Effective Date of this Agreement, the Operator has made an inspection of the Golf Course and related fixtures and facilities and hereby accepts their condition for purposes of this Agreement on an "as is" basis.

4. TERM.

4.1 Term of Agreement. The initial term of this Agreement shall be for five (5) years, with two (2) five (5) year renewals at the City's option, beginning on the Effective Date of March 1, 2015.

4.2 Upon termination of the Agreement, all employees and agents of the Operator shall vacate the premises of the Golf Course and shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, equipment and property, records and all inventories and pre-pays (credit books and gift cards) of the Golf Course back to the City.

4.3 Termination for Convenience. Either party to this Agreement shall have the right to terminate this Agreement by delivering to the other party written notice of its intention to terminate at least ninety (90) days prior to the effective date of the termination.

5. OPERATOR'S BASIC SERVICE OBLIGATIONS.

5.1 Golf Management Services. The Operator shall sell, rent, lease, store and repair golf equipment, sell golf-related clothing and supplies, provide instructional services in the playing of golf, and operate the Golf Course, Pro Shop, Golf Cart rentals as set forth in this Agreement. The Operator shall employ a Class "A" PGA Professional in a supervisory capacity and may employ supervisors, golf professionals and other personnel at the Golf Course, subject to the approval of the City.

A. Merchandise. The Operator is authorized to make purchases in order to provide and maintain in the Pro Shop such inventory of golf merchandise as deemed necessary within the City's Approved Annual Budget to adequately meet the expectations of the public. After written notice to and consultation with the Operator, the City shall have the right to prohibit the sale and rental of any item of merchandise if the City, in its sole

discretion, determines that the item(s) is of such inferior quality as to not be in the public interest to be offered for sale or that such item(s) is not necessary or desirable for proper service to the public. Unless otherwise approved by the Director or designee, the Operator will maintain minimum/maximum inventory levels for sale in the Pro Shop as determined by the City.

- B. The City reserves the right to require that the Operator shall keep a system of accounts for prepaid books (credit books) of tournament winnings awarded at the course for tournament play. The course manager shall control the credit book accounts such that he or she can only increase or decrease winners' book accounts. The system will only allow a total increase to winners' book accounts by no more than the total available in the tournaments' credit book account. The Operator shall be able to run reports for all tournaments at the course and to check all credit book balance sheets. Credit book holders shall be able to spend funds at the City golf course.
 - C. Golf Lessons. The Operator shall provide for Golf Lessons by employing qualified instructors accredited by the PGA and the PGA apprentice program. The Operator shall cause all golf instructors, including Class "A" PGA Golf Professionals, to comply with the rules and regulations of the Golf Course Standard Operating Procedures
 - D. Golf Programs. Operator shall implement and promote golf programs as provided in the Golf Course Standard Operating Procedures by providing group lessons and general golf instruction, and by conducting tournaments for men's and women's clubs, junior and senior groups, leagues and outings.
 - E. Minimum Hours of Operation. At a minimum, the facilities shall initially be open and available to the public as listed on Exhibit B attached herein. Thereafter the days of operation and daily hours of operation shall be as recommended by the Operator and as approved by the Director.
 - F. Golf Course Maintenance. Within sixty (60) days of the execution of this agreement, Operator will commence year round maintenance services which shall include, but not be limited to, maintenance staff management, turf management, natural areas, landscaping, tree maintenance, irrigation system, environmental compliance, record keeping and reporting and other miscellaneous maintenance within the golf course property. Maintenance of the golf course will be in accordance with the city standards set forth in Exhibit C of this Agreement. The City may delay the commencement of the Operator's assumption of maintenance responsibilities by giving the Operator written notice that the City will continue providing maintenance services for the Golf Course. Such notice shall be given to the Operator within forty-five (45) days of the execution of this Agreement. If the City elects to delay commencement of the Operator's assumption of maintenance responsibilities, the City shall provide written notice to the Operator for the duration of the delay. The duration of the delay shall be no more than sixty (60) days unless otherwise agreed by the parties. The City shall be responsible for all Golf Course maintenance until the end of the stated delay.
- 5.2 Building and Equipment Maintenance Services. Throughout the term of this Agreement, the Operator shall keep and maintain in good, operable, usable and sanitary order and repair the interiors and hard surface exteriors contiguous to the parking lots of the Golf Course, including, but not limited to, the Pro Shops, on course restrooms, storage spaces, and golf cart rentals, and all buildings, structures, improvements, fixtures, equipment and utility systems, which may now or hereafter exist on or in the Golf Course. The Operator shall provide for such ordinary repairs, replacements, rebuilding and restoration as may be required in compliance with this Agreement. All such replacements, rebuilding and

restoration, but not repair, shall be approved in writing by the City prior to implementation. Maintenance that would exceed the Annual Approved Budgeted amount shall be approved in writing by the City prior to implementation.

- 5.3 Improvements. Any improvements, additions, alterations or changes (collectively, "Improvements") to the Golf Course facility, shall be subject to written approval by the City, prior to the commencement of the improvements work. Securing of applicable permits and compliance with such terms and conditions as may be imposed by the City and may be reimbursable under this Agreement.
- 5.4 City Ownership. Except for leased equipment and proprietary property of the Operator, the ownership of all Golf Course structures, buildings, equipment or improvements thereto or thereon, merchandise, golf hand carts and Golf Course maintenance equipment constructed or acquired by the City, or by Operator on behalf of the City, and all alterations, additions or betterments thereto, shall remain with and be owned by the City.
- 5.5 Inventories. The Operator and the City shall jointly inventory City-owned equipment following a mutually agreeable schedule, but no less than every two years.
- 5.6 Inspections. The City may conduct both scheduled and unscheduled inspections of the Golf Course without interrupting the normal operations. The City shall retain a written report of such inspections for reference and a copy of the report shall be forwarded to the Operator. The Operator shall review the report and prepare a written response to the noted exceptions and findings within fifteen (15) days of the receipt of the report, including contemplated courses of action to correct the noted exceptions and findings. After consulting with the Director or designee, the Operator shall take corrective action suggested by the Director or designee.

6. OPERATING RESPONSIBILITIES.

- 6.1 Budget. The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year after the first Operating Year of this Agreement. The Budget for the first Operating Year will be provided by the City. Beginning in 2016, the Operator will submit a proposed Budget no later than a date to be determined each year under the Agreement for the upcoming calendar year (by way of example, the proposed Budget for Operating Year/calendar year 2016 by June 1 of 2015). The City shall approve, disapprove and adjust the proposed Budget a date to be determined each year as part of its budget process. Each proposed Budget shall be in a format acceptable to the City and shall include, but not be limited to, proposed Fees and Charges, the projected number of Operator employees, the projected number of rounds of golf played, and all projected revenues for the Golf Course and the proposed Direct Costs and expenses, identifying those that are paid by the Operator and reimbursed by the City. After consultation with Operator, the Director or designee shall have the authority to negotiate changes to the proposed Budget including, but not limited to, the projected revenue, projected costs and the method of cost allocation and marketing.
- 6.2 Annual Reports. Beginning on a date to be determined, and on or about February 2016th of each Operating Year during the Term, the Operator shall submit to the Director or designee, for his or her review and approval, an annual report ("Report"). Each Report shall include a description of the physical condition of the Golf Course and list any repairs or improvements made during the most recently concluded Operating Year. Each Report also shall include a detailed revenue, cost and expense report in a form acceptable to the City. Reports will be submitted by the Operator in written form and as electronic media using mutually agreeable software. If the Director or designee does not approve the Report, the Operator shall take all corrective action and submit a revised report to the Director or designee for review and approval. The Operator will include an Annual Report presentation to the City Council.

6.2a. A report of all inventories as of December 31st of each year shall be submitted to the Director or designee by January 15th of each year.

6.3 Monthly Reports. The Operator shall submit to the City, for its review and approval, on or before the twentieth (20th) day of the month following each month of operations under this Agreement, a detailed and complete Monthly Operating Report. Each Monthly Report shall include a summary regarding the physical condition of the Golf Course and any repairs or improvements made during the most recently concluded month, as well as a monthly inventory. Each Monthly Report also shall include a summary of the financial condition of the Golf Course including the revenue by category and course, the detailed categorized costs and other financial data as may be required by the City. The Operator shall provide additional information and documentation relating to any expense or income entry as the City may require. Monthly Reports will be submitted by the Operator in written form and as electronic media using mutually agreeable software.

6.3a. Other Reports. A Loss Report shall be submitted to the Finance Director or designee within forty-eight (48) hours for any loss of any asset or inventory, including cash, valued at \$100 or more which, as required by State law, will be reported to the State Auditor.

6.4 Compliance with Laws. The Operator shall comply with all municipal ordinances, all state and federal laws, and all regulations applicable to the operation of the Golf Course and the management services provided under this Agreement. The Operator will comply with all applicable laws and regulations applicable to management or service contracts that involve facilities financed with tax-exempt bonds under federal tax law.

6.4a. The Operator shall not knowingly permit any illegal activities to be conducted on or at the premises of the Golf Course. The Operator shall obtain all such required permits or licenses from the appropriate regulatory agency before undertaking any regulated activity.

6.5 This section intentionally left blank.

6.6 Compliance with Rules and Regulations. The Operator shall comply with all rules and regulations set forth in the Golf Course Standard Operating Procedures Manual and will enforce all such rules at the Golf Course.

6.7 Operator's Obligations to Refrain from Discrimination (Equality of Treatment).

The Operator agrees to take all steps necessary to comply with all federal, state and City laws and policies regarding nondiscrimination and equal employment opportunities. The Operator shall not discriminate because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age marital status, familial status, or the presence of any sensory, mental or physical handicap. In the event of non-compliance by the Operator with any of the non-discrimination provisions of this Contract, the City shall be deemed to have cause to terminate this Contract, in whole or in part.

6.8 Signs. The Operator shall not post any signs at the Golf Course property including fence lines, without the prior approval of the City.

6.9 Marketing and Advertising. The Operator shall use its best efforts to maximize the public use of the Golf Course by effectively marketing and promoting the Golf Course to ensure financial and operating success. For each operating year, the Operator shall submit to the City as a part of the proposed Budget a complete marketing and advertising plan and shall include a year-end marketing and advertising report along with the Annual Report concerning all activities undertaken by the Operator with respect to the approved marketing and promotion plan for the applicable Operating Year. The City reserves all advertising rights associated with the Golf Course and Operator will purchase any advertising on behalf of the City.

- 6.10 Utilities. Upon commencement of the term of this Agreement, the City shall be responsible for arranging for the utility services required by the Golf Course, including, but not limited to, water, gas, electricity, sewer service and trash removal. The Operator will be responsible for all telephone, internet, cable and building security utilities. The Operator acknowledges that during the term of this Agreement there may be a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system or electrical apparatus or wires serving the Golf Course. Any expenses incurred by the Operator to correct any such defect, deficiency or impairment shall be a Direct Cost, aside from capital expenditures. The City will be responsible for any and all utility payments and or deposits required for utility services and such payments and or deposits will not be reimbursed as a Direct Cost.
- 6.11 Safety. The Operator shall immediately correct any unsafe conditions to the premises of the Golf Course, and/or notify the City of any potentially unsafe conditions, as well as any potentially unsafe practices occurring thereon. The Operator shall contact an emergency medical response provider as soon as reasonably possible after becoming aware of any person on or at any of the Golf Course who is in need of medical attention because of illness or injury. The Operator is required to contact the City immediately for any injuries sustained on the course and shall cooperate fully with the City in the investigation of any accidental injury or death occurring at the Golf Course and shall submit promptly to the Director or designee an accident report describing any injuries or deaths at the Golf Course. An incident log will be maintained at the Golf Course by the Operator.
- 6.12 Use of Facilities Restrictions. The Operator shall obtain from the Director or designee prior written approval of any events or activities not otherwise specifically provided for or authorized under the Agreement, or any extraordinary events or activities requiring the exclusive use of any of the Golf Courses or any portion thereof. The City retains exclusive use of the storage room enclosed within the top floor of the course Maintenance Building for storage and access of holiday decorations utilized within the city. City will contact Operator for any and all access needs with 24 hour notice. All content(s) will belong to the city and be maintained and insured by city.
- 6.13 Meetings. Representatives of the Operator and the City shall, at a minimum, meet monthly and at such other times as may be required by the City to review the Operator's performance under this Agreement, to review the monthly financial reports submitted by Operator, and discuss any problems or emerging issues.
- 6.14 Fees. Initially all Fees and Charges shall be the Current Fees and Charges schedule that have been approved by the City. Beginning with the Operator's submission of the proposed 2016 Budget on a date to be determined, the Operator shall propose Fees and Charges for the coming year to the Parks and Recreation Advisory Board for final recommendation to the City Council. The Operator, in the exercise of its professional judgment, shall recommend Fees and Charges at such rates that will best meet the goals of maximizing Golf Course net revenue and the positive golfing experience of golfers of all ages and skills. The City will review, revise as needed, and establish Fees and Charges for the upcoming operating year.

The Operator shall also propose for approval by the City: a) off-season fees for rounds of golf, cart fees, for all other golf services at the Golf Courses and/or temporarily lower fees, discounts, or promotional programs not identified within the Standard Operating Procedures Manual located within Exhibit D

These fees include all charges directly related to Golf Course operations including course fees, fees for classes and lessons, equipment fees and other usual Golf Course fees and charges paid by golfers. Retail pricing within the Pro Shop, equipment and supplies, are not included in Fees and Charges and shall be proposed by the Operator in its proposed Budget, or at other times, and shall be approved by the City without legislative approval.

If the Operator proposes an increase in the maximum fees authorized under this Agreement other than in the proposed Budget submission, the Operator shall submit such proposed changes to the City for approval at least ninety (90) days prior to the proposed implementation date.

The parties recognize that any increase in the maximum fees authorized under this Agreement can be approved by the Director or designee up to, but not exceeding the maximum fee approved in the City of Parks and Recreation Fees and Charges Schedule which is adopted by City Council by Ordinance. Any increase in fees to exceed the existing Fees and Charges Schedule shall be in the Operator's proposed Budget and shall be approved in advance by the City Council.

Except as specifically authorized in writing and by mutual agreement, employees of the Operator shall not receive discounts to the above listed fees.

6.14.1 Restaurant, and other Goods and Services. The Operator shall work with the restaurant lessee to coordinate the activities of the restaurant and the golf course.

6.15 Business License, and permits.

6.15.1 Business License and Permits. Operator shall obtain all necessary state and local licenses and permits necessary to conduct business at the Golf Course.

6.15.2 Reimbursed Direct Costs And Expenses. The City will reimburse Operator, as a Direct Cost, Snohomish County Department of Public Health permits and inspections, Washington State Department of Transportation Highway Signage Fees and other permits and fees directly related to the operation of the Golf Course and approved by the City in the Approved Budget. Any Operator legal and administrative costs associated with obtaining these licenses and permits must be approved in advance by the City. Any late charges or penalties incurred by the Operator that are associated with obtaining these licenses and permits will not be reimbursed by the City.

7. COSTS AND EXPENDITURES.

7.1 Direct Costs. All Direct Costs (the normal and ordinary costs of operating and maintaining the Golf Courses) shall be paid by the Operator from the Operator's bank account, and Operator shall be reimbursed by the City. The City will reimburse Direct Costs without mark-up or profit to the Operator, and such costs will include only the amount paid to unrelated persons as listed in the Operator's proposal response dated December 18, 2014. The amounts paid by the Operator for salaries, wages, compensation and benefits to its employees that are to be reimbursed by the City are required to be determined at fair market value and not be based upon any share of net profits from the operation of the Golf Courses. In addition, amounts paid by the Operator as compensation to its "executive" *personnel, including those "executives" located on site or offsite, are not to be reimbursed as Direct Costs but instead are to be included as part of the Management Fee provided in Section 8 below.* Subject to the above limitations, a Direct Cost shall be any cost which is directly related to the normal and ordinary staffing, operations or maintenance of the Golf Courses only when approved by the City in the Approved Budget or when proposed by the Operator and approved in writing by the City, including but not limited to the following:

- A. Operator employee salaries, wages and compensation.
 - B. Operator's employee benefits including vacation, sick leave, health insurance, disability insurance and worker's compensation insurance.
 - C. Employee Incentives and Bonuses. Employee incentives that comply with City policies are authorized and will be considered a Direct Cost. These incentives are to express employee appreciation, and are generally of minimal value (less than twenty-five dollars); the reimbursement request for any incentives that comply with City policies must be submitted on the appropriate form(s). Any other employee incentive or bonus will be excluded as a Direct Cost and will be paid at Operator's sole expense.
 - D. Food for Operator Employees. Food provided to employees that complies with City policies is authorized and will be considered a Direct Cost. Generally food is only authorized as a Direct Cost if it is provided for employee training sessions that last 4 (four) hours or more and is in a location where it is impractical for employees to make individual arrangements for food. All other food provided to employees will be excluded as a Direct Cost and will be at the Operator's or employees sole expense.
 - E. Personal Mileage Reimbursement. Reimbursement of Operator employee usage of personal cars for business purposes shall be considered a Direct Cost, up to the then current rate approved by the IRS. Operator employees requesting mileage reimbursement shall maintain and submit mileage/trip logs as may be required by the City. Mileage will be reimbursed at the current rate authorized by the IRS. The employee must submit with the reimbursement request a log of beginning and ending mileage and beginning and ending location and the business reason for the travel. City is not required to pay costs of an Operator employee commuting between home and work.
 - F. Lease and/or rental of equipment.
 - G. Repair and maintenance of golf and hand carts, irrigation systems and capital equipment.
 - H. Uniforms, laundry and linens.
 - I. Operating supplies, office supplies, cleaning supplies and other miscellaneous supplies.
 - J. Audit. Performance or financial audits that may be required by the City.
 - K. Advertising and marketing expenses.
 - L. Travel. Travel for reasonable, necessary and normal business purposes is a Direct Cost, but must comply with City policies for reimbursement limits. These limits include flying coach on airlines; food and lodging is limited to the City's policy or General Services Administration (GSA.gov) Per Diem. Travel will only be reimbursed for Operator's employees, and not for any family or non-employees traveling with the employee.
 - M. Telephone, postage and freight directly related to the operation of the Golf Course.
 - N. Utilities including natural gas, water, electric power, telephone, garbage, recycling and trash collection which are direct costs of the golf operations whether paid by Operator or City.
 - O. Parking lot maintenance.
 - P. Washington State Business and Occupation taxes on the Direct Costs or reimbursement of same.
 - Q. Refunds. Refunds will be expensed and not deducted from revenue, and will be reimbursed by the City.
- 7.2 Direct Cost Budget. The Direct Cost Budget is a portion of the Budget including inventory.
- 7.3 Excluded Operating Costs. Those operating costs that are paid by the City but are not included in the Direct Cost Budget include and are not limited to the following:
- A. Those maintenance and/or operating costs that are due to any reason beyond Operator's reasonable control, an occurrence of force majeure including, without limitation, acts of God, riots, strikes, fires, provided, however, that such expense shall

continue only during the pendency of the particular occurrence of force majeure. Such excluded costs must exceed Five thousand dollars and no cents (\$5,000.00) per incident, and these costs are subject to the prior approval of the Director or designee. If such costs do not exceed Five thousand dollars and no cents (\$5,000.00) per incident, they shall be treated as Direct Costs.

B. Base Management Fees and Annual Growth Incentive Fee paid as part of this contract to the Operator.

7.4 Capital Expenditures. A Capital Expenditure is not a Direct Cost and must be approved by the Director or designee before it may be undertaken. The City may responsible for the cost of any Capital Expenditure. The City may request that the Operator contract for and make capital improvements and reimburse the Operator for these improvements per the Capital Budget and subject to applicable public works laws and procedures.

Any Capital Expenditures other than minor construction to be managed or implemented by Operator will be under a separate agreement between the City and the Operator or as an approved Amendment to this contract.

8. OPERATOR COMPENSATION.

8.1 Base Management Fee. During the term of the agreement, the City shall pay the Operator, an annual fee of Ninety-Six Thousand Dollars and No Cents (\$96,000.00) per year or on a monthly basis, a fixed amount of Eight Thousand Dollars and No Cents (\$8,000.00) per month (the "Management Fee"). The Management Fee for any partial month during the Term shall be made pro rata based upon the number of days in the month when this Agreement was in effect. For the purposes of pro rata calculations only it is agreed months will contain thirty (30) days. The City will pay the Management Fee by check mailed to the Operator within seven (7) working days (excluding City holidays) after receipt and City acceptance without contest or question of the Monthly Report and supported by an invoice from the Operator. Starting in year two, any increases to the Management Fee shall be based on the Seattle-Tacoma-Bremerton Consumer Price Index (CPI-W) for June with no less than zero percent (0%) and no greater than three percent (3%).

8.2 Annual Growth Incentive Fee

During the course of this Contract, the City shall pay the Operator an Annual Growth Incentive based on the financial performance of the golf course. The City shall pay the Operator a five percent (5%) annual growth incentive if Total Net Revenues exceed base level adjusted annually for inflation as the CPI identified in Section 8.1 of this Agreement. Total Net Revenues is total revenues excluding sales tax, admission tax and cost of goods sold from Merchandise and Lessons. The following table depicts a sample to be used to calculate the annual growth incentive. For calculation of the Annual Growth Incentive ~~percent growth~~ direct operating expenses will not exceed the ~~percent growth of Net Revenues~~ approved annual budget.

Example

	2014	% Net	Base	2015 Est.	2016 Est.	2017 Est.	2018 Est.
Green Fees	584,344.43	100%	584,344.43	598,953.04	613,926.87	629,275.04	645,006.91
Golf Cart Rentals	165,940.02	100%	165,940.02	170,088.52	174,340.73	178,699.25	183,166.73
Merchandise	86,209.21	35%	30,173.22	30,927.55	31,700.74	32,493.26	33,305.59
Lessons		80%	-	2,000.00	2,050.00	2,101.25	2,153.78
Total	838,507.66		780,457.67	801,969.12	822,018.34	842,568.80	863,633.02
Net Revenue Growth				21,511.44	20,049.23	20,550.46	21,064.22
Annual Growth Incentive				1,075.57	1,002.46	1,027.52	1,053.21

Cost of Goods Assumptions

Merchandise	35%
Lessons	
Commissions	80%

8.2.1 Between Effective Date of the Contract and calendar year 2015, the Contractor will not receive an incentive payment. It will only receive its management fee (in addition to reimbursement of direct costs and merchandise cost of goods sold).

8.2.2 Incentive payments are made based on the prior year Net Revenue. Payment will be made by the end of the first quarter for the preceding calendar year, subsequent to the financial closeout and verification of the prior year's performance.

8.3 Payment Procedures.

8.3.1 After receipt from the Operator of applicable invoices that have been approved without contest and accepted by the City, the City shall reimburse the Operator by mailed check for Direct Costs by the Operator within fourteen (14) business days, excluding City holidays and weekends, after receipt of the Operator's invoices in a form approved by the City.

8.3.2 The Operator shall submit original copies of all bills and invoices. Each bill and invoice shall be approved and shall be signed by an Operator management employee.

8.4 Reimbursement Submittals. The Operator will submit receipts, invoices for all Direct Costs and expenses to the City according to a schedule that has been approved by the City. The City reserves the right to review all reimbursement submittals, seek justification from the Operator and once accepted by the City, issue a reimbursement.

Salary reimbursement requests must include by employee: name, total hours, pay rate, total cost, and cost for each benefit (taxes, health insurance, etc.). The request must include a report from the Operator's payroll system that includes the above information.

- 8.4.1 At year-end, any reimbursement request must be separated by calendar year; any single request that includes expenses from two calendar years will not be reimbursed and returned to the Operator for resubmission as separate requests by year. To meet city's year-end close year-end reimbursement must be submitted within the first full week of January.
- 8.4.2 Reimbursement Summary. Each request shall include a summary that includes sub-totals listing each vendor, date paid, check number and amount. Attached to the summary will be the original invoice that was paid. A copy of the check must be attached to each invoice(s). Vendor invoices shall include detailed itemization and be on the vendor's letterhead or invoice with the vendor's name, address, etc., or if on an invoice form provided by the Operator, shall include identifying information and the vendor's signature.
- 8.4.3 Payment Approval and Certification. Prior to submission of any requests for reimbursement, the Operator shall provide a letter signed by the Operator's CEO that identifies all employees authorized to sign and approve reimbursement requests (on the summary page). Each summary invoice shall include a certification statement as follows:

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, services rendered or labor performed as described herein and the claim is a just, due and unpaid obligation against the City by the Operator, and I am authorized to authenticate and certify to said claim." The certification shall be signed and dated.

9. FINANCIAL AND ACCOUNTING PROCEDURES

- 9.1 Accounting Procedures. The Operator shall employ a method of accounting for all the revenues and expenses in connection with the operation of the Golf Courses in accordance with Generally Accepted Accounting Principles (GAAP), and that correctly and accurately reflect the gross receipts and disbursements received or made by the Operator from the operation of the Golf Courses. The Operator shall establish and implement adequate internal controls for this operation and all cashing and cash handling that comply with GAAP, and with the City's cash handling policies. The method of accounting, including bank accounts, established for the operation shall be separate from the accounting system used for any other business operated by the Operator.
- 9.2 Monthly Reports and Transactions. The Operator shall provide to the City a Monthly Report of the previous month's transactions and financial status of the Golf Courses.
 - 9.2.1 Monthly Report. Within twenty (20) days of the end of each month, the Operator shall provide the City with a Monthly Report that includes the current month and year-to-date balance sheet, cash flow report, purchase records, inventory levels and income statement.
 - 9.2.2 On a weekly basis and schedule provided by the City, the Operator will provide a copy of every bank deposit slip and a copy of every credit card batch settlement for the previous week, and a revenue report that separates the revenue by category and source approved by the City. Deposits must be made no less than indicated in the "Deposit Exception Certification" in Exhibit E.
 - 9.2.3 After review of the above items, the City may request additional reports that detail previous transactions.

10. BUSINESS RECORDS.

10.1 Types of Records. The Operator shall keep and store within the city limits of Marysville, Washington the following records and documents:

- A. Regular books of account such as general ledgers;
- B. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
- C. Sales tax returns and checks and other documents proving payment of sums shown;
- D. Cash register tapes or computerized records for the identification of day-to-day sales;
- E. Logs showing the dates and times of greens usage and Golf Lessons at the Golf Course; and
- F. Any other accounting records that the City, in its sole discretion, deems necessary for proper reporting of receipts.
- G. All books and records will be turned over to the City after three (3) years for retention in City archives, in City-authorized storage boxes with a completed City archival form attached to each box as required and requested by the City Archivist.

10.2 Audit of Records. All documents, books and accounting records kept by the Operator pursuant to this Agreement shall be open for inspection by representatives of the City during usual business hours and at a location within the Marysville City limits during the term of this Agreement and for at least three (3) years thereafter. In addition, the City or its authorized representative may, from time to time, conduct an audit of the books of the operation of the Golf Courses and observe the operation of the business. The City will use its best efforts to minimize the interruption with the normal operation of the Golf Courses during any inspection or audit performed pursuant to the provisions of this section. The City and Operator will independently conduct and jointly conduct "surprise" cash and inventory audits as each deems appropriate. The results of the audits will be documented in a written report, a copy of which will be given to both parties.

10.3 Annual Financial Statements. The City may request and the Operator shall provide to the satisfaction of the City audits of financial statements and Golf Course operations. The audit shall be performed by independent certified public accountants or other persons designated by the City, and the cost of the audit shall be included as a Direct Cost of operation.

10.4 Public Records. All information obtained in connection with the City's inspections of the records or audits and all information submitted to the City may be or become subject to public inspection and/or reproduction as public records.

10.5 Loss of Assets. The Operator will provide the City with a report for any loss of assets (including cash) that exceeds \$100 (one hundred dollars). The report shall be submitted to the Director of designee within two (2) working days after discovery of the loss of the asset. The report shall be submitted on the City's Loss Report form as provide by the City and:

- 10.5.1 The exact or estimated amount of the loss.
- 10.5.2 Composition of the loss (cash/checks).
- 10.5.3 Date of the loss.
- 10.5.4 When and how the loss was discovered.
- 10.5.5 Whether it is known, who is responsible for the loss (and, if so, the name).
- 10.5.6 A copy of the police report shall be included in the report to the City.
- 10.5.7 Whether the loss is covered by insurance.

11. INSURANCE AND INDEMNITY.

11.1 Insurance.

- A. Worker's Compensation Insurance. The Operator shall keep in full force and effect at all times during the term of this Agreement worker's compensation insurance for all workers employed pursuant to this Agreement in compliance with RCW 51 and any applicable Federal statute. If any work is sublet, the Operator shall require its sub operator(s) similarly to provide worker's compensation insurance for all of the latter's employees unless all the employees are covered by the Operator.
- B. Liability Insurance. The Operator shall keep in full force and effect, at all times during the term of this Agreement, Commercial General Liability ("CGL") insurance using Insurance Services Office form CG0001(04-13) or the equivalent (including Premises/Operations, Products/Completed Operations, Personal Injury/Advertising Injury, Contractual Liability, Independent Contractors. Limits shall be not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Employer's Liability with limits not less than \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 aggregate. Liquor Liability with limits not less than \$2,000,000 each occurrence and \$2,000,000 aggregate. Commercial Automobile Liability using Insurance Services Office form CA0001 (03-10) or the equivalent providing coverage for owned autos (if any), non-owned autos and hired autos. Umbrella/Excess Liability insurance with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate. Such policy shall provide limits in excess of Commercial General Liability, Employer's Liability and Commercial Automobile Liability. "The City of Marysville shall be included as an additional insured under each policy for liability caused in whole or in part by the Operator. Coverage shall be primary and non-contributory with any insurance or self-insurance maintained by the City. The City shall be additional insured for both ongoing and completed operations on the Commercial General Liability policy using Insurance Services Office forms CG 2010(04-13) and CG2037(04-13) or the equivalent.
- C. Property Insurance. The City shall insure or self-insure real property and personal property, including new buildings and additions under construction on City premises (but excluding land such as greens, fairways, trees and landscaping), inventory and mobile equipment (including leased mobile equipment) for the current replacement value thereof subject to various deductibles for the benefit of both the City and Operator. The City shall obtain from its property insurer a waiver of subrogation in favor of the Operator to the extent that property insurance applies to any loss. In addition, the City agrees to waive its rights of recovery for claims involving damage to City property in excess of \$1,000 for any loss within the applicable deductible amount. The Operator shall insure any personal property owned by the operator and kept on-site at the Golf Courses, is responsible for the cost of any insurance on Operator's personal property kept on-site at the Golf Courses, and such amount will not be a Direct Cost. The Operator hereby releases the City from any claim arising in any way from loss or damage to Operator's personal property.
- D. Commercial Crime Insurance. The Operator shall keep in full force and effect at all times during the term of this Agreement a Commercial Crime insurance policy in the amount of \$500,000 for employee dishonesty and coverage for theft, disappearance and destruction of or to monies or funds of, in or at the Golf Courses in an amount as dictated by the exposure at any given time.. All amounts set forth in herein shall be per occurrence and in the aggregate. The Operator also shall maintain such Employee Dishonesty on behalf of the City whereby in the event any officer, employee, agent or subcontractor of Operator embezzles, steals or otherwise fraudulently or improperly takes or obtains City funds, money or property, the City shall be reimbursed for the total amount of funds taken up to \$500,000per occurrence. Such policy shall be endorsed to include loss to "Client's Property" using Insurance Services Office form CR0401 (08-13) or the equivalent. City of Marysville shall also be included as a Loss Payee on the Employee Dishonesty Insurance.
- E. Evidence of Insurance. The Operator's professional insurance broker shall deliver to

the City, in a timely manner, certificates of insurance and copies of declarations pages, schedules of endorsements and additional insured policy provisions for all insurance required pursuant to this Agreement acceptable to the City. Each insurance policy required hereunder shall provide that cancellation shall not be made without 30 days (10 days with respect to cancellation for non-payment of premium) prior written notice to the City. Insurance Certification shall be issued to, and notice of cancellation/reinstatement may be mailed to:

City of Marysville
City Clerk
1049 State Avenue
Marysville, WA 98270

Insurance certification shall be mailed, or delivered electronically (as may notice of cancellation/reinstatement) by email to CityClerk@marysvillewa.gov facsimile transmission to 360-363-8042

All insurance required shall be provided by insurers authorized to provide insurance coverage in the State of Washington pursuant to RCW Chapter 48 and shall be rated by A.M. Best Company as an A(-) VII or better. Approval by the City of the insurance herein shall not limit, relieve or decrease the liability of the Operator.

- F. Cost of Insurance. The cost of the insurance required by this section and any deductible that the Operator pays for claims on the insurance required by in this Section (except claims less than \$1,000 involving damage to City property only to the extent to which Operator is responsible for the damage under subsection 11.1.C.) shall be Direct Costs and shall be borne by the City.

11.2 Indemnity.

- A. The Operator shall defend, protect, indemnify and hold the City, its officers, elected officials, volunteers, agents and employees from and against any and all suits, judgments, causes of action, claims, losses, demands, damages, liabilities, and expenses, including, but not limited to, attorney's fees and costs of litigation, resulting from death or injury to any person or damage or destruction of any property or property rights arising out of or relating to any act or omission of the Operator, its agents, subcontractors, or employees, or arising out of or relating to the work to be performed under this Agreement, including any breach of Operator's obligations herein. In the event a claim or legal action is covered by RCW 4.24.115, Operator's duty to indemnify and defend shall not extend to damages resulting from the City's sole negligence, and in the case of concurrent negligence shall apply to the extent of the negligence attributed to the Consultant, its employees, subcontractors and agents.
- B. The Operator shall defend, indemnify and hold harmless the City for any fines imposed by administrative regulatory bodies, except for fines resulting from and directly related to action for which the City is solely and completely responsible. In the event the City is only partially responsible for said action or inaction, the Operator shall defend, indemnify and hold harmless the City for the full amount of such fines.
- C. The City does not and shall not waive any rights against the Operator which it may have under this Section 11.2 because of the acceptance by the City of any of the insurance policies described in Section 11.1.
- D. The indemnity provisions in this Section 11.2 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the operations of this Agreement, regardless of whether or not the insurance policies referred to herein shall have been determined to be applicable to any of such damages or claims for damages.
- E. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Operator's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete

indemnity from claims made by Operator's employees.

- F. THE OBLIGATIONS UNDER THIS SECTION 11.2 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. OPERATOR AND THE CITY EACH REPRESENT THAT THIS SECTION WAS MUTUALLY NEGOTIATED AND AGREED UPON.

12. REPRESENTATIONS AND WARRANTIES.

- 12.1 Organization and Authority. As of the date of this Agreement and thereafter, the Operator hereby represents and warrants that (a) it is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in all other states where necessary in light of its business or properties and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by the Operator under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by the Operator, and (d) this Agreement constitutes the legal, valid and binding obligation of the Operator and is enforceable against the Operator in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.
- 12.2 No Conflict. As of the Effective Date and thereafter for the term of this Agreement, the Operator hereby represents and warrants that the execution, delivery and performance by the Operator of this Agreement does not and will not a) conflict with or violate any provision of its articles of incorporation or bylaws, b) result in a material breach or violation of any term or provision of, or constitute a material default under, any material agreement or instrument to which the Operator is a party or by which the Operator or any of its assets are bound, or c) contravene or constitute a material default under any provision of applicable law or regulation.
- 12.3 Accuracy of Representations Warranties. The representations and warranties contained in this Agreement do not contain any untrue statement of a material fact or omit any material fact necessary in order to make the statements contained herein not misleading or incomplete.
- 12.4 Survival of Representations and Warranties. The representations and warranties set forth by the Operator in this Article 12 shall survive the date of this Agreement and shall terminate only upon the sixth anniversary of the date of termination of this Agreement.

13. DEFAULT AND TERMINATION

- 13.1 Default. If Operator violates breaches or fails to keep or perform any term, provision, covenant or obligation under this Agreement, the City may provide the Operator with written notice specifying the failure or breach and providing a period of time determined by the City as reasonably necessary to cure the failure or breach. If Operator's breach relates to a monetary obligation, a reasonable time to cure will not exceed ten (10) days. If the Operator does not cure the breach or failure within the time required by the City's notice, Operator's breach will be a "Default". If the cure cannot reasonably be completed in the time provided by the City, Operator will not be in Default if a cure is commenced within the notice period and thereafter diligently pursued to timely completion. No waiver by the City of any Operator breach or Default hereunder shall be construed to be or act as a waiver of any subsequent breach or Default by the Operator.
- 13.2 City Remedies. If the Operator fails to cure any Default, the City shall have the following nonexclusive rights and remedies at its option: (1) to cure such Default on Operator's behalf and at Operator's sole expense and to charge Operator for all actual and reasonable costs and expenses incurred by City in effecting such cure; (2) to immediately terminate this Agreement upon written notice to Operator.
- 13.3 If there is an Operator Default, the City shall not be liable for damages by reason of

termination or City entry onto the Golf Courses. The City may also avail itself of any other remedy provided by law.

- 13.4 This Agreement may be terminated by the City without cause upon ninety (90) days' written notice to Operator. Operator will be paid for all Work performed prior to the termination date in accordance with the compensation provisions set forth in Section 8 herein. The City reserves the right to cancel this Agreement with cause, effective at a time of its choosing, by providing written notice of termination to Operator. Work in progress would be completed at the City's option.
- 13.5 This Agreement is contingent upon the City Council's appropriation of sufficient funds for the Work contemplated under this Agreement. In the event that sufficient funds are not appropriated for the Work, the City shall have the right to terminate the Agreement, effective immediately, without termination charge or other liability, by providing written notice of termination to Operator.

14. MISCELLANEOUS.

- 14.1 Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede any prior agreement or understanding among the parties with respect to such subject matter.
- 14.2 Severability. If any provision of this Agreement or the application of such provision to any party or circumstance shall be invalid, the remainder of this Agreement or the application of such provision to other parties or circumstances shall not be affected thereby.
- 14.3 Notices. All notices, requests, demands, consents and other communications required or permitted to be given by this Agreement shall be in writing and personally delivered or placed in the United States mail, properly addressed and with full postage prepaid, certified and return receipt requested. Such notices shall be deemed received at the earlier of (a) the date actually received, or (b) five (5) business days after such mailing. Such notices shall be sent to the parties at the following addresses, unless other addresses are furnished by appropriate notice:

If to the City, to:

City of Marysville
City Clerk
1049 State Avenue
Marysville, WA 98270

If to the Operator, to:

Premier Golf Centers, LLC
Bill Schickler
2466 Westlake Avenue North #8
Seattle, WA 98109

- 14.4 Assignment; Subcontract. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns. Operator shall not assign any of its rights or delegate any of its duties under this Agreement to a third party unless a) the Director or designee gives his/her prior approval, in writing, of the third party contract prior to execution, and b) the third party contract is consistent and complies with the terms and conditions of this Agreement. For purposes of this Section, if Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this

Lease. If Lessee is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

- 14.5 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one in the same instrument.
- 14.6 Headings. The article and section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.
- 14.7 Governing Law and Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington without regard to any otherwise governing principals of conflicts of laws. Venue for any action relating to or arising from this Agreement will be in the Superior Court of Snohomish County. This Agreement shall be construed neutrally and not in favor of or against any party.
- 14.8 Amendment. This Agreement shall not be modified or amended except by a written agreement executed by both of the parties.
- 14.9 Further Actions. Each party shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be required to carry out the provisions or the intent of this Agreement.

IN WITNESS THEREOF, City of Marysville and Operator have caused this Agreement to be executed by its proper officers on the dates shown below.

CITY OF MARYSVILLE

PREMIER GOLF CENTERS, LLC

Jon Nehring, Mayor

Signature

Date

Printed Name

ATTEST BY:

Title

Sandy Langdon, City Clerk

Date

Date

APPROVED AS TO FORM:

Jon Walker, City Attorney

Date

EXHIBIT A
CEDARCREST GOLF COURSE OVERHEAD MAP



Property Description for Cedarcrest Golf Course

Parcel # 30052300300300

Address: 6810 84TH ST NE, MARYSVILLE, WA 98270-7818 SEC 23 TWP 30 RGE 05TH PTN OF SW1/4 & NW1/4 DAF BEG CONC MON AT CTR OF SEC 23 TH N00*00 47E ALG C/L FOR 163.31FT TO S LN GETCHELL HILL RD TH S88*32 29W ALG S LN SD RD 725.42FT TAP 1FT E OF CHAINLINK FENCE TPB TH S11*28 18E 123.37FT THS18*08 49W 127.89FT TH S10*45 12W 326.41FT TH S02*39 20W 114.14FT TH S24*53 05W 160.57FT TH S15*49 47E124.85FT TH S03*34 16W 83.64FT TH S 368.16FT TO S LN NE1/4 SW1/4 TH S87*26 07W ALG S LN TO E LN MARYSVILLE ARLINGTON HWY TH N ALG E LN SD HWY TO S LN GETCHELL HILL RD TH E ALG S LN SDRD TO TPB TGW SW1/4 SW1/4 & W 450FT OF SE1/4 SW1/4 LESS PTN DAF BEG SW COR SEC TH E TO E LN MAR-ARL RD TPB TH N ALG SD E LN 330FT TH E 570FT TH SELY TAP ONS LN SD SUB 1000FT E OF TPB TH W

TO TPB & LESS S 20FT THOF & LESS PTN LY WHN 76TH ST NE WHN PLAT OF MUNSON
CREEK ESTATES DIV 1 & TGW TH PTN NW1/4 DAF BEG SW COR NW1/4 TH N00*45 20E
ALG W LNSEC 217.50FT TO C/L GETCHELL HILL RD TH N89*15 20E ALG SD C/L 287.87FT
TH N00*4440W 20FT TO NLY MGN SD RD & TPB TH CONT N00*44 40W 200FT TH N89*15
20E225FT TH S00*44 40E 200FT TO NLY MGN SD RD TH S89*15 20W ALG SD RD 225FT
TO TPB LESS ADD'L R/W TO SNO CO PER DEED IN DED REC AF NO 9509290824 VOL
3078 PG 1530

EXHIBIT B
HOURS OF OPERATION to be negotiated

DATE	1 st Tee Time Weekday AM	1 st Tee Time Weekend AM	TWILITE STARTS PM	TWILITE LATE RATE PM	GOLF SHOP CLOSES PM
JANUARY 1 - JANUARY 15	7:45	7:45	1:00	1:00	4:00
JANUARY 16 - JANUARY 31	7:30	7:30	1:00	1:00	4:30
FEBRUARY 1 - FEBRUARY 15	7:00	7:00	1:00	1:00	5:00
FEBRUARY 16 - FEBRUARY 29	6:45	6:45	1:00	1:00	5:30
MARCH 1 - MARCH 8	6:30	6:30	2:00	4:00	6:00

SAVINGS TIME BEGINS DAYLIGHT

MARCH 9 – MARCH 31	6:45	6:45	3:30	5:30	7:30
APRIL 1 - APRIL 15	6:15	6:15	3:45	5:45	8:00
APRIL 16 - APRIL 30	6:00	6:00	4:15	6:15	8:15
MAY 1 - MAY 15	5:30	5:30	4:30	6:30	8:30
MAY 16 - MAY 31	5:30	5:15	5:00	7:00	9:00
JUNE 1 - JUNE 15	5:30	5:00	5:00	7:00	9:00
JUNE 16 – JUNE 30	5:30	5:00	5:00	7:00	9:00
JULY 1 - JULY 15	5:30	5:00	5:00	7:00	9:00
JULY 16 - JULY 31	5:30	5:30	5:00	7:00	9:00
AUGUST 1 - AUGUST 15	5:45	5:45	5:00	7:00	9:00
AUGUST 16 - AUGUST 31	6:00	6:00	4:30	6:30	8:30
SEPTEMBER 1 - SEPTEMBER 15	6:30	6:30	4:00	6:00	8:00
SEPTEMBER 16 - SEPTEMBER 30	6:45	6:45	3:00	5:00	7:00
OCTOBER 1 - OCTOBER 15	7:00	7:00	2:30	4:30	6:30
OCTOBER 16 - NOVEMBER 1	7:15	7:15	2:00	4:00	6:00

DAYLIGHT SAVINGS TIME ENDS

NOVEMBER 2 – NOVEMBER 15	7:00	7:00	1:00	1:00	4:45
NOVEMBER 16 - NOVEMBER 30	7:30	7:30	1:00	1:00	4:30
DECEMBER 1 - DECEMBER 15	7:45	7:45	1:00	1:00	4:00
DECEMBER 16 – DECEMBER 31	7:45	7:45	1:00	1:00	4:00

HOLIDAYS

JANUARY 1 (NEW YEARS DAY)
MAY 26 (MEMORIAL DAY)
JULY 4 (INDEPENDENCE DAY)
SEPTEMBER 3 (LABOR DAY)
NOV. 22/23 (THANKSGIVING)
DECEMBER 25th -CLOSED

PLEASE NOTE

* The Golf Shop doors open approximately 15 minutes before the day's first tee time.

** The first tee time is an approximation. Premier GC reserves the right to open earlier or later depending on weather and daylight conditions.

EXHIBIT C

CEDARCREST GOLF COURSE MAINTENANCE STANDARDS

The City expects that the Operator continue to operate and maintain the course with qualified personnel that maintain a Golf Course Superintendent Association of America (GCSAA) Class A certification or equivalent.

To perform course maintenance, a Golf Course Maintenance Superintendent, one assistant, and one to five greens keepers are to be employed at the golf course. Maintenance operations at golf courses include turf and landscape maintenance for approximately 99 acres of land as defined in the legal description.

Maintenance functions include:

- General golf maintenance
- Irrigation maintenance
- Equipment repair
- Small Project Construction

Turf and landscape maintenance involves mowing of tees, greens, fairways, roughs and entryways. Turf maintenance also includes aerification, overseeding, and fertilizer and pesticide applications.

Daily golf maintenance includes moving tee markers, cutting putting green cups, servicing ball washers and trash containers, raking bunkers, and course inspection.

Irrigation maintenance includes service and repair of wells, pumping stations, piping, controllers, and heads. Additionally, closely monitoring, recording, and reporting water usage is a very important duty.

Golf maintenance staff will perform all equipment repairs and service, including oil changes and routine service, tire repairs, engine overhauls, reel and bedknife grinding, and equipment restoration work. All work and records are to be managed according to the City's Standard Operating Procedure Manual for Cedarcrest Golf Course.

Construction projects may include irrigation and drainage improvements, turf renovation, expanded teeing areas, and bunker reconstruction. Maintenance personnel also perform numerous odd job repairs to the Pro-Shop and other structures and course amenities. There are five (5) structures owned and maintained by the City of Marysville. These include the one Pro-Shop, one outdoor restroom, one restaurant (excluded), one maintenance shop and one pump house. The Golf Course Superintendent will oversee contractor repairs of these structures and their system at the respective golf courses.

Produce High Quality Golf Course

The major key to successful golf operation is the presentation of a product that is consistent with the demands of the golfers served. The City expect smooth greens, weed-free fairways and tees, and well-manicured bunkers and landscapes, maintained cart paths, clean facilities, courteous service, and excellent service.

The Golf Course Superintendent and maintenance staff will produce vibrant, healthy, manicured turf from tee to green, properly set up each course for daily play as needed, and make all repairs quickly, effectively and efficiently. The Superintendent will manage resources wisely to preserve the environment and effectively control costs. The Superintendent will follow all state mandates concerning water usage

and pesticide herbicide reporting and will maintain valid Washington State Pesticide Applicator licensing and maintain record of all pesticides applied on the course.

Additionally, the Superintendent will commit to continuous turf maintenance and agronomic education. Superintendent will assure fair and equitable course set up conducive to expected play patterns, based on weather, tournament and tee sheet scheduling, and anticipated play volume. Golf Course Superintendent will be expected to meet established criteria for mowing frequencies, turf coverage, greens speeds, weed and pest control, bunker maintenance, and irrigation and equipment maintenance. Superintendent will also be expected to maintain very good to excellent customer survey ratings.

Golf Professional, Superintendent and maintenance staff will assure clean, safe, and attractive pro shop and external grounds, including front parking area, food and beverage patio support, and cart fleet services and cart path network, to provide each individual customer with their respective needs.

EXHIBIT D

STANDARD OPERATING PROCEDURES MANUAL
CEDARCREST MUNICIPAL GOLF COURSE

The City's Standard Operating Procedures Manual will be provided to the Operator as a reference for Policy Governing Play, Standard Operational Procedures and will be updated by Operator with Pro Shop Controls and Maintenance Division Internal Controls within the first operating cycle of the Agreement

Exhibit E



DEPOSIT EXCEPTION CERTIFICATION

RCW 43.09.240

I, Jim Ballew as Director for Golf/Parks and Recreation request deposit exception as allowed under RCW 43.09.240 as stated below. Deposit exception will be as follows:

Deposits will be made a minimum of once a week during the off season, October through March. During the peak season, April through September, deposits will be a minimum of twice a week.

I CERTIFY THAT THE MONEY RECEIVED UNDER MY SUPERVISION IS HELD WITH PROPER SAFEKEEPING INCLUDING PROPER THEFT PROTECTION TO REDUCE RISK OF LOSS OF FUNDS.

Signature: [Handwritten Signature]

Date: 5.20.13

Department: Parks & Recreation / Golf

+++++

For Finance Use Only

City Treasurer Acceptance

Signature: [Handwritten Signature]

Date: 5/21/13

RCW 43.09.240

“Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the local government once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible as long as the treasurer has received a written request from the department, district, or agency, and where the department, district, or agency certifies that the money is held with proper safekeeping and that the entity carries out proper theft protection to reduce risk of loss of funds. Exceptions granted by the treasurer shall state the frequency with which deposits are required as long as no exception exceeds a time period greater than one deposit per week.

In case a public officer or employee collects or receives funds for the account of a local government of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the local government for the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district.”