



AGENDA

Antioch City Council: Committee for the Lone Tree Golf Course

Mayor Sean Wright and Council Member Tony Tiscareno

April 9, 2018 - 6:30 pm

**Lone Tree Golf Course, Board Room
4800 Golf Course Rd.**

1. Roll Call
2. Pledge of Allegiance
3. Introductions
4. Public Comments
5. City Update
 - Informational Discussion of Draft Agreement for the Operation and Management of the Antioch Municipal Golf Course
6. LTGC Update – Informational Reports
 - Discussion and General Overview of 2018 Programs and Services
7. Adjournment
 - Next Meeting

Attachment

1. Draft Agreement for the Operations and Management of the Antioch Municipal Golf Course

The public has the opportunity to address the Committee on each agenda item. Comments regarding matters not on this Agenda but within the jurisdiction of the City Council's Lone Tree Golf Course Committee may be addressed during the "Public Comments" section.

The meetings are accessible to those with disabilities. Auxiliary aides will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7078 or TDD (925) 779-7081. Agenda and related writings provided to Commission members are available for viewing by the public during normal office hours at the Antioch Community Center, located at 4703 Lone Tree Way, Antioch, CA 94531, as well as at the Committee meeting. Individuals may view the agenda and related writings on the City of Antioch website: www.ci.antioch.ca.us

AGREEMENT FOR THE OPERATION AND MANAGEMENT OF THE ANTIOCH MUNICIPAL GOLF COURSE

THIS AGREEMENT is made and entered into on this _____ day of _____ by and between the CITY OF ANTIOCH, a municipal corporation, hereinafter called "CITY", and ANTIOCH PUBLIC GOLF, INC., a nonprofit public benefit corporation also known as the LONE TREE GOLF COURSE, hereinafter referred to as "CORPORATION".

RECITALS

- A.** CITY owns the Antioch Municipal Golf Course, which is a premier feature within the community and in need of continued management.
- B.** The parties previously entered into an Agreement for the Operation and Management of the Antioch Municipal Golf Course, also known as the Lone Tree Golf Course, dated May 25, 1982; Agreement has been extended and supplemented by various Amendments, and is currently set to expire on June 30, 2018.
- C.** CITY is satisfied with CORPORATION's performance under the Agreements and CITY desires to enter into an agreement in order to facilitate long-term planning for the improvement, enhancement and operation of the Golf Course.
- D.** CITY expects that the management of the golf course and related facilities meets the highest standard for operations, and shall provide patrons with a product and experience that is competitive for a public venue.
- E.** CORPORATION is willing and able to continue the operation and management of the golf course and related facilities with the intent and the obligation to enhance the desirability of the golf course, event center, restaurant and all facilities.
- F.** CORPORATION's sole purpose is to operate the golf course so that visitors have a highly valued experience; expenditures support operations and that revenues are returned to the facility to make improvements and ensure that the overall business remains competitive within the region.
- G.** CITY and CORPORATION recognize that promotion of the golf course, the event center and restaurant, and all related facilities is a primary factor towards increasing golf rounds, restaurant visits, and engaging community support.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants, conditions, and obligations of the Parties set forth herein, the CITY and CORPORATION hereby agrees as follows:

I.

TERM OF AGREEMENT

A. Term. The term of this Agreement shall be for a period of fifteen (15) years, ending June 30, 2033. This provision shall not prevent the parties from developing amendments to the agreement to ensure the best and most appropriate management of all operations.

B. Review. CITY and CORPORATION agree to review the terms of the Agreement and the operations of the golf course and all related facilities after three years of operating under these terms. Further review shall occur after five years, eight years and twelve years of operation respectively. CITY reserves the right to modify, amend, or update the agreement to best meet the needs of CITY.

C. Previous Agreements. All previous agreements between the Parties, including agreements relating to the improvement of the Golf Course, Event Center, Restaurant, and facilities, and financing thereof, are superseded by this Agreement.

II.

EXCLUSIVE USE

A. Licensee. CITY has granted CORPORATION the exclusive use of the Antioch Municipal Golf Course land and improvements. CORPORATION shall continue to occupy and operate the course, driving range, pro shop, event center, restaurant, and facilities as a licensee and not as a lessee.

B. Payment. CORPORATION shall submit annual payment for exclusive use of the Antioch Municipal Golf Course on the first day of June each year. First payment in the amount of \$20,000 shall be made June, 2019. Each payment in subsequent years will be subject to adjustment based on the percentage change in San Francisco Bay Area Consumer Price Index, but in no event shall it exceed 5% per year.

III.

GENERAL OBLIGATIONS OF CORPORATION

A. Course Supervision. CORPORATION is responsible for the general operation of the play on the course insofar as the playing and golfing public is concerned, shall enforce all rules and regulations which are adopted by CORPORATION from time to time, and shall assume responsibility for policing the course, keeping off trespassers, preventing injury to the course by players and others and preserving proper order in and about the general premises including restaurant and event center.

B. General Manager. CORPORATION may hire a General Manager/Golf Professional or other individual who is well qualified to be in charge of the operation and management of the golf course, the clubhouse, restaurant, event center, range, pro shop, maintenance facilities and all other operations and amenities on the property. The manager will be familiar with best practices within the golf industry and apply the highest levels of professional services while managing Lone Tree Golf Course.

C. Course Hours of Operation. The course, including the golf course, clubhouse, pro shop, driving range, restaurant, event center and restrooms shall be kept open daily, including Saturdays, Sundays, and holidays with the exception of Christmas Day, during such hours as there is public demand therefor. A competent representative of CORPORATION shall be present and on duty at the course each day from sunrise to sunset. There shall be no obligation to keep the course open when it is unplayable, although the clubhouse, restaurant, and event center shall remain open during regular business hours.

D. Fees. CORPORATION shall establish greens fees and other charges for the play of golf as are reasonable and similar to comparable golf courses within the region. Fees for restaurant pricing, event center pricing and other charges for business purposes shall be established to cover all costs associated with operations.

CORPORATION shall ensure that no person is allowed to play on the course, host an event, or patronize the restaurant without having first paid appropriate fees or rates as are established by the Corporation.

CITY may review fees as needed to ensure that costs for operations are met and all expenditures are covered by revenues.

E. Golf Lessons and Instruction. CORPORATION shall make provisions for industry leading instruction to be given in the game of golf, so that the increased play of golf is encouraged and enjoyed.

F. Pro Shop Merchandise for Sale and Rent. CORPORATION shall at all times keep and maintain for sale and rental when appropriate a stock of merchandise, supplies and equipment in keeping with the demand and suitable for use upon the course including but not limited to clothing, golf clubs, golf bags, golf carts, golf shoes, tees, books and other golfing equipment and supplies.

G. Other Business Activities. CORPORATION may carry on such other business activities on the premises as are compatible with the game of golf and the facilities. Activities may include but are not limited to the renting out of the facility for private receptions or parties. Such activities shall not interfere with the game of golf or, must adequately compensate for lost revenue due to golf revenues being impacted. The clubhouse, event center, and restaurant are deemed to be premier community amenities, and be available for use by the public for receptions and banquets. The

clubhouse, event center, and restaurant shall be maintained and operated competitively and profitably, offering quality food, beverage, and service comparable in quality and price to similar facilities in the region.

H. Course Promotion. CORPORATION shall have the responsibility to advertise and promote golf and tournaments, banquets & events, activities, the driving range and the restaurant facility, and any remaining services, to increase rounds of play, number of visitors and general community support for the facility. CORPORATION shall promote the facility as a public, municipal course and strive to reach a minimum of 40,000 rounds of golf each year.

I. Course Maintenance and Repairs. CORPORATION shall properly maintain the course, including the trees, greens, fairways, fencing and netting, and Clubhouse landscaping. CORPORATION shall also service and maintain all equipment associated with course and clubhouse maintenance. Maintenance shall be a continuing obligation, so that the course, greens, fairways and grounds are safe, attractive and in a quality and competitive condition that promotes the use of all aspects of the facility.

CORPORATION shall implement conservation practices whenever possible, or required by regulating agencies.

CORPORATION is solely responsible for the repairs and renovation of all features within the golf course, restaurant, clubhouse, event center, maintenance yard and open areas within the boundaries of the Lone Tree Golf Course.

J. Consultations. CORPORATION recognizes the need to communicate with users of the golf course facilities and also recognizes that the best interest of the community and the users of the facilities can be best served by maintaining an open line of communication. CORPORATION shall utilize all communication practices that are traditional and innovative with any person or group within the community that has an interest in the operation of the said facility.

K. Subcontracting. CORPORATION shall not be prohibited from subcontracting any of the functions described herein, although CORPORATION shall notify CITY of any subcontract for services and have overall responsibility therefor.

L. Permits, Licenses, and Taxes. CORPORATION shall obtain, at its own expense, any and all permits and licenses which may be required by any public agency other than CITY for the exercise of said rights, licenses and privileges in connection with all operations. CORPORATION shall pay any and all taxes including but not limited to, sales and use taxes and possessory interest taxes, which might be assessed CORPORATION for whatever purpose in the operation of the golf course and all related facilities.

M. Receipts and Accounting. CORPORATION shall install and maintain a system of records and accounts that meet standard accounting practices.

CORPORATION shall make available to CITY all financial reports and records regarding its operation of the course at any reasonable time upon demand. Not later than 90 days following the close of each fiscal year, CORPORATION shall furnish to CITY a financial statement prepared by a qualified public accountant with his or her opinion annexed thereto, including but not limited to comparative balance sheets; comparative operating statements; and changes in investment, property and equipment.

N. Maintenance of Entry Road and Parking Lot. CORPORATION shall be responsible for the daily upkeep of asphalt roadway from Golf Course Road to the Clubhouse and Event Center and the asphalt parking lot i.e., litter pickup, debris removal, weed abatement.

IV. PROHIBITIONS

CORPORATION shall not do any of the following acts:

1. Assign or transfer this Agreement. CORPORATION may, however, subcontract for services to implement this Agreement.
2. Commit, permit or allow any nuisance or waste in, or injury to, the course, event center, pro shop, restaurant, driving range, maintenance facility, or any portion of them, or permit the use of any of the facilities for any illegal purpose.
3. Deny fair and equal use, or allow discriminatory use, of the premises and facilities or deny equal employment opportunities on the basis of race, color, sex, religion, ancestry, national origin, place of residence or membership or non-membership in any club, organization or other association, or in any arbitrary or discriminatory manner.
4. Allow any use of the facilities without first paying all fees for services provided including but not limited to golf play, events and special programs, and pro shop and restaurant purchases.
5. Violate any laws, rules or regulations governing the use of chemicals for control of weeds, diseases, and pests. Such laws and rules shall include, but not be limited to:
 - a) Laws found in the California Food and Agriculture Code with respect to:
 - (i) Restricted use pesticide permits and use.
 - (ii) Storage and transportation of pesticides.

- (iii) Pesticide worker safety.
 - (iv) Monthly pesticide use reports.
 - (v) Pest control operations and licensing for recommending use and applying pesticides.
- b) Regulations as found in the California Administrative Code as adopted by the Director of Food and Agriculture.
 - c) All pesticide use and operations need be done in strict accordance with the policies and procedures adopted by the Contra Costa County Agriculture Commissioner's office.

V.

UTILITIES

1. CORPORATION shall at all times adopt and implement best practices for water management for golf course operations, restaurant and facility operations and general landscaping. Best Management Practices for water conservation could be described as the combination of proper plant selection and cultural maintenance practices that provide adequate turf quality for the game of golf while minimizing water use.

2. CORPORATION shall be responsible for the cost of all utilities, except for untreated water used for irrigation. Untreated water is not available at will; CORPORATION shall provide a water use plan quarterly including a report and request for untreated water. CITY will monitor use of untreated water and to ensure proper use.

- a) CORPORATION shall pay all costs associated with the Solar Power Purchasing Agreement (PPA) project initiated in 2018.

3. CORPORATION shall abide by drought water delivery restrictions that may be announced from time to time by CITY or other regulatory agency. CORPORATION shall at all times make maximum use of water conservation techniques, which shall be regularly and consistently reviewed and reported.

4. Using recycled/reclaimed water to irrigate the golf course and landscaping helps preserve potable water for households and drinking. CORPORATION shall utilize reclaimed water as part of the water management plan for operations.

- a) Fees for recycled/reclaimed water take effect on October 1, 2018.

VI.

GENERAL OBLIGATIONS OF THE CITY

A. Rates and Pricing. CITY will not unreasonably disapprove rates and fees set by CORPORATION. CITY may, from time to time, review fees and charges to ensure reasonable competition and comparison with regional golf operations.

B. Roadway and Parking Lot Repairs. CITY will pay all expenditures needed to rebuild and repair, one time only, the roadway from Golf Course Road to the Clubhouse parking lot and repaint and restripe the complete parking lot area. The road will meet a Pavement Construction Index of at least 75 and be in good useable condition for a minimum of 12 years.

C. Financing. Previously, CORPORATION entered into agreements with CITY to finance improvements to the golf course and related facilities. Any outstanding payments owed to CITY by CORPORATION prior to the date of approval in this Agreement will be made null and void; CITY will oversee payments for loans and financing that have previously supported improvements to Lone Tree Golf Course.

D. Utilities. CITY will pay all expenditures associated with the provision of untreated water used for irrigation. Previously, CORPORATION was required to pay for untreated water provided by CITY. Any outstanding payments owed to CITY for use of untreated water will be made null and void.

1. Solar. CITY initiated a Solar Power Purchase Agreement (PPA) project in 2018 to benefit golf and facility operations; approved by City Council on January 9, 2018 and executed February 8, 2018. All net cost savings shall support Lone Tree Golf Course operations and improvements.

E. Communication. CITY shall meet with CORPORATION regularly to review golf and facility operations, communicate and share resource information and collaborate on future opportunities.

VII.

IMPROVEMENTS

A. Course Improvement. CORPORATION recognizes that CITY has entered into this Agreement with a nonprofit corporation so that all revenues in excess of actual, reasonable expense shall be returned to the facilities and business in terms of competitive and quality improvements in order to maintain and upkeep entire operational efforts to quality expectations defined herein.

CORPORATION shall not undertake any major alterations, additions, or improvements at the course without obtaining the prior consent of the CITY through the

regular meetings and communication established with any Committees or staff liaison. .

B. Financing of Improvements. CORPORATION is solely responsible for the cost and financing of any and all improvements and repairs regardless of the type and length of financing. CITY is not obligated and will not participate in capital improvement financing and will not provide any additional revenues for operations.

VIII.

LIABILITY AND WORKERS' COMPENSATION INSURANCE AND INDEMNIFICATION

A. Workers' Compensation and Liability Insurance. CORPORATION, at the time of execution of this Agreement, shall, at its sole expense, procure and at all times during the term of this Agreement maintain in full force and effect Workers' Compensation Insurance and Public Liability Insurance as follows:

1. A policy covering the frill liability of CORPORATION and all persons employed by it, directly or indirectly, or their dependents in accordance with the provisions of Division IV of the Labor Code of the State of California relating to Workers' Compensation Insurance.

2. A policy of Public Liability Insurance, including automobile insurance in, which CITY, its officers, employees and agents, shall be named as additional insureds insuring, indemnifying and saving harmless and agreeing to defend said additional insureds against all suits, claims or actions of any person or persons for or on account of any injury, or damages to persons or property, sustained or arising from the operation of CORPORATION included in this Agreement or in consequence thereof and to pay all judgments and costs of expenses in connection with litigation therewith. Said Public Liability Insurance shall provide for a limit of not less than \$1,000,000.00 combined single limit for all risks. Said policy or policies of insurance shall require that CITY be given 30 day notice prior to cancellation or change in any policy or policies.

The aforementioned policies shall be issued by an insurance carrier and shall be in form satisfactory to the City Attorney. In lieu of actual delivery of such policies, a certificate issued by the insurance carrier showing such policies to be in force for the period covered by the Agreement may be delivered to CITY.

B. Furnishings and Fixtures Insurance. CORPORATION shall insure any and all furnishings, fixtures, equipment, merchandise and supplies which it is either required to provide under the terms of this Agreement, or is furnished to it by CITY, against loss, or damage from fire, theft or any other cause, and shall provide to CITY insurance policies or certificates of insurance in sufficient amount and in proper form satisfactory to the City Attorney.

C. Hold Harmless. CORPORATION shall indemnify and hold harmless CITY and all of its officers, agents or employees from any and all claims arising out of or through accidents or otherwise which may occur due to CORPORATION's use of the premises, exercise of any of the rights, licenses, and privileges herein granted to CORPORATION or performance herein agreed by it, and shall defend said CITY, its officers, employees and agents in any suit, claim or action brought on account of any injury or damages to persons or property sustained or arising from the operations of CORPORATION, and to pay all judgments and costs of expenses in connection with litigation therewith.

IX. TERMINATION

A. Cause of Termination. CITY reserves the right to terminate this Agreement for nonperformance or inadequate performance. If, in the view of the City Council, CORPORATION has not performed adequately under the Agreement, it may cause a notice to be given to CORPORATION, specifying the areas of inadequate performance. The notice shall give CORPORATION 90 days in which to rectify or resolve the areas of inadequate performance. If the City Council remains unsatisfied, it may terminate the Agreement following a public hearing on such issue. Any resolution terminating the Agreement shall contain findings and reasons for the termination. Upon such termination, CITY shall assume responsibility for operation and maintenance of the golf course and facilities; however, CITY may make arrangements for another corporation, person, or entity to assume such responsibility.

In order to insure the continued success of the golf course, annual rounds need to be maintained to a level competitive to the marketplace and current industry, ultimately supporting and maintaining a fiscally viable business.

CORPORATION may also elect to terminate this Agreement upon the following grounds:

1. That CORPORATION finds itself unable to financially continue the operation and maintenance of the course and its facilities; or
2. That CORPORATION is in the process of dissolving, or has been dissolved.

CORPORATION shall give CITY at least six months notice of its intent to terminate the agreement. The City Council shall consider such matter at a public hearing.

CORPORATION shall specify the reasons for such termination. Upon such termination, CITY shall assume responsibility for operation and maintenance of all golf and related facilities.

B. Eminent Domain. If the entire premises shall be taken by condemnation by any governmental authority or conveyed in lieu of condemnation, or if a portion of the premises shall be so taken or conveyed so as to render the premises untenable for the purposes of this Agreement, this Agreement shall terminate as of the date possession shall be required by said governmental authority, and the parties shall be released from all further liability hereunder.

If only a portion of the premises shall be so taken or conveyed and the remainder of the premises is not thereby rendered untenable for the purposes of this Agreement, CITY shall, at its expense, restore the premises, as in its judgment after consultation with CORPORATION, is required by such taking, and this Agreement shall continue in force, otherwise unaffected.

The entire award or compensation on account of such condemnation or conveyance shall belong and shall be paid to CITY without deduction therefrom for any estate vested in CORPORATION, and CORPORATION shall receive no part of any such award or compensation except any portion of the award or compensation made specifically for CORPORATION's trade fixtures and equipment, provided that said portion shall in no way decrease the amount of award or compensation which would otherwise be payable to CITY.

Provided however that notwithstanding anything to the contrary herein, CITY shall pay to CORPORATION, from the condemnation payment or award, a sum representing the "agreed value" of CORPORATION's approved improvements to the golf course.

The agreed value of such improvements shall be determined, adjusting for depreciation on a straight-line basis over the useful life CORPORATION has assigned thereto. The date of the taking for purposes hereof shall be the date CORPORATION is required to relinquish possession.

C. CITY's Rights Upon Termination. Upon termination by either party, CITY shall have the following rights:

1. To recover from CORPORATION all the facilities and equipment which were transferred to CORPORATION for its use.
2. The right of first refusal on all equipment, merchandise, furnishings, fixtures, and supplies which were acquired by CORPORATION. CITY shall have the option to purchase such property at market value.
3. Any item of personal property which CITY has not designated for purchase and which is not removed by CORPORATION within 30 days of termination shall be deemed abandoned by CORPORATION, and absolute title thereto shall vest in CITY immediately.

X

MISCELLANEOUS PROVISIONS

A. Lease. This Agreement does not constitute a deed or grant of an easement by CITY and does not constitute a lease.

B. Succession to Reclamation Permit. CORPORATION shall succeed to the benefits and liabilities of the December 1, 1981 permit from the United States Department of the Interior, Bureau of Reclamation, granted to CITY. Further, CORPORATION shall succeed to the benefits and liabilities of all future permits issued CITY from the United States Department of the Interior, Bureau of Reclamation.

C. No Warranty of Suitability. CITY does not warrant or represent that the course, event center, restaurant, driving range, pro shop, or other public places to which this Agreement relates, are safe, healthful or suitable for the purposes for which they are permitted to be used under this Agreement.

D. Right to Enter. CITY, through the City Manager or his/her authorized representative may, upon reasonable notice, enter into the premises, including but not limited to the clubhouse, restaurant, event center and pro shop, at any and all reasonable times during the term of this Agreement for the purpose of determining whether CORPORATION is complying with the terms and conditions hereof or for any other purpose incidental to the rights of CITY for emergency reasons. CORPORATION shall be required to submit a key to all locked doors to the police department and shall also provide a key or other device to turn off the alarm system.

E. Failure to exercise Rights after Breach. Failure of CITY to insist upon a strict performance of any of the duties, obligations, conditions or covenants contained in this Agreement shall not be deemed a waiver of any subsequent breach or default in the duties, obligations, conditions or covenants herein contained.

F. Waiver of Claims against CITY. CORPORATION hereby waives any claim against CITY, the City Council and its officers, agents or employees for damages or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying any part of this Agreement from being carried out.

G. Mutual Drafting. This Agreement is the result of mutual drafting by the parties both of whom were represented by legal counsel. No interpretation shall be given to this Agreement based upon the identity of the drafter.

IN WITNESS WHEREOF, this Agreement is executed by the CITY OF ANTIOCH, pursuant to Resolution No. 2018/___ authorizing the City Manager to execute the Agreement by and between CITY and ANTIOCH PUBLIC GOLF, INC.,

CITY OF ANTIOCH:

ANTIOCH PUBLIC GOLF, INC:

Ron Bernal, City Manager

Sal Sbranti, President
Antioch Public Golf, Inc.

Date: _____

Date: _____

Attest:

Arne Simonsen, City Clerk

Approved as to Form:

Derek Cole, City Attorney

DRAFT

AGREEMENT FOR THE OPERATION AND MANAGEMENT OF THE ANTIOCH MUNICIPAL GOLF COURSE

THIS AGREEMENT is made and entered into on this _____ day of _____ by and between the CITY OF ANTIOCH, a municipal corporation, hereinafter called "CITY", and ANTIOCH PUBLIC GOLF, INC., a nonprofit public benefit corporation also known as the LONE TREE GOLF COURSE, hereinafter referred to as "CORPORATION".

RECITALS

A. CITY owns the Antioch Municipal Golf Course, which is a premier feature within the community and in need of continued management.

B. The parties previously entered into an Agreement for the Operation and Management of the Antioch Municipal Golf Course, also known as the Lone Tree Golf Course, dated May 25, 1982; Agreement has been extended and supplemented by various Amendments, and is currently set to expire on June 30, 2018.

C. CITY is satisfied with CORPORATION's performance under the Agreements and CITY desires to enter into an agreement in order to facilitate long-term planning for the improvement, enhancement and operation of the Golf Course.

D. CITY expects that the management of the golf course and related facilities meets the highest standard for operations, and shall provide patrons with a product and experience that is competitive for a public venue.

E. CORPORATION is willing and able to continue the operation and management of the golf course and related facilities with the intent and the obligation to enhance the desirability of the golf course, event center, restaurant and all facilities.

F. CORPORATION's sole purpose is to operate the golf course so that visitors have a highly valued experience; expenditures support operations and that revenues are returned to the facility to make improvements and ensure that the overall business remains competitive within the region.

G. CITY and CORPORATION recognize that promotion of the golf course, the event center and restaurant, and all related facilities is a primary factor towards increasing golf rounds, restaurant visits, and engaging community support.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants, conditions, and obligations of the Parties set forth herein, the CITY and CORPORATION hereby agrees as follows:

I.

TERM OF AGREEMENT

A. Term. The term of this Agreement shall be for a period of fifteen (15) years, ending June 30, 2033. This provision shall not prevent the parties from developing amendments to the agreement to ensure the best and most appropriate management of all operations.

B. Review. CITY and CORPORATION agree to review the terms of the Agreement and the operations of the golf course and all related facilities after three years of operating under these terms. Further review shall occur after five years, eight years and twelve years of operation respectively. CITY reserves the right to modify, amend, or update the agreement to best meet the needs of CITY.

C. Previous Agreements. All previous agreements between the Parties, including agreements relating to the improvement of the Golf Course, Event Center, Restaurant, and facilities, and financing thereof, are superseded by this Agreement.

II.

EXCLUSIVE USE

A. Licensee. CITY has granted CORPORATION the exclusive use of the Antioch Municipal Golf Course land and improvements. CORPORATION shall continue to occupy and operate the course, driving range, pro shop, event center, restaurant, and facilities as a licensee and not as a lessee.

B. Payment. CORPORATION shall submit annual payment for exclusive use of the Antioch Municipal Golf Course on the first day of June each year. First payment in the amount of \$20,000 shall be made June, 2019. Each payment in subsequent years will be subject to adjustment based on the percentage change in San Francisco Bay Area Consumer Price Index, but in no event shall it exceed 5% per year.

III.

GENERAL OBLIGATIONS OF CORPORATION

A. Course Supervision. CORPORATION is responsible for the general operation of the play on the course insofar as the playing and golfing public is concerned, shall enforce all rules and regulations which are adopted by CORPORATION from time to time, and shall assume responsibility for policing the course, keeping off trespassers, preventing injury to the course by players and others and preserving proper order in and about the general premises including restaurant and event center.

B. General Manager. CORPORATION may hire a General Manager/Golf Professional or other individual who is well qualified to be in charge of the operation and management of the golf course, the clubhouse, restaurant, event center, range, pro shop, maintenance facilities and all other operations and amenities on the property. The manager will be familiar with best practices within the golf industry and apply the highest levels of professional services while managing Lone Tree Golf Course.

C. Course Hours of Operation. The course, including the golf course, clubhouse, pro shop, driving range, restaurant, event center and restrooms shall be kept open daily, including Saturdays, Sundays, and holidays with the exception of Christmas Day, during such hours as there is public demand therefor. A competent representative of CORPORATION shall be present and on duty at the course each day from sunrise to sunset. There shall be no obligation to keep the course open when it is unplayable, although the clubhouse, restaurant, and event center shall remain open during regular business hours.

D. Fees. CORPORATION shall establish greens fees and other charges for the play of golf as are reasonable and similar to comparable golf courses within the region. Fees for restaurant pricing, event center pricing and other charges for business purposes shall be established to cover all costs associated with operations.

CORPORATION shall ensure that no person is allowed to play on the course, host an event, or patronize the restaurant without having first paid appropriate fees or rates as are established by the Corporation.

CITY may review fees as needed to ensure that costs for operations are met and all expenditures are covered by revenues.

E. Golf Lessons and Instruction. CORPORATION shall make provisions for industry leading instruction to be given in the game of golf, so that the increased play of golf is encouraged and enjoyed.

F. Pro Shop Merchandise for Sale and Rent. CORPORATION shall at all times keep and maintain for sale and rental when appropriate a stock of merchandise, supplies and equipment in keeping with the demand and suitable for use upon the course including but not limited to clothing, golf clubs, golf bags, golf carts, golf shoes, tees, books and other golfing equipment and supplies.

G. Other Business Activities. CORPORATION may carry on such other business activities on the premises as are compatible with the game of golf and the facilities. Activities may include but are not limited to the renting out of the facility for private receptions or parties. Such activities shall not interfere with the game of golf or, must adequately compensate for lost revenue due to golf revenues being impacted. The clubhouse, event center, and restaurant are deemed to be premier community amenities, and be available for use by the public for receptions and banquets. The

clubhouse, event center, and restaurant shall be maintained and operated competitively and profitably, offering quality food, beverage, and service comparable in quality and price to similar facilities in the region.

H. Course Promotion. CORPORATION shall have the responsibility to advertise and promote golf and tournaments, banquets & events, activities, the driving range and the restaurant facility, and any remaining services, to increase rounds of play, number of visitors and general community support for the facility. CORPORATION shall promote the facility as a public, municipal course and strive to reach a minimum of 40,000 rounds of golf each year.

I. Course Maintenance and Repairs. CORPORATION shall properly maintain the course, including the trees, greens, fairways, fencing and netting, and Clubhouse landscaping. CORPORATION shall also service and maintain all equipment associated with course and clubhouse maintenance. Maintenance shall be a continuing obligation, so that the course, greens, fairways and grounds are safe, attractive and in a quality and competitive condition that promotes the use of all aspects of the facility.

CORPORATION shall implement conservation practices whenever possible, or required by regulating agencies.

CORPORATION is solely responsible for the repairs and renovation of all features within the golf course, restaurant, clubhouse, event center, maintenance yard and open areas within the boundaries of the Lone Tree Golf Course.

J. Consultations. CORPORATION recognizes the need to communicate with users of the golf course facilities and also recognizes that the best interest of the community and the users of the facilities can be best served by maintaining an open line of communication. CORPORATION shall utilize all communication practices that are traditional and innovative with any person or group within the community that has an interest in the operation of the said facility.

K. Subcontracting. CORPORATION shall not be prohibited from subcontracting any of the functions described herein, although CORPORATION shall notify CITY of any subcontract for services and have overall responsibility therefor.

L. Permits, Licenses, and Taxes. CORPORATION shall obtain, at its own expense, any and all permits and licenses which may be required by any public agency other than CITY for the exercise of said rights, licenses and privileges in connection with all operations. CORPORATION shall pay any and all taxes including but not limited to, sales and use taxes and possessory interest taxes, which might be assessed CORPORATION for whatever purpose in the operation of the golf course and all related facilities.

M. Receipts and Accounting. CORPORATION shall install and maintain a system of records and accounts that meet standard accounting practices.

CORPORATION shall make available to CITY all financial reports and records regarding its operation of the course at any reasonable time upon demand. Not later than 90 days following the close of each fiscal year, CORPORATION shall furnish to CITY a financial statement prepared by a qualified public accountant with his or her opinion annexed thereto, including but not limited to comparative balance sheets; comparative operating statements; and changes in investment, property and equipment.

N. Maintenance of Entry Road and Parking Lot. CORPORATION shall be responsible for the daily upkeep of asphalt roadway from Golf Course Road to the Clubhouse and Event Center and the asphalt parking lot i.e., litter pickup, debris removal, weed abatement.

IV. PROHIBITIONS

CORPORATION shall not do any of the following acts:

1. Assign or transfer this Agreement. CORPORATION may, however, subcontract for services to implement this Agreement.
2. Commit, permit or allow any nuisance or waste in, or injury to, the course, event center, pro shop, restaurant, driving range, maintenance facility, or any portion of them, or permit the use of any of the facilities for any illegal purpose.
3. Deny fair and equal use, or allow discriminatory use, of the premises and facilities or deny equal employment opportunities on the basis of race, color, sex, religion, ancestry, national origin, place of residence or membership or non-membership in any club, organization or other association, or in any arbitrary or discriminatory manner.
4. Allow any use of the facilities without first paying all fees for services provided including but not limited to golf play, events and special programs, and pro shop and restaurant purchases.
5. Violate any laws, rules or regulations governing the use of chemicals for control of weeds, diseases, and pests. Such laws and rules shall include, but not be limited to:
 - a) Laws found in the California Food and Agriculture Code with respect to:
 - (i) Restricted use pesticide permits and use.
 - (ii) Storage and transportation of pesticides.

- (iii) Pesticide worker safety.
 - (iv) Monthly pesticide use reports.
 - (v) Pest control operations and licensing for recommending use and applying pesticides.
- b) Regulations as found in the California Administrative Code as adopted by the Director of Food and Agriculture.
 - c) All pesticide use and operations need be done in strict accordance with the policies and procedures adopted by the Contra Costa County Agriculture Commissioner's office.

V. UTILITIES

1. CORPORATION shall at all times adopt and implement best practices for water management for golf course operations, restaurant and facility operations and general landscaping. Best Management Practices for water conservation could be described as the combination of proper plant selection and cultural maintenance practices that provide adequate turf quality for the game of golf while minimizing water use.

2. CORPORATION shall be responsible for the cost of all utilities, except for untreated water used for irrigation. Untreated water is not available at will; CORPORATION shall provide a water use plan quarterly including a report and request for untreated water. CITY will monitor use of untreated water and to ensure proper use.

- a) CORPORATION shall pay all costs associated with the Solar Power Purchasing Agreement (PPA) project initiated in 2018.

3. CORPORATION shall abide by drought water delivery restrictions that may be announced from time to time by CITY or other regulatory agency. CORPORATION shall at all times make maximum use of water conservation techniques, which shall be regularly and consistently reviewed and reported.

4. Using recycled/reclaimed water to irrigate the golf course and landscaping helps preserve potable water for households and drinking. CORPORATION shall utilize reclaimed water as part of the water management plan for operations.

- a) Fees for recycled/reclaimed water take effect on October 1, 2018.

VI.

GENERAL OBLIGATIONS OF THE CITY

A. Rates and Pricing. CITY will not unreasonably disapprove rates and fees set by CORPORATION. CITY may, from time to time, review fees and charges to ensure reasonable competition and comparison with regional golf operations.

B. Roadway and Parking Lot Repairs. CITY will pay all expenditures needed to rebuild and repair, one time only, the roadway from Golf Course Road to the Clubhouse parking lot and repaint and restripe the complete parking lot area. The road will meet a Pavement Construction Index of at least 75 and be in good useable condition for a minimum of 12 years.

C. Financing. Previously, CORPORATION entered into agreements with CITY to finance improvements to the golf course and related facilities. Any outstanding payments owed to CITY by CORPORATION prior to the date of approval in this Agreement will be made null and void; CITY will oversee payments for loans and financing that have previously supported improvements to Lone Tree Golf Course.

D. Utilities. CITY will pay all expenditures associated with the provision of untreated water used for irrigation. Previously, CORPORATION was required to pay for untreated water provided by CITY. Any outstanding payments owed to CITY for use of untreated water will be made null and void.

1. Solar. CITY initiated a Solar Power Purchase Agreement (PPA) project in 2018 to benefit golf and facility operations; approved by City Council on January 9, 2018 and executed February 8, 2018. All net cost savings shall support Lone Tree Golf Course operations and improvements.

E. Communication. CITY shall meet with CORPORATION regularly to review golf and facility operations, communicate and share resource information and collaborate on future opportunities.

VII.

IMPROVEMENTS

A. Course Improvement. CORPORATION recognizes that CITY has entered into this Agreement with a nonprofit corporation so that all revenues in excess of actual, reasonable expense shall be returned to the facilities and business in terms of competitive and quality improvements in order to maintain and upkeep entire operational efforts to quality expectations defined herein.

CORPORATION shall not undertake any major alterations, additions, or improvements at the course without obtaining the prior consent of the CITY through the

regular meetings and communication established with any Committees or staff liaison. .

B. Financing of Improvements. CORPORATION is solely responsible for the cost and financing of any and all improvements and repairs regardless of the type and length of financing. CITY is not obligated and will not participate in capital improvement financing and will not provide any additional revenues for operations.

VIII.

LIABILITY AND WORKERS' COMPENSATION INSURANCE AND INDEMNIFICATION

A. Workers' Compensation and Liability Insurance. CORPORATION, at the time of execution of this Agreement, shall, at its sole expense, procure and at all times during the term of this Agreement maintain in full force and effect Workers' Compensation Insurance and Public Liability Insurance as follows:

1. A policy covering the frill liability of CORPORATION and all persons employed by it, directly or indirectly, or their dependents in accordance with the provisions of Division IV of the Labor Code of the State of California relating to Workers' Compensation Insurance.

2. A policy of Public Liability Insurance, including automobile insurance in, which CITY, its officers, employees and agents, shall be named as additional insureds insuring, indemnifying and saving harmless and agreeing to defend said additional insureds against all suits, claims or actions of any person or persons for or on account of any injury, or damages to persons or property, sustained or arising from the operation of CORPORATION included in this Agreement or in consequence thereof and to pay all judgments and costs of expenses in connection with litigation therewith. Said Public Liability Insurance shall provide for a limit of not less than \$1,000,000.00 combined single limit for all risks. Said policy or policies of insurance shall require that CITY be given 30 day notice prior to cancellation or change in any policy or policies.

The aforementioned policies shall be issued by an insurance carrier and shall be in form satisfactory to the City Attorney. In lieu of actual delivery of such policies, a certificate issued by the insurance carrier showing such policies to be in force for the period covered by the Agreement may be delivered to CITY.

B. Furnishings and Fixtures Insurance. CORPORATION shall insure any and all furnishings, fixtures, equipment, merchandise and supplies which it is either required to provide under the terms of this Agreement, or is furnished to it by CITY, against loss, or damage from fire, theft or any other cause, and shall provide to CITY insurance policies or certificates of insurance in sufficient amount and in proper form satisfactory to the City Attorney.

C. Hold Harmless. CORPORATION shall indemnify and hold harmless CITY and all of its officers, agents or employees from any and all claims arising out of or through accidents or otherwise which may occur due to CORPORATION's use of the premises, exercise of any of the rights, licenses, and privileges herein granted to CORPORATION or performance herein agreed by it, and shall defend said CITY, its officers, employees and agents in any suit, claim or action brought on account of any injury or damages to persons or property sustained or arising from the operations of CORPORATION, and to pay all judgments and costs of expenses in connection with litigation therewith.

IX. TERMINATION

A. Cause of Termination. CITY reserves the right to terminate this Agreement for nonperformance or inadequate performance. If, in the view of the City Council, CORPORATION has not performed adequately under the Agreement, it may cause a notice to be given to CORPORATION, specifying the areas of inadequate performance. The notice shall give CORPORATION 90 days in which to rectify or resolve the areas of inadequate performance. If the City Council remains unsatisfied, it may terminate the Agreement following a public hearing on such issue. Any resolution terminating the Agreement shall contain findings and reasons for the termination. Upon such termination, CITY shall assume responsibility for operation and maintenance of the golf course and facilities; however, CITY may make arrangements for another corporation, person, or entity to assume such responsibility.

In order to insure the continued success of the golf course, annual rounds need to be maintained to a level competitive to the marketplace and current industry, ultimately supporting and maintaining a fiscally viable business.

CORPORATION may also elect to terminate this Agreement upon the following grounds:

1. That CORPORATION finds itself unable to financially continue the operation and maintenance of the course and its facilities; or
2. That CORPORATION is in the process of dissolving, or has been dissolved.

CORPORATION shall give CITY at least six months notice of its intent to terminate the agreement. The City Council shall consider such matter at a public hearing.

CORPORATION shall specify the reasons for such termination. Upon such termination, CITY shall assume responsibility for operation and maintenance of all golf and related facilities.

B. Eminent Domain. If the entire premises shall be taken by condemnation by any governmental authority or conveyed in lieu of condemnation, or if a portion of the premises shall be so taken or conveyed so as to render the premises untenable for the purposes of this Agreement, this Agreement shall terminate as of the date possession shall be required by said governmental authority, and the parties shall be released from all further liability hereunder.

If only a portion of the premises shall be so taken or conveyed and the remainder of the premises is not thereby rendered untenable for the purposes of this Agreement, CITY shall, at its expense, restore the premises, as in its judgment after consultation with CORPORATION, is required by such taking, and this Agreement shall continue in force, otherwise unaffected.

The entire award or compensation on account of such condemnation or conveyance shall belong and shall be paid to CITY without deduction therefrom for any estate vested in CORPORATION, and CORPORATION shall receive no part of any such award or compensation except any portion of the award or compensation made specifically for CORPORATION's trade fixtures and equipment, provided that said portion shall in no way decrease the amount of award or compensation which would otherwise be payable to CITY.

Provided however that notwithstanding anything to the contrary herein, CITY shall pay to CORPORATION, from the condemnation payment or award, a sum representing the "agreed value" of CORPORATION's approved improvements to the golf course.

The agreed value of such improvements shall be determined, adjusting for depreciation on a straight-line basis over the useful life CORPORATION has assigned thereto. The date of the taking for purposes hereof shall be the date CORPORATION is required to relinquish possession.

C. CITY's Rights Upon Termination. Upon termination by either party, CITY shall have the following rights:

1. To recover from CORPORATION all the facilities and equipment which were transferred to CORPORATION for its use.
2. The right of first refusal on all equipment, merchandise, furnishings, fixtures, and supplies which were acquired by CORPORATION. CITY shall have the option to purchase such property at market value.
3. Any item of personal property which CITY has not designated for purchase and which is not removed by CORPORATION within 30 days of termination shall be deemed abandoned by CORPORATION, and absolute title thereto shall vest in CITY immediately.

X

MISCELLANEOUS PROVISIONS

A. Lease. This Agreement does not constitute a deed or grant of an easement by CITY and does not constitute a lease.

B. Succession to Reclamation Permit. CORPORATION shall succeed to the benefits and liabilities of the December 1, 1981 permit from the United States Department of the Interior, Bureau of Reclamation, granted to CITY. Further, CORPORATION shall succeed to the benefits and liabilities of all future permits issued CITY from the United States Department of the Interior, Bureau of Reclamation.

C. No Warranty of Suitability. CITY does not warrant or represent that the course, event center, restaurant, driving range, pro shop, or other public places to which this Agreement relates, are safe, healthful or suitable for the purposes for which they are permitted to be used under this Agreement.

D. Right to Enter. CITY, through the City Manager or his/her authorized representative may, upon reasonable notice, enter into the premises, including but not limited to the clubhouse, restaurant, event center and pro shop, at any and all reasonable times during the term of this Agreement for the purpose of determining whether CORPORATION is complying with the terms and conditions hereof or for any other purpose incidental to the rights of CITY for emergency reasons. CORPORATION shall be required to submit a key to all locked doors to the police department and shall also provide a key or other device to turn off the alarm system.

E. Failure to exercise Rights after Breach. Failure of CITY to insist upon a strict performance of any of the duties, obligations, conditions or covenants contained in this Agreement shall not be deemed a waiver of any subsequent breach or default in the duties, obligations, conditions or covenants herein contained.

F. Waiver of Claims against CITY. CORPORATION hereby waives any claim against CITY, the City Council and its officers, agents or employees for damages or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying any part of this Agreement from being carried out.

G. Mutual Drafting. This Agreement is the result of mutual drafting by the parties both of whom were represented by legal counsel. No interpretation shall be given to this Agreement based upon the identity of the drafter.

IN WITNESS WHEREOF, this Agreement is executed by the CITY OF ANTIOCH, pursuant to Resolution No. 2018/___ authorizing the City Manager to execute the Agreement by and between CITY and ANTIOCH PUBLIC GOLF, INC.,

CITY OF ANTIOCH:

ANTIOCH PUBLIC GOLF, INC:

Ron Bernal, City Manager

Sal Sbranti, President
Antioch Public Golf, Inc.

Date: _____

Date: _____

Attest:

Arne Simonsen, City Clerk

Approved as to Form:

Derek Cole, City Attorney

DRAFT