

GOLF COURSE MANAGEMENT AGREEMENT

This Golf Course Management Agreement (“Agreement”) is entered into by and between the City of Brookings, an Oregon municipal corporation (the “City”), and Early Management Team, Inc., an Oregon corporation (EMT), whereby EMT will provide golf course management services.

RECITALS

- A. The City owns a golf course known as Salmon Run Golf Course, located at 99040 South Bank Chetco River Rd (the property and the improvements are herein referred to as the “Golf Course”).
- B. Salmon Run Golf Course consists of an 18-hole golf course, driving range, shop building, clubhouse and associated business operation.
- C. EMT has expressed a willingness to manage the golf course for the City.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- 1.0 **MANAGEMENT.** City hereby retains, engages and appoints EMT as City’s agent to supervise, manage, direct, and operate the Golf Course on behalf of and for the account of City. EMT hereby accepts said appointment upon and subject to the terms and conditions hereof and at all times consistent with the Business Plan approved by City. City hereby delegates to EMT the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, fees and other pricing, and other policies, rules, and regulations affecting the Golf Course or the operation thereof, to implement all of same, and to perform any act on behalf of City deemed by EMT to be necessary or desirable for the operation and maintenance of the Golf Course. EMT shall have the authority and responsibility for the administration, operation and management of the Golf Course, including, without limitation, course maintenance, building maintenance, equipment maintenance, food and beverage provision, merchandise, service, accounting and financial reporting.
- 2.0 **TERM.** This Agreement has a term of 36 months, commencing on May 20, 2016 and terminating on May 19, 2019. This Agreement may be extended for two additional 36 month periods upon the written consent of both parties.
- 3.0 **BUSINESS PLAN.** EMT has developed a Business Plan attached hereto as Exhibit A. It is acknowledged that the parties have entered into this Agreement with reliance upon said Business Plan.

3.01 As conditions warrant, EMT shall revise the Business Plan and present revisions to the City for approval. EMT shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the Business Plan since the parties acknowledge that the Business Plan is intended to set forth objectives and goals based upon EMT's judgment and the facts and circumstances known by EMT at the time of preparation.

3.02 On an annual basis, EMT and City shall ~~update-meet to review~~ the Business Plan ~~no later than July 1 and submit it to City for City's review and written approval. City shall give its comments and/or approval of the updated Business Plan within thirty (30) calendar days after receiving the Business Plan from EMT. In the event of disapproval of the Business Plan (or any portion thereof), EMT shall use commercially reasonable efforts to operate the Golf Course pursuant to the terms of this Agreement until such time as City and EMT agree upon revisions to the Business Plan, and make such adjustments as the parties deem necessary and appropriate.~~

4.0 SCOPE OF SERVICES. EMT will provide all labor and materials, unless otherwise specified in this Agreement, for the operation and maintenance of the Golf Course including, but not limited to, the following:

- a. Supervision of the starting of play by golfers.
- b. Supervision of play on the course.
- c. Enforcement of all rules and regulations relative to the golf course.
- d. Establish and collect greens fees and membership fees.
- e. Provision and maintenance of rental equipment, (i.e. carts, clubs).
- f. Provide an operating fleet of carts to handle the requirements of the course; return carts to storage area each evening; account for all carts at end of the day; collection of fees for use of carts.
- g. Organize, supervise and direct volunteers
- h. Maintain all internal signs
- i. Provision of range balls that are in a reasonable condition for rental; keep range tee area neat.
- j. Provide proper and professional maintenance for course fairways, driving range, greens, shrubs and trees. EMT will at its sole cost and expense be responsible for supplies and labor to meet this requirement excluding irrigation water supply. Watering to be done at night as much as possible.
- k. Operate and maintain a friendly, reputable pro shop, practice range and golf course.
- l. Maintain the Pro Shop in a clean, presentable, and well stocked condition; keep the Pro Shop open during normal hours of operation; keep knowledgeable staff on hand to help until all bags and carts have been returned each day and play is finished.
- m. Maintain score cards, divot tools, tees and golf balls at all time.
- n. Organize, advertise and operate golf tournaments.
- o. Market the golf course and events.
- p. Operate the clubhouse, event tent, and outside meeting, snacking area.

q. Repair and maintenance of golf carts, mowers and tractors and other equipment.
~~q.i.~~ Repair irrigation distribution pipe, sprinkler heads, valves, controller boxes, controller component and software.

4.01 EMT shall comply with City purchasing regulations with respect to purchase of parts and materials subject to reimbursement under this agreement. Specifically, EMT shall attempt to secure at least three quotes for all purchases of \$1,000 or more. All purchases of \$1,000 or more shall be approved by City in advance.

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5.0 RESPONSIBILITIES OF CITY. City shall be responsible for the following:

- a. Maintaining the access road in good repair
- b. Maintaining cart roads in good repair
- c. Maintaining bridge structure in good repair
- d. Maintaining roadside drainage, ditches and culverts
- e. Maintaining potable water system, including source of supply, treatment and distribution
- f. Maintaining equipment and piping used to extract irrigation water from the Freeman Ranch well and the transmission main connecting to the golf course irrigation system
- g. Maintaining the on-site sewage collection system, but not including periodic pumping of the septic tank
- h. Maintaining the shop building structure including roof
- i. Providing and maintaining an event tent adjacent to the clubhouse
- j. Providing and maintaining an entrance sign at South Bank Chetco River Road
- k. Service direction signs on Highway 101 from the Oregon Department of Transportation
- ~~k.i.~~ Provide irrigation distribution pipe, sprinkler heads, valves, controller boxes, controller components and software.

6.0 CONDITION OF PROPERTY. EMT will accept all properties, facilities, and equipment "as is" in their present existing condition. The City and EMT will work together to identify urgent needs for construction and repair of facilities during the term of this Agreement. The parties will agree as to which party will be responsible for making the repairs on a project by project basis.

7.0 USE OF PROPERTY. City hereby grants to EMT the right to use the property that constitutes the Golf Course for the purposes set forth herein (it being understood that the right of possession remains with the City and that the City may enter Golf Course at any time).

7.01 City Tournaments. EMT agrees to waive entry fees (consisting of green fees and cart fees) for the use of the Golf Course for the conduct of one city-sponsored fundraising tournament annually.

8.0 UTILITIES. All utilities, including, but not limited to, telephone, internet, electric, gas, sewage/garbage, cable, and all other utilities will be the responsibility of EMT. The provision of both potable and irrigation water will be the responsibility of the City.

9.0 SECURITY. EMT will at all times during the term of this Agreement provide adequate security and safety measures necessary to protect the Golf Course and any persons, including EMT's employees, invitees, agents, and members of the general public, from risk of harm arising from EMT's management of the Golf Course.

10.0 JACK CREEK. EMT will endeavor to retain the natural golf features and aesthetic beauty of Jack Creek Valley. EMT will work closely with the appropriate governmental agencies to meet this obligation. EMT will not use any pesticides or fertilizers which require a permit, or allow any pesticides or fertilizers to enter Jack Creek.

11.0 WASTE. EMT must not commit or suffer to be committed any waste upon the Golf Course premises or allow any nuisance, unreasonable noise, odor, or other act or thing that may disturb the quiet enjoyment of any other person(s) or entities located on or near the Golf Course premises.

12.0 DISASTER ASSISTANCE. In the event the golf course suffers damage as a result of a disaster event declared by the President, whereby disaster assistance funds are made available for public facilities, City shall apply for assistance to fund debris removal and repairs at the Golf Course.

13.0 EQUIPMENT. EMT may use City-owned equipment secured as a part of the Settlement Agreement with Wild Rivers Golf Management for the purpose of maintaining and operating the Golf Course. EMT shall be responsible for maintenance and repair of said equipment. EMT shall notify City when such equipment is no longer serviceable or no longer of use and shall assist the City in the disposal of said equipment. Thereafter, EMT shall be responsible for providing replacement equipment as needed which will be an asset of EMT. Attached hereto as Exhibit B is a listing of City-owned equipment as of the execution this Agreement.

13.01 Carts. City agrees to enter into a lease/purchase agreement or otherwise secure financing for the purchase of 48 golf carts from a third party. EMT agrees to pay to City an amount equal to the monthly lease and/or purchase payment. Upon final payment on said financing, ownership of the carts shall be transferred to EMT. EMT shall at all times be responsible for the maintenance and repair of said carts. EMT may purchase or lease additional carts at their discretion and at their expense.

13.02 Equipment Replacement. City and EMT will develop plan for equipment replacement, including financing.

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14.0 SAFETY.

14.01 Unsafe Conditions. EMT must immediately correct any unsafe condition of the Golf Course or unsafe practices occurring thereon, as well as comply with all applicable safety laws. EMT must cooperate and comply fully with City, County,

State, Federal or any other regulatory agency having jurisdiction thereover regarding any safety inspections and certifications of any and all structures, enclosures, vehicles, and equipment.

- 14.02 Emergency Assistance and Notification. EMT must take commercially reasonable steps, such as call 9-1-1, in order to obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring at the Golf Course and agrees to cooperate fully with City in the investigation of any accidental injury or death occurring at the Golf Course. EMT must submit a report within twenty-four (24) hours to the City Manager of any accidental injury requiring ambulance response or death.
- 14.03 Fire Protection. City shall provide fire protection services for the Golf Course and shall, at its discretion, locate fire suppression equipment at Golf Course. City may provide Golf Course employees with training in use of said equipment.
- 15.0 SUPERVISION. EMT shall report to and take direction from the City Manager. EMT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting of all funds. EMT will submit a quarterly financial report to the City Manager detailing all expenses and income for each month.
- 16.0 INSURANCE. EMT must obtain and maintain during the term of this Agreement, and any extension thereof, the following types of insurance at EMT's sole expense.
- 16.01 Commercial General Liability. CGL insurance with not less than the following limits, and endorsed to include the City of Brookings as an additional insured, shall be provided by EMT:
- a. General aggregate: \$2,000,000.
 - b. Completed operation aggregate \$2,000,000.
 - c. Personal and advertising - injury \$1,000,000 each occurrence.
 - d. Fire damage: \$100,000
 - e. Medical expense \$10,000
 - f. Umbrella Liability Aggregate: \$1,000,000
- 16.02 Workers' Compensation Insurance. Workers compensation insurance shall be required under the Laws of the State of Oregon.
- 16.03 Automobile Insurance. Automobile insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:
- a. Bodily injury: \$1,000,000 per person \$1,000,000 per accident.
 - b. Property damage: \$500,000 per accident basis.

16.04 Primary Insurance. EMT's insurance policies, with respect to any claims related to this Agreement, will be primary with respect to all other sources of coverage available. Any City maintained insurance or self-insurance coverage will be in excess of and not contribute to any of EMT's coverage.

17.0 INDEPENDENT CONTRACTOR. EMT services shall be furnished by EMT as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by EMT as an independent contractor. EMT acknowledges that the compensation for all services provided under this Agreement is specified in the Agreement and EMT is not entitled to any City benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to City employees. EMT represents that EMT maintains a separate place of business, serves clients other than the City, will report all income and expenses accrued under this contract as applicable to the Internal Revenue Service, and has a tax account with the State of Oregon for payment of all applicable taxes collected by the State of Oregon. Neither EMT nor any of its employees are eligible to receive any of the rights or benefits otherwise available to City employees. EMT shall be free from the direction and control of the City over the means and manner of performing services under this Agreement, subject only to the right of the City to specify the desired results. EMT shall be solely responsible for payment of all taxes, fees, and salaries due its employees as required by law or other agreement.

17.01 Personnel. EMT represents that it will secure at his own expense, all personnel required to perform the services under this Agreement. Such personnel shall not be employees of nor have any contractual relationship with the City. Such personnel shall be compensated solely by EMT.

17.02 Employees. EMT shall: (1) determine personnel requirements, recruitment schedules, and compensation levels; (2) furnish job descriptions for full-time, and operational and procedural manuals for all personnel; and (3) establish forms and procedures for employee compensation. EMT shall hire, promote, discharge, and supervise all employees performing services in and about the Golf Course. All of the employees of the Golf Course shall be employees of EMT. City must approve in advance and in writing the hiring of EMT's general manager. Such approval shall not be unreasonably withheld.

17.03 Supervision. All of the services required hereunder will be performed by EMT or under its supervision and all personnel engaged in the work shall be fully qualified and authorized or permitted under state and local law to perform such services.

17.04 Subcontracting. EMT shall negotiate, consummate, enter into, and perform such agreements as EMT may deem necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as EMT determines are needed from time to time for the management and operation of the Golf Course. Notwithstanding the above, any contract that exceeds Ten Thousand Dollars (\$10,000) in total payments over the term of such contract or which has a term of more than one (1) year shall require the prior written consent of City.

17.04.1 Oceanside Diner/Jack Creek Café. It is recognized that, at the time of first execution of this Agreement, Oceanside Diner, dba Jack Creek Café, is conducting business within the clubhouse building under a letter agreement with the City of Brookings. ~~The parties agree that EMT may shall~~ enter into a subcontract agreement with Oceanside Diner/Jack Creek Café or successor for the continuing operation of said food service and restaurant not later than November 1, 2017. This section is not to be interpreted as requiring EMT to contract for the provision of food service or a restaurant.

17.05 Repairs. EMT shall use commercially reasonable efforts to make, or cause to be made, all necessary and proper repairs in and to Salmon Run in order to keep and maintain the same in good repair, working order and condition (normal wear and tear excepted), and outfitted and equipped for the proper operation thereof.

17.05.1. EMT shall invoice City for the cost of all materials and supplies associated with maintenance as provided in Sections 4.0(r) and 5.0(l). Upon prior written authorization by City, EMT may perform repair work listed in Section 5.0 and receive reimbursement for actual costs.

17.05.2 EMT and City, through its Public Works and Development Services Department, shall develop a plan to address drainage and grading needs at the golf course. Said plan shall identify corrective measures, estimated costs, sources of funds, and a schedule of work for incrementally correcting flooding and other course physical constraints to extended season use.

17.06 Licenses, Permits and Accreditations. EMT shall apply for and use its commercially reasonable efforts to obtain and maintain, in City's name (or, if otherwise required by applicable law, in EMT's name) all licenses, permits, and accreditations required in connection with the management and operation of the Golf Course. City will reasonably cooperate with EMT in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

17.07 Fee. EMT's fee will consist of retaining any income, subject to the following, realized as a result of EMT's management of the Golf Course under this

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Agreement. EMT will not charge a monthly fee. EMT shall provide City with a copy of EMT U.S. Corporation Income Tax Return (IRS Form 1120) not later than May 15 of each year. EMT shall retain as a management fee 100 percent of the first \$50,000 of Taxable Income as shown on Line 30 of Form 1120 and 80 percent of Taxable Income in excess of \$50,000. EMT shall remit to City the aforementioned percent of Taxable Income in excess not later than June 1 of the calendar year in which the federal income tax is payable.

17.08 Fee Upon Term Extension. The amount of Fee provided in 17.07 shall be subject to renegotiation upon extension of this Agreement as provided in Section 7.0.

17.09 Disposition of funds remitted to City. Monies remitted to City under Section 17.07 shall be used by City to pay for capital projects and major maintenance to golf course buildings, roads, drainage systems and other infrastructure.

~~17.09~~ 17.10 City and EMT shall develop a plan for expansion or relocation of the driving range, including acquisition of additional land.

18.0 ACCOUNTING AND REPORTING. EMT shall at all times maintain accounting records in a format consistent (in all material respects) with generally accepted accounting practices. EMT shall provide the following financial statements in a format reasonably specified by City:

18.01 Quarterly Statement. EMT shall submit to City, within twenty (20) calendar days after the close of each calendar month, a financial statement showing in reasonably accurate detail the financial activities of Salmon Run for the preceding calendar month and the calendar year to date.

18.02 Annual Statement. EMT shall submit to City, within sixty (60) calendar days after the close of each calendar year, a financial statement showing in reasonably accurate detail the financial activities of Salmon Run for the calendar year then ended.

19.0 INTERNAL CONTROL. EMT agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Golf Course, such controls to be consistent with generally accepted accounting practices and principles.

20.0 RECORDS INSPECTION. EMT shall maintain a complete set of all financial, vendor, employee and operating records relating to the Golf Course. At any time during the term of this Agreement, City shall have the right, to inspect the books, records, invoices, deposits, canceled checks, or other financial data or transactions of the Golf Course at reasonable times and during normal business hours. City reserves the right to engage an

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independent auditor to audit the financial activities of the Golf Course. Upon expiration or termination of this Agreement, EMT will promptly turn over all such records or copies of such records to City.

- 21.0 **DEFAULT.** The occurrence of any one or more of the following events, which is not cured in any applicable grace period, shall constitute a default under this Agreement (hereinafter referred to as an “Event of Default”):
- 21.01 **Failure to Comply.** Either party’s failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement that is not cured within thirty (30) calendar days after written notice thereof from the other party to specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any failure cannot with due diligence be cured within such thirty (30) day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.
- 21.02 **Bankruptcy.** If either party: (1) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property; (2) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature; (3) makes a general assignment for the benefit of creditors; (4) is adjudicated as bankrupt or insolvent; or (5) files a voluntary petition in bankruptcy or a petition of an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing.
- 21.03 **Reorganization, Receiver.** If an order, judgment, or decree is entered without the application, approval, or consent of the party by a court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) calendar days from the date of entry thereof.
- 21.04 **Fraud.** If either party has reasonable grounds to suspect that the other party has committed an act of fraud involving the provision of services under this Agreement including any acts of fraud suspected against the corporate officers, directors, employees or agents of either party.

22.0 WRITTEN NOTICE OF TERMINATION. Upon proper termination of this Agreement, EMT shall vacate the Golf Course and transfer all contracts, licenses, unearned accounts receivable, furniture, fixtures, and equipment to the City and assist in the orderly transfer of the operation to the City or the City's contractor for management.

22.01 Termination for Fraud. If EMT defaults by committing an act of fraud, the City may terminate the Agreement immediately upon written notice to EMT and obtain performance of the work elsewhere.

22.02 Termination for All Other Causes. When termination occurs under any terms or condition of the Agreement, the City shall establish a schedule for EMT to comply with in vacating the Golf Course and winding up its business under this Agreement. Upon any termination notices under the Agreement, EMT shall work diligently and in good faith to vacate the property in accordance with the City's schedule. In no case, shall the schedule for vacating the property exceed 60 calendar days.

23.0 GENERAL PROVISIONS.

23.01 No Discrimination. EMT will not discriminate in the operation or management of the Golf Course against any person on account of age, race, religion, color, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record or conviction record. This section does not prohibit the abidance of law governing the consumption of alcoholic beverages or the offering of special rates or services to persons 50 years of age or older.

23.02 Notice. Any notices to be given under this Agreement by either party to the other must be in writing and may be transmitted by personal delivery or by certified mail, postage prepaid with return receipt requested. Mailed notices will be addressed to the parties at the addresses appearing below their respective signatures, but each party may change that address by written notice in accordance with this section. Notices delivered personally will be deemed received as of the date of actual receipt; mailed notices will be deemed received three (3) calendar days after the date of mailing.

23.03 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

23.04 Indemnification. To the fullest extent permitted by law, EMT shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorney's fees and costs of litigation ("claims"), arising out of EMT's performance under this

Agreement or out of the operations conducted by EMT, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from EMT's performance of this Agreement, EMT shall provide a defense to the indemnitee or at the City's option, reimburse indemnitees their costs of defense, including reasonable attorney's fees, incurred in defense of such claims.

- 23.05 No Assignment. This Agreement is for the personal services of EMT. EMT may not assign this Agreement, EMT's right to moneys becoming due under this Agreement, or EMT's duties under this Agreement to any other person or entity without the written consent of the City. Any attempt at any such unauthorized assignment shall be void.
- 23.06 No Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party will not be deemed a waiver of that term, covenant, or condition, nor will any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
- 23.07 Compliance with Laws. EMT shall comply with all applicable local, state and federal laws and regulations.
- 23.08 Attorney's Fees. If any legal action or proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and expenses in addition to any other relief to which that party may be entitled. This provision will be construed as applicable to the entire Agreement.
- 23.09 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement will nevertheless continue in full force without being impaired or invalidated in any way.
- 23.10 Entire Agreement. This instrument contains the entire agreement of the parties with respect to the subject matter hereof and there are no other promised representations or warranties affecting it. This Agreement supersedes any and all other agreements, either oral or in writing, between the City and EMT with respect to the engagement of the City and EMT and contains all of the covenants and agreements between the parties with respect to that engagement. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not embodied in the Agreement, and that no other

agreement, statement, or promise not contained in this Agreement will be valid or binding on either party.

- 23.11 Execution. Each person signing on behalf of the respective parties represents and attests that they are authorized to sign and to bind their principals.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 20th day of May, 2016.

CITY OF BROOKINGS
898 Elk Drive
Brookings, OR 97415

EARLY MANAGEMENT TEAM, INC.
P.O. Box 1688
Brookings, OR 97415

By: Gary Milliman, City Manager

By: Valarie L. Early, President