

**REQUEST FOR PROPOSALS
RFP No. 2026-001**

**GOLF COURSE OPERATIONS AND MANAGEMENT SERVICE
DESERT LAKES GOLF COURSE
CITY OF ALAMOGORDO, NEW MEXICO**

I. Introduction

A. Purpose of this Request for Proposal

The City of Alamogordo is soliciting sealed proposals from qualified firms specializing in municipal golf course management and operations for the Desert Lakes Golf Course, based on the scope of work described below and in accordance with any federal, state, and local requirements. It is the intent of the City of Alamogordo to execute an agreement with the most qualified Contractor(s) that present an economically viable proposal. All potential Offerors are to read, understand, and accept the requirements of this Request for Proposal.

The City seeks an experienced operator to manage the day-to-day operations of the Desert Lakes Golf Course, including the driving range, pro shop, clubhouse/restaurant operations, course restrooms, and surrounding landscaped areas, (excluding course maintenance) and to promote the course as an accessible community resource through excellence in customer service, responsible financial and data stewardship, and increased community engagement. The City reserves the right to determine the operating approach that best serves the golfing public and the citizens of Alamogordo and to reject any and all proposals.

B. Project Description/Scope of Work

Scope of work is to provide operation and management services in accordance with "Attachment One".

C. Chief Procurement Officer

1. Chief Procurement Officer is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Barbara Pyeatt, Chief Procurement Officer
Address: Purchasing Department
2600 N. Florida Ave.
Alamogordo, NM 88310
Telephone: (575) 439-4116
Fax: (575) 439-4117
Email: bpyeatt@ci.alamogordo.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Purchasing Department
 Attn: Barbara Pyeatt, CPO
 Reference: RFP 2026-001 Golf Course Operation and Management Service –
 Desert Lakes Golf Course
 Address: 2600 N Florida Ave.
 Alamogordo, New Mexico 85310

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Chief Procurement Officer. Offerors may contact ONLY the Chief Procurement Officer regarding this procurement.

NOTE: DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF OTHER THAN PURCHASING STAFF REGARDING THIS RFP WILL RENDER THE PROPOSAL NON-COMPLIANT.

II. Conditions Governing the Procurement

This section of the RFP contains the schedule, description and conditions governing the procurement

A. *SEQUENCE OF EVENTS*

The Chief Procurement Officer will make every effort to adhere to the following schedule. However, if the Selection Committee makes a selection at the proposal Short Listing, oral presentation will not apply.

Action	Responsible Party	Due Dates
Issue RFP	City of Alamogordo	January 17, 2026
Mandatory Walk Through	City of Alamogordo	February 9, 2026
Deadline to submit Written Questions	Potential Offerors	February 12, 2026
Addenda if necessary	City of Alamogordo	February 13, 2026
Submission Proposals	Potential Offerors	February 27, 2026
Proposal Evaluation	Evaluation Committee	March 6, 2026
Oral Presentation before Commission – Authorization of Award	City of Alamogordo	March 24, 2025

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A, above.

1. Issuance of RFP

This RFP is being issued on behalf of the Parks and Recreation Department, City of Alamogordo.

2. Distribution List Response Due

Potential Offerors can hand deliver, return by facsimile, email or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Chief Procurement Officer.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential organization name shall not appear on the distribution list.

3. Pre-Proposal Conference

A **Mandatory Walk Through** at 10:00 AM Mountain Standard Time/Daylight Time as indicated in the sequence of events. Location: **2351 Hamilton Road, Alamogordo, NM 88310.**

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Chief Procurement Officer as to the intent or clarity of this RFP until 3:00 PM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Chief Procurement Officer as declared in Section II, Paragraph C.

5. Response to Written Questions

An Addendum will be issued in response to all written questions and will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and on the City's website. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2.

All offerors will be required to acknowledge receipt of RFP amendment(s) in writing as part of their proposal transmittal. A failure to acknowledge receipt of RFP amendment(s) may be cause for rejection of the proposal.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON see Section II A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Chief Procurement Officer at the address listed in Section I, Paragraph C2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2026-001 GOLF COURSE OPERATION AND MANAGEMENT SERVICES– DESERT LAKES GOLF COURSE. Proposals submitted by facsimile, or other electronic means, will not be accepted.

At all times, it shall be the responsibility of the offeror to ensure its proposal is delivered to the City of Alamogordo by the proposal due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

A public log will be kept of the names of all Offer organizations that submitted proposals. The contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposal has been awarded.

Proposals accepted by the City shall be valid for a period of ninety (90) days following the deadline for the proposal submittal.

7. Proposal Evaluation

A Selection Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Chief Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Issuing Department and Chief Procurement Officer.

9. Contract Awards

The Contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached within the time specified, the City of Alamogordo reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or reserves the right to cancel the award.

10. Protest Deadline

Any protest by an Offeror must be in conformance with Section 2-13-300 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the commission's approval to negotiate and will end at 5:00 pm MDT on the fifteenth (15) calendar day following that approval. Protests must be written and must include the name and address of the Protester and the solicitation number(s). It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Manager. The protest must be delivered to the following address:

Name: Barbara Pyeatt
Title: Chief Procurement Officer
Address 2600 N. Florida Ave.
Alamogordo, NM 88310
Fax Number: 575-439-4117
E-mail: bpyeatt@ci.alamogordo.nm.us

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

This procurement will be conducted in accordance with the City of Alamogordo's procurement regulations.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Subcontractors

The selected firm shall not assign, sublet, or transfer their interest in this agreement without prior written consent from the City. If such an assignment is allowed, the firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

4. Offerers

Since the award is made on a quality-based evaluation process, replacement of Offerers after award of and prior to the contract execution may cause the Offeror to be disqualified.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials.

6. Offerors Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Chief Procurement Officer and signed by the Offerors duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by City of Alamogordo. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Chief Procurement Officer will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered

or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, City of Alamogordo shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the City of Alamogordo or any of its Departments to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when Procurement Department determines such action to be in the best interest of the City of Alamogordo.

10. Sufficient Appropriation

Any agreement or contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the offeror. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the offeror as final.

11. Legal Review

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought in writing to the attention of the Chief Procurement Officer.

12. Governing Law

This procurement and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied, in writing, by the City of Alamogordo through the Chief Procurement Officer or in this RFP should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The City of Alamogordo reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this solicitation. The contents of this solicitation, as revised and/or supplemented, and the successful Offerors proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the City of Alamogordo's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The City of Alamogordo may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at complete substitutions are not acceptable to the City of Alamogordo and will result in disqualification of the Offerors proposal.

15. Offerors Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Alamogordo. Not to be included in page count.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Alamogordo and the Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

17. Offeror Qualifications

The Selection Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Selection Committee will reject the proposal of any potential Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Section 2-13-110 of the City of Alamogordo Procurement Ordinance.

18. Right to Waive Minor Irregularities

The Chief Procurement Officer reserves the right to waive minor irregularities. The Chief Procurement Officer also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Chief Procurement Officer.

19. Change in Representatives

The City of Alamogordo reserve the right to require a change in offeror representatives if the assigned representatives is not, in the opinion of the City of Alamogordo, meeting its needs adequately.

20. Notice - Bribery and Kickbacks

New Mexico criminal statutes imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. City of Alamogordo Rights

The City of Alamogordo in agreement with the Chief Procurement Officer reserves the right to accept all or a portion of a potential Offerors proposal.

This procurement in no manner obligates the City of Alamogordo or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors must secure from the Chief Procurement Officer and the Owner written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offerors proposal.

23. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the City of Alamogordo.

24. Confidentiality

Any confidential information provided to, or developed by, the firm in the performance of services under this contract shall be kept confidential and shall not be made available to any individual or organization by the firm without the prior written approval of the City Commission. The Offeror agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the City Commission's written permission. By confidential information, we mean the software and related materials, including enhancements, which are designated as proprietary and confidential trade secrets of the licensor and licensee of the software. Firm(s) will not remove any copyright, trademark, and other proprietary rights notice from the licensed software or related materials.

25. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

26. Use of Electronic Versions of this RFP

This solicitation is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the solicitation. In the event of conflict between a version of the solicitation in the Offerors possession and the version maintained by the City of Alamogordo, the version maintained by the City of Alamogordo shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Attachment Three) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made. **Failure to complete and return the signed unaltered form will result in disqualification.**

28. Conflict of Interest; Governmental Conduct Act.

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

29. Utilization of Proposal

City of Alamogordo may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this solicitation may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondent(s) under its contract with the City of Alamogordo, pursuant to terms and conditions stated therein

30. Award of Contract

The award shall be made to the responsible Offeror whose proposal is most advantageous to the City of Alamogordo taking into consideration the evaluation factors set forth in this solicitation. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

31. Fees

Firms desiring to be considered for proposed Attorney services shall indicate the hourly rate for Attorney and other attorneys and support staff that may be working on required projects.

Firms shall indicate all other costs and reimbursables, including meeting attendance, travel (per mile), telephone, printing, photocopying, etc.

Firms shall indicate the minimum increment of time billed for each service, including phone calls, correspondence, and personal conferences.

The City of Alamogordo's standard agreement for Services is attached for reference (Attachment Seven)

32. Registration

All work shall be under the direction of a Licensed Professional registered by the State of New Mexico.

33. INSURANCE REQUIREMENTS –

The Contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved. The contractor shall not allow any subcontractor to commence work on this subcontract until all similar insurance required of the subcontractor has been obtained. Insurance specifications and monetary requirements will be finalized at contract development.

General Liability:

Bodily Injury Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

Property Damage Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

Automobile Liability:

Bodily Injury Liability:

\$500,000 each person

\$1,000,000 each occurrence

Property Damage Liability:

\$1,000,000 each occurrence

Workers' Compensation Insurance

The CONTRACTOR shall also carry Workers' Compensation Insurance or otherwise fully comply with the provisions of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

Professional Liability	\$1,000,000
Malpractice/liability Insurance	Per State Regulations

III RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. PROPOSAL FORMAT

Proposal Organization

Offerors shall submit **SIX (6) hard copies and ONE (1) electronic copy** of their proposal to the location specified in this RFP, on or before the closing date and time for receipt of proposals. Proposals shall follow the format as described below:

- There is no page limit. Size of pages of 8.5" by 11" paper, including title, index, and other required information, not including front and back covers, transmittal letter, Veteran's Preference Certification Form, Resident Business Certificate, or Campaign Contribution Disclosure Form.
- Bound on left-hand margin.
- Minimum font size 10.
- Front cover with RFP number, project title, date, and firm's name (not included in page limit).
- Back cover without any text (not included in page limit).
- The proposal must be organized and indexed in the following format and order and must contain, as a minimum, all listed items in the sequence indicated:
 1. Letter of transmittal, not to exceed one page (not included in page limit). If applicable, will include **written acknowledgment of receipt of RFP amendment(s)**;

2. Responses to the six (6) Selection Criteria items, addressing all requested information, in the order presented in this RFP above. Provide the Selection Criteria title at the beginning of each response so that it is clear what proposal text is addressing each Selection Criteria item.
- If applicable, Offerors shall provide Resident Business Certificate and submit with each copy of the proposal (not included in page count).
 - Offerors shall complete Attachment Three – Campaign Contribution Disclosure Form and submit with each copy of the proposal (not included in page count).
 - To preclude possible errors and/or misinterpretations, the proposal must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Offeror prior to scheduled proposal submittal deadline. Failure to do so may be just cause for rejection of proposal.
 - Proposals shall be delivered in sealed envelopes which shall be clearly marked “**RFP 2026-001 Golf Course Operation and Management Service – Desert Lakes Golf Course**” on the outside of the envelope. Proposals shall be signed by a representative authorized to bind the company.

IV. EVALUATION

A. CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

1. Qualifications and Experience (50 Points Total)

- 1.1 Organizational Overview – 5 Points
- 1.2 Client Portfolio – 8 Points
- 1.3 Public-Sector / Municipal Experience – 8 Points
- 1.4 Non-Golf Activities and Events – 3 Points
- 1.5 Capital Construction and Improvements – 4 Points
- 1.6 Proprietary Systems and Incentive Programs – 4 Points
- 1.7 Meeting City Desired Outcomes – 18 Points

2. Management Structure and Training (15 Points Total)

- 2.1 Organizational Staffing Plan – 3 Points
- 2.2 General Manager Qualifications – 2 Points
- 2.3 Incident Response and On-Site Support – 2 Points
- 2.4 Customer Service Training – 2 Points
- 2.5 Equity and Inclusion Training – 2 Points
- 2.6 Youth Development / Internships – 1 Point
- 2.7 Routine Maintenance and Repairs – 2 Points
- 2.8 Electric Cart and Cart Barn Experience – 1 Point

3. Financial Management (10 Points Total)

- 3.1 Purchasing Systems and Standards – 3 Points
- 3.2 Financial and Operating Systems – 3 Points
- 3.3 Accounting, Financial Controls, and Reporting – 4 Points

4. Marketing Plans (15 Points Total)

- 4.1 Marketing Strategy and Promotion – 6 Points
- 4.2 Expanding Access to New / Frontline Users – 5 Points
- 4.3 Alignment with City Outcomes – 4 Points

5. Transition and Quality Assurance (5 Points Total)

- 5.1 Transition Plan – 2 Points
- 5.2 Performance Management and Improvement – 3 Points

6. Financial Proposal (5 Points Total)

- 6.1 Clarity and Structure – 2 Points
- 6.2 Alignment with City Interests – 2 Points
- 6.3 Risk Allocation and Transparency – 1 Point

TOTAL AVAILABLE POINTS = 100

Additional Preference Award Points Available

An Offeror must specify which preference below they would claim if qualifying for more than one. The preference values are not cumulative.

Resident Veterans Preference Certification, (Certificate Required)

Available Points = 10 Percent of total Points

Points will be awarded based upon offerors ability to provide a copy of a current Certificate

New Mexico Business Preference, (Certificate Required)

Available Points = 5 Percent of total Points

Points will be awarded based upon offerors ability to provide a copy of a current Resident Business Certificate.

Local Business Preference, (Certificate Required)

Available Points = 10 Percent of total Points

Points will be awarded based upon offerors ability to provide proof of Local Business Residence.

B. EVALUATION PROCESS:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Chief Procurement Officer may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may be asked to present oral presentation. Points awarded from oral presentations will be added to the previously assigned points to attain final scores.
5. The responsible Offeror (s) whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section IV, will be recommended for Contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

BID EVALUATION CRITERION FOR AREA BUSINESSES – LOCAL BUSINESS PREFERENCE

Effective March 20, 2015, the Alamogordo City Commission adopted Ordinance No. 1490 establishing Bid evaluation criterion for area businesses. Any business licensed in New Mexico, with a current business registration from the City of Alamogordo, with fixed offices or distribution points within fifteen (15) miles of the city limits of Alamogordo and able to furnish evidence of payment of New Mexico Gross Receipts tax shall qualify. If a non-Area Business is the highest-ranking Prequalified Candidate, the evaluation score of the proposal submitted by an Area Business shall be multiplied by a Local Preference Factor of 1.10. If the resulting score of the Area Business receiving the Local Preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to be awarded the Area Business receiving the preference. If no proposals are received from an Area Business, or if the proposal received from an Area Business does not qualify for an award after multiplication by the Local Preference Factor, the contract shall be recommended to be awarded the highest-ranking proposer.

View the following link for the complete Ordinance No. 1490 Local Preference:

<http://ci.alamogordo.nm.us/AssetsOrdinance+1490.pdf>

This procurement will be conducted in accordance with the City of Alamogordo Purchasing Ordinance No. 1304.

RESIDENT VETERANS PREFERENCE CERTIFICATION

In accordance with Sections 13- 1-21 and 13-1- 22 NMSA 1978 resident veteran business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year shall be awarded ten percent (10%) additional evaluation points of the total possible points, which computes

to 10 additional points (100 X 10%). This preference is separate from the current instate preference and is not cumulative with that preference. If a vendor will be utilizing this preference, they must include a copy in their proposal of the Resident Veteran Business Certificate issued by the State of New Mexico Taxation and Revenue Department. This preference will not apply when the expenditure includes federal funds for a specific purchase. More information can be obtain from the NM TRD website at <http://www.tax.newmexico.gov/Default.aspx>

Proposals received without copy of this certificate do not qualify for this preference.

IN-STATE PREFERENCE (RESIDENT BUSINESS)

To receive a resident business preference pursuant to Section 13-4-2 NMSA 1978, an offeror shall submit with its proposal a copy of a valid resident business certificate issued by the taxation and revenue department. For a proposal submitted by a resident business with the required Resident Business Certificate, in addition to the total points on an RFP, 5% must be added for preference points.

For information on obtaining a resident business certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, New Mexico 87502-5374, telephone (505) 827-0951 or on the web at <http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx>

Proposals received without copy of this certificate do not qualify for this preference.

An offeror must specify which preference they would claim if qualifying for more than one. The preference values are not cumulative.

RFP 2026-001 Golf Course Operational and Management Services – Desert Lakes Golf Course

ACKNOWLEDGMENT OF RECEIPT FORM

REQUEST FOR PROPOSALS

Proposal Based

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy of acknowledged RFP.

The acknowledgement of receipt should be signed and returned to the Chief Procurement Officer. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and the City’s written responses to those questions in the form of an addenda.

COMPANY: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

This name and address will be used for all correspondence related to the Request for Proposals.

Company does/does not (circle one) intend to respond to this Request for Proposals.

Acknowledgements must be delivered to the Chief Procurement Officer at the following address:

Barbara Pyeatt
Chief Procurement Officer
Purchasing Department
2600 N Florida Ave
Alamogordo, New Mexico 88310
bpyeatt@ci.alamogordo.nm.us
Fax Number: (575) 439-4117

ATTACHMENT ONE

Scope of Work

Golf Course Operation and Management Services – Desert Lakes Golf Course

The City of Alamogordo is seeking an experienced and qualified municipal golf course operator to manage and operate the Desert Lakes Golf Course's pro shop and restaurant. The golf course is a valued public asset and community resource, and this Request for Proposal represents an opportunity for the City to evaluate current operations, maintain existing strengths, and explore new service and revenue-generating opportunities that enhance long-term sustainability and community benefit. The City's objectives include expanding access to and interest in golf among all residents and visitors, strengthening financial performance and accountability systems, and ensuring a high standard of customer service across all aspects of golf operations. The City is particularly interested in innovative approaches that position the golf course as an inclusive, welcoming, and accessible space for families, youth, frontline communities, individuals with disabilities, and those with little or no prior experience with golf.

The selected operator will be expected to serve as a collaborative partner with the City of Alamogordo, supporting ongoing facility maintenance, capital improvements, and operational enhancements informed by user feedback and staff expertise. The City seeks an operator that recognizes the golf course as both a recreational facility and a community gathering space, while acting as a responsible steward of public funds, data, and facilities.

The successful Proposer shall be responsible for the comprehensive day-to-day management and operation of the Desert Lakes Golf Course pro shop and restaurant, in accordance with the terms outlined in this RFP. At a minimum, the Scope of Work shall include the following:

1. Golf Course Operations and Management
 - Manage daily operations of the golf course's driving range, pro shop, clubhouse, and restaurant operations, course restrooms, and landscape maintenance associated with these areas.
 - Deliver consistent, high-quality customer service across all points of interaction with golfers, visitors, and the general public.
 - Ensure the golf course operates as a safe, welcoming, and accessible public facility.
2. Financial Management and Systems
 - Implement and maintain strong financial management systems to support the sustainable financial health of the golf facility.
 - Provide transparent financial performance reporting and fiscal controls acceptable to the City.
3. Revenue Generation and Programming
 - Identify and implement strategies to increase golf participation and course utilization among residents and visitors.

- Develop and promote revenue-generating activities such as tournaments, leagues, clinics, public events, and other appropriate golf-related offerings.
 - Explore and manage limited non-golf activities that are compatible with golf operations and community use, such as walking paths, post-sunset activities, trivia nights, or similar events, subject to City approval.
4. Community Engagement and Accessibility
- Promote golf as an accessible public resource and actively engage communities that have historically had limited exposure to golf, including youth ages 13–17, families, frontline communities, and individuals with disabilities.
 - Collaborate with City departments, Community-Based Organizations (CBOs), schools, youth programs, tribal entities, and other external partners to develop inclusive and community-focused programming.
 - Support practices that ensure the golf course is a good neighbor to surrounding residents and businesses.
5. Partnership with Alamogordo Parks & Recreation
- Maintain a strong working relationship with AP&R staff to support operational coordination, maintenance planning, and capital improvement projects.
 - Assist in implementing facility improvements based on user feedback, operational needs, and City priorities.
 - Comply with all City policies, procedures, and reporting requirements.

Minimum Qualifications

Minimum qualifications are required to be eligible to submit a proposal response. Your submittal response must show compliance with these minimum qualifications. Those who are not responsive to these qualifications shall be rejected without further consideration:

- Experience in the management and operation of golf course pro shops, driving ranges, and restaurants with positive annual revenue growth and /or annual earned profits
- 10 or more years of experience in the management and operation of 18-hole golf course pro shops, driving ranges, and restaurants.
- Minimum of 5 years of experience managing golf systems **with** a total revenue of \$3 million or more.

MANDATORY WALK THROUGH.

1. Qualifications and Experience

A. Description of the Proposer's Organization

1. Organizational Overview

Please provide a brief description of your organization, including:

- Years of experience in golf course management
- Business structure (e.g., corporation, partnership, LLC, etc.)
- Names, titles, and brief bios of key officers and executives

2. Client Portfolio

Provide a list of your golf course management clients, including:

- Property name
 - City and state
 - Identification of public/municipally owned courses versus privately owned courses
3. **Public-Sector Experience**
Please explain your experience working with city, county, or state governments. In your response:
- Describe key differences between managing publicly owned versus privately owned golf facilities
 - If you have not worked with a public agency, describe the challenges you anticipate and how your organization would address them
4. **Non-Golf Activities and Events**
Does your organization have experience implementing non-golf activities or events (as defined in Section 7) at the courses you have managed or operated? Please describe.
5. **Capital Construction and Facility Improvements**
Describe your experience implementing capital construction projects or facility improvements at golf courses you manage. Include:
- Brief description of the project(s)
 - Your role and responsibilities
 - Partners involved
 - Financial contribution by your organization, if any
6. **Proprietary Systems and Incentive Programs**
Describe any proprietary systems, technologies, or customer incentive programs your organization has developed and would propose to implement at the Desert Lakes Golf Course facilities.
- Identify anticipated benefits to the City of Alamogordo
 - Identify anticipated benefits to golf course users
7. **Financial Statements (Final Three Candidates Only)**
Finalists will be required to submit financial statements for their golf course management operations, including:
- Balance sheets
 - Statements of income
 - Statements of changes in financial position

Statements shall cover fiscal years 2020–2025. Audited financial statements are strongly preferred. If audited statements are unavailable, the proposer’s Chief Financial Officer must certify the accuracy of the statements. If financial statements are not available, please state why.

Do NOT submit financial statements with the initial proposal. This information will be requested only from the final three candidates.

B. Meeting the City’s Desired Golf Course Management Outcomes

1. **Outcomes Narrative**
Please provide a narrative of **eight (8) pages or less** describing how your organization will achieve the following outcomes:

- Increase access to and interest in golf for all city residents and visitors, including families, youth ages 13–17, and frontline communities (see Section 7 for definition)
- Ensure strong systems and policies that support the sustainable financial health of the City’s golf facilities, including financial performance management, data privacy, and fiscal reporting
- Commit to excellence in customer service across all aspects of golf course operations
- Provide innovative programming opportunities, including:
 - New golf-related revenue opportunities (e.g., tournaments, special events)
 - Appropriate non-golf activities (e.g., post-sunset programming, trivia nights)
 - Collaboration with City of Alamogordo business units (e.g., Senior Center, Recreation Center, youth programs)
 - Practices that position the golf facilities as a “good neighbor” to surrounding residents and businesses
- Establish a strong working partnership with Alamogordo Parks & Recreation to implement capital construction projects and facility improvements informed by user feedback and staff expertise

2. Management Structure and Training

A. Management Structure

1. Organizational Staffing Plan

Provide an organizational chart identifying staff positions proposed to support:

- Golf pro shop operations
- Driving range operations
- Restaurant and food and beverage operations

2. General Manager Qualifications

Describe the qualifications, experience, and competencies required for the General Manager assigned to the Desert Lakes Golf Course facilities.

3. Incident Response and On-Site Support

Incidents may occur at the Desert Lakes Golf Course facilities at any time, including outside of normal operating hours. Please explain how your management structure ensures timely, on-the-ground response and coordination with Alamogordo Parks & Recreation when issues arise.

B. Employee and Manager Training

1. Customer Service Training

Describe your organization’s approach to customer service training for employees.

a. Equity and Inclusion Training

Specifically describe how your organization trains employees to promote equity, inclusion, and a welcoming environment for all guests and staff, regardless of race, color, sexual orientation, or other protected characteristics.

2. Youth Development and Internships

Describe your experience with youth internships or youth development programs. If you do not currently offer such programs, indicate whether your organization would be open to implementing them.

C. Maintenance and Janitorial Services

1. **Routine Maintenance and Repairs**

Based on the responsibilities outlined in the sample contract, describe how your organization would handle routine maintenance and repairs, including:

- Outdoor facilities
- Landscaping around retail and operational areas
- Cart barns, practice facilities, and driving range areas

2. **Electric Cart and Cart Barn Experience**

Describe your experience maintaining electric golf carts and electric cart barns. Indicate whether the introduction or expansion of electric carts is part of your proposal for Desert Lakes Golf Course.

3. Financial Management

A. Purchasing Systems and Standards

Please discuss any unique or proprietary purchasing capabilities your organization offers, including how these capabilities support operational efficiency and financial performance.

B. Financial and Operating Systems

1. **Point-of-Sale and Reservation Systems**

Identify the financial and/or operating systems you propose to use for point-of-sale, reservations, and related functions at the Desert Lakes Golf Course facilities.

C. Accounting, Financial Controls, and Reporting

The City expects detailed monthly and annual financial reporting from its golf operator. The contents of these reports will be negotiated as part of the final contract. Please refer to the sample contract for one possible reporting framework.

4. Marketing Plans

One of the City's goals is to increase golf course usage among first-time visitors, new golfers, and frontline communities, while ensuring the golf facilities function as inclusive community assets.

1. Describe how your organization will market and promote the golf course to achieve the City's stated outcomes.
2. Describe your experience increasing usage by first-time visitors, new players, and/or frontline communities, and how you would apply that experience in Alamogordo.

5. Transition and Quality Assurance

1. Describe how you would manage the transition from the incumbent operator to your organization. If you are the incumbent operator, describe how you would transition into a new contract term.
2. Describe your performance management policies and practices and how you will support continuous improvement to meet the City's desired outcomes.

6. Financial Proposal

Please propose your preferred management and compensation structure, which may include a management fee, revenue-sharing model, or other structure. Your proposal should clearly explain the financial relationship between the City and the operator.

7. Course Improvements

Describe any investments you would propose for facilities, infrastructure, or programming at the Desert Lakes Golf Course, including:

- Rationale for the proposed investments
- How you would partner with the City to implement these improvements
- How sustainability and environmentally responsible practices would be incorporated

D. Contract Term

The contract term you propose to meet the outcomes outlined in your management proposal. The baseline term is 4 years with an option for a 4-year extension, but you may propose an alternate term. If proposing an alternate term, please describe why you are making this proposal- for example, to realize return on capital investments, provide a more realistic timeline for course user growth, etc.

Mandatory- Cost and Pricing:

Provide a single page that states a firm fixed price, to include all direct, indirect, and overhead expenses, including travel and lodging expenses, incurred by the Consultant to perform the Work.

Definition of Key Terms

Frontline Communities

Frontline communities are populations that have historically experienced disproportionate impacts from social, economic, environmental, or systemic barriers, including but not limited to racism, discrimination, historical disinvestment, environmental exposure, limited access to public resources, and displacement risk.

Many frontline communities have historically had limited access to golf facilities and organized golf programming and may be underrepresented in amateur or professional golf participation. Alamogordo Parks & Recreation seeks to ensure that City golf facilities are inclusive, welcoming, and accessible to all members of the public, and to prioritize investments and programming approaches that expand equitable access to recreational opportunities.

Nothing in this definition is intended to create a preference, quota, or entitlement, or to require actions inconsistent with applicable federal, state, or local nondiscrimination laws.

Non-Golf Activities

Non-Golf Activities are programs or events conducted at the Desert Lakes Golf Course that are not directly related to the playing of golf or instruction in the game of golf. Non-Golf Activities may include, but are not limited to, use of the clubhouse for community meetings or events; use of designated areas for walking or jogging; entertainment or social activities such as concerts, trivia nights, or movie nights; and alternative recreational activities such as FlingGolf or bocce golf.

Non-Golf Activities are subject to City approval and must be compatible with golf operations, applicable laws and regulations, facility limitations, and any restrictions associated with funding, bonding, or permitting requirements. Nothing in this definition shall be construed to authorize Non-Golf Activities without prior City approval.

Seasonality

Peak Season shall mean the months of April through October, and Off Season shall mean the months of November through March

ATTACHMENT TWO

Mandatory- Cost and Pricing: Per Attachment One: Scope of Work

Provide a single page that states a firm fixed price, to include all direct, indirect, and overhead expenses, including travel and lodging expenses, incurred by the Consultant to perform the Work. The City of Alamogordo's standard agreement for Services is attached for reference (Attachment Seven)

ATTACHMENT THREE

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable Public Official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract. **“Representative**

of a Prospective Contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

Signature

Date

Title

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

ATTACHMENT FOUR
NON-COLLUSION AFFIDAVIT

STATE OF _____)
County OF _____)

_____ (name) being first duly sworn, deposes and says that he/she is(title) _____ of (organization) _____ who submits herewith to the City of Alamogordo, proposal;

That all statements of fact in such proposal are true;

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the City of Alamogordo, or of any bidder of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of proposal, said bidder;

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual of group of individuals, except that City of Alamogordo, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By: _____
Title: _____

SUBSCRIBED and sworn to before me this _____ day of _____, 20 _____.

Notary Public: _____
My Commission Expires: _____
(Print Name and Title): _____

ATTACHMENT FIVE

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Offeror certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or Local department or agency;
2. Have not within a three year period preceding this proposal been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative Signature of Authorized Representative

Date: _____

ATTACHMENT SIX

RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

PROPOSAL CHECKLIST

Did You:

1. Include one (1) Original hard copy, Five (5) hard copies, and one (1) electronic copy of the proposal
2. Signed List of Services & Cost Schedule – Attachment TWO.
3. Sign and notarize the “Non-Collusion Affidavit” form – Attachment FOUR
4. Sign the “Disbarment Certification” Attachment FIVE
5. Fill out and sign the “Campaign Contribution Form” – Attachment THREE
6. Resident Veterans Preference Certification – Attachment SIX (If applicable)
7. Review and acknowledge all addenda
8. Include the Transmittal Cover Letter
9. Deliver your sealed proposal to the City of Alamogordo Purchasing Department located at 2600 N Florida Ave. Alamogordo NM 88310 at designated time in Sequence of Events
10. Mark your proposal package per C. 2. as listed in this RFP.

** If not completed as required, your proposal may be deemed “Non-Responsive”

This form is for information purposes only and must not be submitted with your proposal.

Golf Sample Contract

**THE CITY OF ALAMOGORDO DEPARTMENT OF PARKS & RECREATION
GOLF COURSE MANAGEMENT AGREEMENT**

THIS GOLF COURSE MANAGEMENT AGREEMENT (“Agreement”) is entered into by and between the City of Alamogordo (“City”), a municipal corporation of the State of New Mexico, acting by and through its Department of Parks & Recreation (“Department”) and the Director thereof, and Contractor (“Operator”), a State limited liability company.

RECITALS:

WHEREAS, pursuant to the Alamogordo Charter, the Director has the responsibility for the operation and control of the parks and recreation system of the City; and

WHEREAS, the City owns the Desert Lakes 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, collect fees on behalf of the City, and 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 Department issued a request for proposals in order to select a golf course operator, and Contractor submitted the successful proposal;

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 hereby agree as follows:

1. DEFINITIONS.

The following terms shall be defined as follows for the purposes of this Agreement:

- 1.1. “Adjusted Gross Revenue” means Gross Revenue earned from the operation of the City’s Golf Course, reduced only by a) New Mexico State sales taxes and other taxes imposed by any government agency on sales, b) admissions taxes collected, and c) revenue collected from the sale of surplus 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 January 1 of each year.
- 1.3. “Approved Annual Budget” means the Golf Course budget that is approved by the City.
- 1.4. “Awarded Financial Terms” means those financial terms contained in the Financial Proposal that have been accepted by the City Commission and incorporated into this Agreement as Exhibit D.
- 1.5. “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 year and a cost of no less than \$7,000 (Five Thousand Dollars).
- 1.6. “City” means the City of Alamogordo, a municipal corporation, and its elected officials and any department or subdivision thereof.
- 1.7. “Dark” means ½ hour after sunset until ½ hour before sunrise.
- 1.8. “Department” means the City of Alamogordo’s Department of Parks & Recreation.
- 1.9. “Direct Cost” means any cost which is directly related to the normal and ordinary staffing, operations, or routine maintenance of the Golf Course facilities as approved by the City in the Annual Budget, as further defined in Section 6.1

Golf Sample Contract

- 1.10. "Director" means the Director of Parks & Recreation responsible for the management of the Golf Course Management Agreement and the overall operations of the City Golf Course.
- 1.11. "Driving Range" means the golf practice driving range facilities located at the Desert Lakes Golf Course that will be operated at the Golf Course during the Term of this Agreement.
- 1.12. "Effective Date" means the date the Agreement is executed by both parties following authorization by an effective ordinance of the City of Alamogordo.
- 1.13. "Executive" means any person who has a financial interest in Contractor or any officer of the company with the title of Chief Executive, Chief Financial Officer, or Director.
- 1.14. "Fees and Charges" means the fees and charges for the use of the Golf Course (greens fees and cart rental fees) as approved by the City Commission for the applicable Operation Year.
- 1.15. "Financial Proposal" means the financial submission made by Operator in response to the City's Request for Proposals for Golf Course Management Services.
 - 1.15.1. 1.14 "Golf Course Manual" means the manual for the operation of the Golf Course attached hereto as Exhibit A, and all reasonable revisions thereto promulgated by the Department from time to time made after written notice to and consultation with Operator.
- 1.16. "Golf Course" means all of the buildings, grounds, fixtures, structures, restrooms, equipment, computers, tools, vehicles, fencing, and all appurtenances thereto at the Desert Lakes Golf Course.
- 1.17. "Golf Lessons" means the professional golf instruction given at the Golf Course by either the Class "A" PGA Golf Professional or qualified golf instructor(s) as approved by 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 proceed from all retail and wholesale sales; sale of food and beverages; sales from vending devices; mail, telephone, or online orders received or filled on or from the Golf Course; all deposits not refunded to purchasers; orders taken although filled elsewhere; 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 exchanged 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:
 - 1.19.1. The first Operating Year shall commence on the Effective **Date** and end on **Date** at 11:59 p.m.
 - 1.19.2. Each Operating Year thereafter shall comprise the period of 12 (twelve) full calendar months.
- 1.20. "Operator" means Contractor (the professional golf course operating company selected to operate the City's Golf Course Pro Shop and Restaurant, and does not include course maintenance, irrigation, ponds, pump houses, or maintenance facilities).
- 1.21. "Operator Offices" means space located at Desert Lakes Golf Course in the office area, limited to approximately 494 square feet.
- 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 are good for any item. Credit books are designated by number and are generally for merchandise only unless they are temporary accounts set up for prepaid deposits on banquets or tournaments.
- 1.23. "Pro Shops" means the golf and merchandise facilities located at the Golf Course.

Golf Sample Contract

- 1.24. "Restaurants" means the food and beverage dining facilities located at the Golf Courses. Vending machines, remote food/beverage carts, and other food-related activities on the Golf Course are included in the definition of "Restaurants." "Property" means the real property upon which the Golf Course is located.
- 1.25. "Superintendent" means the Golf Course Superintendent. The Golf Course Superintendent is responsible for all things concerning grass, course maintenance, irrigation systems, irrigation ponds, etc. The Golf Course Superintendent reports to the Director of Parks and Recreation.

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, Restaurant, Driving Range, Golf Cart Rentals and Barns, restrooms, and all other buildings located at the Golf Course, excluding the golf course maintenance buildings, pump houses, and other maintenance facilities.

3. ACCEPTANCE.

Prior to the Effective Date of this Agreement, the Operator has made an inspection of the Golf Course, the Operator Offices, and related fixtures and facilities and hereby accepts the condition of them 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 a period of Four (4) years, beginning on the effective Date and terminating at 11:59 p.m. Mountain Standard Time (MST) on **DATE**. The City shall have the option, in its sole discretion, to extend the term of this Agreement for up to four (4) additional one-year periods by providing written notice to Operator prior to expiration of the then-current term.
- 4.2 Transfer. Upon termination or expiration of the Agreement, all employees and agents of the Operator shall vacate the premises of the Golf Course and the Operator's Offices and shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, equipment and property, records, all inventories, Prepays (credit books and gift cards), and change funds of the Golf Course back to the City. The Operator will maintain a current list of contracts and leases for the benefit of the golf course and surrender it to the City upon transfer.
- 4.3 Termination for Convenience by City. The City may terminate this Agreement, in whole or in part, for its convenience and without cause, upon not less than ninety (90) days' prior written notice to Operator. Operator shall not have the right to terminate this Agreement for convenience.

Upon receipt of a notice of termination for convenience, Operator shall: (a) continue to perform its obligations in a diligent and orderly manner during the notice period; (b) cooperate fully with the City to ensure uninterrupted public operation of the Golf Course; and (c) take all reasonable steps to wind down operations and transition management as directed by the City.

Golf Sample Contract

Termination for convenience shall not relieve Operator of any obligation that by its nature survives termination, including but not limited to record retention, indemnification, audit cooperation, and transfer of revenues and property.

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, and Driving Range consistent with the standards and conditions in this Agreement. The Operator shall employ managers, golf professionals, and other personnel at the Golf Course, provided that City approval shall be limited to key management personnel and shall not extend to day-to-day employment decisions. Operator and its employees are not City employees for any purpose.
- 5.1.1 Merchandise. The Operator is authorized to make purchases in order to provide and maintain in the Pro Shops such inventory of golf merchandise as deemed necessary within the Department's Approved Annual Budget to adequately meet the expectations of the public. If the revenue from merchandise sales exceeds the amount in the Approved Annual Budget, the Operator may exceed the merchandise purchasing amount in the Approved Annual Budget by 66% of the actual revenue in excess of the budgeted amount. After written notice to and consultation with the Operator, the Department shall have the right to prohibit the sale and rental of any item of merchandise if the Department, 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, the Operator will maintain minimum/maximum inventory levels for sale in the pro shop as follows:
- \$25,000 (twenty-five thousand dollars) to a maximum of \$120,000 (One hundred and twenty thousand dollars)
 - In the event that a new facility is built or a retail shop is expanded, the Director and Operator shall set new minimum and maximum inventory levels for that facility.
- 5.1.2 Tournament Credit Books. The Operator shall keep a system of accounts for prepaid books (credit books) of tournament winnings awarded at each course for tournament play. The golf 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 and to check all credit book balance sheets. Credit book holders shall be able to spend funds at the Pro Shop or Golf Course Restaurant. The Operator shall provide monthly credit book details to The City of Alamogordo Finance Department.
- 5.1.3 Golf Lessons. The Operator shall provide for Golf Lessons by employing qualified instructors accredited by the PGA, LPGA, and the PGA, LPGA apprentice program.

Golf Sample Contract

The Operator shall cause all golf instructors, including Class “A” PGA Golf Professionals, to comply with the rules and regulations of the Golf Course Manual.

- 5.1.4 Golf Programs. Operator shall implement and promote golf programs as provided in the Golf Course Manual by providing group lessons, range balls, and general golf instruction, and by conducting tournaments for men’s and women’s clubs, junior and senior groups, leagues, and outings.
- 5.1.5 Minimum Hours of Operation. At a minimum, the facilities shall initially be open and available to the public in accordance with the schedule attached as Exhibit B – Initial Hours of Operation. Thereafter, the days of operation and daily hours of operation shall be recommended by the Operator and, as approved by the Department.
- 5.1.6 Restaurant. The Operator shall provide Restaurant services at the Golf Course. The Operator shall submit menus and menu prices for approval by the Department annually or by the schedule established by the Department. Initially, the hours of operation shall be as shown in Exhibit B- Initial Hours of Operation. The Restaurant services operation shall be used as an enhancement to the golf programs administered by the Operator, and will be coordinated with golf events sponsored by (1) the daily clientele visiting the facilities, (2) recognized clubs as defined in the Golf Manual, attached as Exhibit A, and (3) corporate groups. Tournament packages shall include special menu selections for events of 16 (Sixteen) or more golfers. In situations where the food and beverage required to be purchased exceeds the budget due entirely because the revenue for food and beverage exceeds the revenue budget, the operator shall be entitled to exceed the food and beverage purchasing budget by 35% of the over-budgeted revenue amount.
- 5.1.7 Quality Control. Operator shall regularly retain a qualified “shopping” service from an outside vendor to use trained shoppers to anonymously evaluate customer service, operations, employee integrity, merchandising, and product quality. All reports from the provider shall be forwarded to the City. These costs will be reimbursed by the City.
- 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 club house, driving range, and parking lots of the Golf Course, including, but not limited to, the Pro Shop, restrooms, storage spaces, the driving range, golf cart rentals, and restaurant, and all buildings, structures, improvements, fixtures, equipment, which may now or hereafter exist on or in the Golf Course. Excluded are golf course grounds and ground maintenance buildings maintained by the City. The Operator shall provide for such ordinary repairs, replacements, rebuilding, and restoration as may be required to maintain the Golf Course in compliance with this Agreement. All replacements, rebuilding, and restoration, other than ordinary repairs, 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.

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- 5.3 Capital Improvements and Small Construction Projects. Under the direction of the City, the Operator is authorized to manage the design and construction of small construction projects under \$7,000. The Director will approve all conceptual designs using the standard City procedures for small public works projects using the standard City procedures for small public works projects. The City reserves the right of inspection during construction. All work must be approved by the City prior to the start of use by the Operator or the general public.

The Operator shall not undertake any major improvements, additions, alterations, or changes that cost in excess of \$7,000 (collectively, "Improvements") to the Golf Course or appurtenant facilities without the prior, written approval of the Department. All work is subject to the Operator securing applicable permits and compliance with all terms and conditions imposed by the Department in its sole discretion. Improvements shall be reimbursable under this Agreement.

- 5.4 Department 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 Department, or by Operator on behalf of the Department, and all alterations, additions, or betterments thereto, shall remain with and be owned by the City.

- 5.5 Inventories. The Operator and the Department shall jointly inventory City-owned equipment following a mutually agreeable schedule.

- 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 15 (fifteen) days of the receipt of the report, including contemplated courses of action to correct the noted exceptions and findings. After consulting with the Director, the Operator shall take corrective action as suggested by the Director.

- 5.7 Operator Offices. The Operator has a license to use the Operator Offices for the purpose of managing the City's Golf Course and for incidental office use. The license to use the Operator Offices will automatically cease with the termination or expiration of this Agreement.

6. OPERATING RESPONSIBILITIES.

- 6.1 Annual Budget. The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year of this Agreement. The Annual Budget for the first Operating Year will be provided by the City. Beginning in YEAR, the Operator will submit a proposed Annual Budget no later than January 1 of each year under the Agreement for the upcoming calendar year (by way of example, the proposed Annual Budget for Operating Year/calendar year YEAR by June 1 of Year). The City shall approve, disapprove, and adjust the proposed Annual Budget by December 1 of each year as part of its annual budget process. Each proposed Annual Budget shall be in a format acceptable to the City and shall include, but not

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be limited to, proposed Fees and charges, the projected number of Operator employees, the projected number of rounds of golf played and Driving Range buckets of golf balls purchased, and all projected revenues by source and 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 the Operator, the Director shall have the authority to negotiate changes to the proposed Annual Budget, including, but not limited to, the projected costs, the method of cost allocation, marketing plans, and advertising. The initial Annual Budget shall be based upon the Operator's Awarded Financial Terms, provided that all budgets remain subject to review, modification, and approval by the City through its annual budget process.

6.2 Reports

6.2.1 Annual Reports. Beginning on or before February 15, YEAR, and thereafter on or before February 15 of each Operation Year during the Term, the Operator shall submit to the Director, for his or her review and approval, an annual report ("Annual Report"). Each Annual 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 Annual Report also shall include a detailed revenue, cost, and expense report in a form acceptable to the City. Annual Reports will be submitted by the Operator in electronic media using mutually agreeable software and in hard copy when requested. If the Director doesn't approve the Annual Report, the Operator shall take all corrective action and submit a revised report to the Director for review and approval. A report of all inventories (including prepaids and change funds) as of December 31 of each year shall be submitted to the City by January 15 to the City's Accounting Department.

6.2.2 Monthly Reports. The Operator shall submit to the Department, for its review and approval, on or before the twentieth day of the month following each month of operations under this Agreement, a detailed and complete report regarding the prior month's operations in a form acceptable to the Department ("Monthly Report") (See Exhibit C- Sample Monthly Financial Reporting Template) Each Monthly Report shall include a summary regarding the physical condition of the Golf Course and any major 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 Courses, including the revenue by category and course, the categorized costs, and other financial data as may be required by the Department. The Operator shall provide additional information and documentation relating to any expense or income entry as the Department may require. Monthly Reports will be submitted by the Operator in electronic media using mutually agreeable software and in hard copy when requested.

6.2.3 Loss Reports. A Loss Report shall be submitted to the City's Accounting Department immediately for any loss of any asset, including cash of any amount, and inventory, Capital asset valued at more than \$5,000; small and attractive asset \$400 or more per occurrence. The report shall be submitted on the City's Loss Report (Loss of Assets) form (see Exhibit E) and shall include:

A. The exact or estimated amount of the loss.

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- B. Composition of the loss (cash/checks).
 - C. Date of the loss.
 - D. When and how the loss was discovered.
 - E. Whether it is known who is responsible for the loss (and, if so, the name).
 - F. When possible and appropriate to get, a copy of the police report shall be included in the report to the City.
 - G. Whether the loss is covered by insurance.
- 6.2.4 Shopper Reports. An outside company will be retained to provide shopper reports. Reports will be conducted at the request of the Director and will be promptly forwarded to the City.
- 6.3 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. 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.
- 6.4 Governing Law. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of New Mexico. The venue of any lawsuit between the parties arising under this Agreement shall be Otero County, New Mexico, and the parties hereto do hereby stipulate to the jurisdiction and venue of the Courts of Otero County, New Mexico.
- 6.5 Compliance with Rules and Regulations. The Operator shall comply with all rules and regulations set forth in the Golf Course Manual (Exhibit A) and shall enforce all such rules at the Golf Course.
- 6.6 Operator's Obligations to Refrain from Discrimination (Equality of Treatment). Without limiting the generality of Section 6.3, the Operator will comply and shall require its subcontractors to comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of New Mexico, and the City of Alamogordo; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.
- 6.7 Signs. The Operator shall not post any permanent signs at the Golf Course without the prior approval of the Department.
- 6.8 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 Department as a part of the proposed Annual 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

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by the Operator with respect to the approved marketing and promotion plan for the applicable Operating Year. The Operator may deviate from the amounts provided within the budget and marketing plan to respond to unexpected market conditions after first consulting with and obtaining the approval of the Director. The City reserves all advertising rights associated with the Golf Course, and the Operator will purchase any advertising on behalf of the City.

- 6.9 Utilities. Upon commencement of the term of this Agreement, the Operator 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 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.
- 6.10 Safety. The Operator shall immediately correct any unsafe conditions to the Golf Course Facilities, or notify the Golf Course Superintendent of any unsafe conditions on the course, and notify the Department 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 the Golf Course who is in need of medical attention because of illness or injury. The Operator shall cooperate fully with the Department in the investigation of any accidental injury or death occurring at the Golf Course and shall submit promptly to the Director an accident report describing any injuries or deaths at the Golf Course. An incident log shall be maintained at the Golf Course by the Operator.
- 6.11 Use of Facilities Restrictions. The Operator shall obtain from the Director 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 the Golf Course or any portion thereof.
- 6.12 Meetings. Representatives of the Operator and the Department shall, at a minimum, meet monthly and at such other times as may be required by the Department 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.
- 6.13 Fee Structure.
- 6.13.1 Fees and Charges. Initially, all Fees and Charges shall be the current Fees and Charges in effect at the Golf Course as of the Effective **DATE**. (Exhibit B). Beginning with the Operator's submission of the proposed Annual Budget for the year on **DATE**, Year, the Operator shall propose Fees and Charges for the coming year. Additionally, Operator shall conduct a biannual market survey of comparable local MUNICIPAL golf courses and driving ranges and provide the Director with the results. The Operator, in the exercise of its professional judgment, shall

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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 Department will review, revise as needed, and submit proposed changes to the City Commission for approval for the upcoming operating year.

- 6.13.2 Changes to Fees and Charges. At any time during the Term, the Operator may propose off-season Fees and Charges for rounds of golf, cart fees, Driving /Range fees, and temporarily lower fees, discounts, or promotional programs based on sound business practice. Any change to Fees and Charges is subject to prior review and approval by the Department and the City Commission.
 - 6.13.3 Other Charges. All Charges directly charged to the public that are related to golf course operations, including course and range fees, fees for classes and lessons, equipment fees, and other usual golf course fees and charges paid by golfers shall be proposed by the Operator in its proposed Annual Budget and are subject to approval by the Department AND the City Commission. Restaurant and retail prices, including prices for Pro Shop equipment and supplies, are not included in Fee and Charges and shall be proposed by the Operator in its proposed Annual Budget, and may be changed at other times by the Operator as market conditions and costs change, subject to Department approval. The Department shall have the right to reject any price changes. If the Operator proposes an increase in the maximum fees authorized by the Department other than in the proposed Annual Budget submission, the Operator shall submit such proposed changes to the Department for approval at least 90 (ninety) days prior to the proposed implementation date. Any such change will be implemented only with the written approval of the Director.
 - 6.13.4 Discounts. Except as specifically authorized in writing and by mutual agreement as part of this contract, employees of the Operator shall not receive discounts to the above-listed fees. In acknowledgment of the retail food and beverage operations, an industry conforming standard policy for food and beverage consumption is attached as Exhibit G, F-B House Policies.
 - 6.13.5 Reciprocal Play. In addition, there is an established reciprocal play policy allowed, attached as Exhibit H, Reciprocal Play and Practice Policy
 - 6.13.6 Operator Employee Merchandise Discounts. All Operator employees and current City employees are eligible to purchase pro-shop merchandise at cost **plus** 10%. If the item is discounted to the public below this price, then the employee would pay that price with no additional discount. Employees may not use their discount to purchase items for resale.
- 6.14 Business License, Permits, and Leasehold Excise Tax.

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6.14.1 Non-Reimbursed Costs and Expenses. The Operator shall obtain and pay for, without reimbursement by the City **a)** the state licenses, registrations, and permits; unless authorized herein, **b)** any federal government fees, taxes, charges for the Operator's business, **c)** the Operator's City of Alamogordo Business Licenses, and **d)** leasehold excise taxes, if any. Any Operator's legal and administrative costs associated with obtaining these licenses and permits will not be reimbursed by the City. Any late charges or penalties incurred by the Operator associated with obtaining these licenses and permits will not be reimbursed by the City.

6.14.2 Reimbursed Direct Costs and Expenses. The City will reimburse Operator, as a Direct Cost, Otero County Department of Public Health permits and inspections, and other permits and fees directly related to the operation of the Golf Course and approved by the City in the Approved Annual 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 without prior approval of the Director.

6.15 Restaurant and other Goods and Services. The Operator shall at all times maintain a complete list or schedule of the prices charged for all goods and services supplied to the public by or at the Golf course. Such a list or schedule of proposed prices shall be included in each proposed Annual Budget provided to the Department. Such prices shall be based on the following considerations; a) that the Golf Course are intended to serve the needs of the public with the goods and services supplied at a cost comparable to other local sources of similar goods and services and b) that the potential profit margin should accommodate the cost of providing the goods or services in compliance with the obligations of this Agreement. If the Department notifies the Operator that a fee or price being charged is not fair and reasonable, the Operator shall have the right to confer with the Department to justify such fee. Following reasonable conference and consultation thereon, the Operator shall immediately make such fee/price adjustments as may be ordered by the Department.

7. COST AND EXPENDITURES, LATE FEES.

7.1 Direct Costs. All Direct Costs (the normal and ordinary costs of operating and maintaining the Golf Course) shall be paid by the Operator from the Operator's bank accounts, and the 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 actual amount paid by the Operator to persons and entities unrelated to the Operator.

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

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profits from the operation of the Golf Course. Executive personnel 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.

Late Fees paid to vendors will not be reimbursed without the approval of the Director. Subject to the above limitation, a Direct Cost shall be any cost which is directly related to the normal and ordinary staffing, operations or maintenance of the Golf Course Facilities as outlined in the Agreement, only when approved by the City in the Approved Annual Budget or when proposed by the Operator and approved, in writing, by the City, including but not limited to the following:

- 7.1.1 Operator employee salaries, wages, and compensation.
- 7.1.2 Operator's employee benefits, including vacation, sick leave, health insurance, HAS Contributions, 401(k) contributions, disability insurance, and worker's compensation insurance.
- 7.1.3 Employee Incentives and Bonuses. Employee incentives that comply with the City policies are authorized and may be considered a Direct Cost. Authorized incentives are to express employee appreciation, and are generally of minimal value (less than ten dollars); the value is in the giving and not in the gift itself. The reimbursement request for any incentives that comply with City policies must include a completed City Form (see Exhibit F). Any other employee incentive or bonus will be excluded as a Direct Cost and will be paid at Operator's sole expense.
- 7.1.4 Food for Operator Employees. Food provided to employees that complies with City policies is authorized and will be considered a Direct Cost. In acknowledgement of the retail food and beverage operations, and industry conforming standard policy for food and beverage consumption is attached as Exhibit G. All food purchased by employees under the attached food and beverage policy will be excluded as a Direct Cost and will be at the Operator's or employee's sole expense.
- 7.1.5 Lease and/or rental of equipment.
- 7.1.6 Repair and maintenance of golf and hand carts, and capital equipment used in the Pro Shop, Restaurant, Driving Range, and Cart Barn.
- 7.1.7 Uniforms, laundry, and linens.
- 7.1.8 Operating supplies, office supplies, cleaning supplies, and other miscellaneous supplies.
- 7.1.9 Audit. Performance or financial audits may be required by the City.
- 7.1.10 Advertising and marketing expenses.
- 7.1.11 Telephone, postage, and freight directly related to the operation of the Golf Course.

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- 7.1.12 Utilities and utility deposits, including natural gas, water, electric power, telephones, garbage, recycling, and trash collection.
- 7.1.13 Parking lot maintenance.
- 7.1.14 New Mexico State Business and Occupation taxes, if applicable, on the Direct Costs or reimbursement of same.
- 7.1.15 Refunds. Refunds will be expensed and not deducted from revenue, and will be reimbursed by the City.
- 7.1.16 Food, Beverages, and restaurant supplies.
- 7.1.17 Petty cash reimbursements must meet the same guidelines as other invoices, including an itemized receipt listing what was purchased and that the purchase was paid (proof of purchase and payment).
- 7.2 Direct Cost Budget. The Direct Cost Budget is a portion of the Annual Budget and includes 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 limited to the following:
 - 7.3.1 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, and/or fires, provided however, that such expense shall continue only during the pendency of the particular occurrence of force majeure and are subject to the prior approval of the Director.
 - 7.3.2 Base Management Fees and Revenue 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 each must be separately approved by the City before it may be undertaken. The City is responsible for the cost of any Capital Expenditure approved. Examples of such expenditures include, but are not limited to, equipment for the driving range, kitchen, and restaurant fixtures, etc. The City may request that the Operator contract for and make capital improvements and will 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 under Section 7.5 to be managed or implemented by the Operator will be under a separate agreement between the City and the Operator.
- 7.5 Small Construction Projects. Pre-approved small construction projects under Section 5.3 and included in the Annual Budget will be reimbursed.
- 8. OPERATOR COMPENSATION. Operator compensation, including any Base Management Fee, incentive compensation, or revenue-based compensation, shall be governed exclusively by Exhibit D (Awarded Financial Terms), subject to annual appropriation and the provisions of this Agreement.

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No compensation provision shall be interpreted to create a lease, concession, profit-sharing arrangement, or possessory interest in City property

- 8.1 Base Management Fee. The City shall pay Operator a Base Management Fee in the amounts and on the schedule set forth in Exhibit D (Awarded Financial Terms), subject to annual appropriation and the terms of this Agreement.
- 8.2 Revenue Growth Incentive Fee. The Revenue Growth Incentive Fee, if any, shall be calculated and paid in accordance with the methodology and limits set forth in Exhibit D, provided that no portion of Operator compensation shall be based on a share of net profits from the operation of the Golf Course.
- 8.3 Annual Limit on Operator Compensation. Notwithstanding any provisions in this Section 8 regarding adjustments to Operator's fees, the Base Management Fee shall not be less than 80% of the total compensation paid to Operator for a calendar year under this Agreement. No provision of the Awarded Financial Terms shall be interpreted to alter the nature of this Agreement as a management agreement, nor to create any leasehold, possessory interest, or profit-sharing arrangement.
- 8.4 Payment Procedures.
 - 8.4.1 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 for Direct Costs by ACH or check mailed to the Operator within 10 (ten) business days, excluding City holidays, after receipt of the Operator's invoices in a form approved by the City.
 - 8.4.2 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. Operator shall submit weekly invoices to be approved and paid by the City.
- 8.5 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. In no event shall the reimbursement submittals be processed more often than once a week with the exception of twice per month payroll reimbursements. The City reserves the right to review all reimbursement submittals, see justification from the Operator, and once accepted by the City, issue a reimbursement.
 - 8.5.1 Salary reimbursement requests must be separated by golf course and include by employee: name, total hours, pay rate, total cost, and cost for each benefit

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(taxes, health insurance, etc.). The request must include a report from the Operator's payroll system that includes the above information.

8.5.2 At year-end, if requested by the City, reimbursement requests must be separated by calendar year; any single that includes expenses from two calendar years will not be reimbursed and returned to the Operator for resubmission as separate requests by year.

8.5.3 Reimbursement Summary. Each request shall include a summary that includes sub-totals by golf course and list each vendor, date paid, check number, and amount. Attached to the summary shall be the original invoice that was paid. Upon request by the City, 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.

The City and operator shall agree to work diligently toward an electronic submission system acceptable to state auditors that increases efficiency and reduces the combined cost of submission to the City.

8.5.4 Payment Approval and Certification. At least once annually, the Operator shall provide a letter signed by the CEO, including all employees who are authorized to sign reimbursement requests. Prior to submission of any requests for reimbursement, the Operator shall provide a letter signed by the 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 Bank Account. The City has established a bank account ("City's Bank Account") for the purposes of accepting deposits of revenues under this Agreement. The funds in this account are the property of the City. Payments by Operator from this account are prohibited.

9.2 Revenues. All revenues from sales and rentals at Desert Lakes Golf Course are the property of the City and not part of the fees or consideration paid to the Operator and shall be deposited into the City's Bank Account daily. No deposits of the golf course revenue may be made into any other bank account for any purpose or under any circumstances.

9.3 Golf Revenues should cover all golf expenses, including the Golf Debt Service expense (\$xxxxx).

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9.4 Accounting Procedures. For the expenditure process, please refer to Section 8.5.

- 9.4.1 Each business day, the City will reconcile all daily sales and other revenue transactions by using a report directly from the Operator's point of sale system that can then be easily and expediently uploaded by the City into the City's financial system (Tyler).
- 9.4.2 If the Operator makes an adjustment after submission, it should notify the City of Alamogordo Finance Department on the same business day.
- 9.4.3 If the Operator creates any new business revenue, this should first be discussed with the City and incorporated into the sales and revenue reconciliations and reporting.
- 9.4.4 The Operator will provide the City with a monthly sales and revenue report that separates the revenue by category and source approved by the City.
- 9.4.5 Any new Point of Sale or financial system must first be vetted and approved by the City of Alamogordo and meet Payment Card Industry (PCI) level three requirements.
- 9.4.6 Fixed Assets and Inventory: All assets belong to the City.
- 9.4.7 The Operator shall employ a method of accounting for all the revenues and expenses in connection with the operation of the Golf Course that is consistent with the City's modified cost basis reporting, and that correctly and accurately reflects the gross receipts and disbursements received or made by the Operator from the operation of the Golf Course. The Operator shall establish and implement adequate internal controls for this operation and all cashiering and cash handling that comply with GAAP (General Accepted Accounting Practices), 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.
- 9.5 Monthly Reports and Transactions. The Operator shall provide to the City of a Monthly Report of the previous month's transactions and financial status of the Golf Course.
 - 9.5.1 Monthly Report. Within 20 (Twenty) 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 inventory levels, a monthly and year-to-date balance sheet, cash flow report, and income statement.
 - 9.5.2 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.
 - 9.5.3 After review of the above items, the City may request additional reports that detail previous transactions.

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10. BUSINESS RECORDS.

- 10.1 Types of Records. The Operator shall keep and store within the city limits of Alamogordo, New Mexico, the following records and documents:
- 10.1.1 Regular books of account, such as general ledgers;
 - 10.1.2 Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
 - 10.1.3 Sales tax returns, checks, and other documents proving payment of sums shown;
 - 10.1.4 Cash register tapes or computerized records for the identification of day-to-day sales;
 - 10.1.5 Logs showing the dates and times of driving Range and greens usage, and Golf Lessons at the Golf Course; and
 - 10.1.6 Any other accounting records that the City, in its sole discretion, deems necessary for proper reporting of receipts.
 - 10.1.7 All books and records will be turned over to the City after 3 (Three) years for retention in City archives, in City-authorized storage boxes with a completed City archival form attached to each box as required by the City Archivist/Clerk. These records may be in electronic format on CDs, DVDs, or whatever format is deemed acceptable to the City Archivist/Clerk.
- 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 Alamogordo City limits during the term of this Agreement and for at least 3 (three) 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 Course and observe the operation of the business. The City will use its best efforts to minimize the interruption of the normal operation of the Golf Course 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 and IPRA Compliance. All records created, received, or maintained by Operator in connection with this Agreement are public

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records of the City and subject to the New Mexico Inspection of Public Records Act (“IPRA”). Operator shall promptly provide such records to the City upon request and shall cooperate fully with the City to ensure compliance with statutory deadlines.

Operator shall indemnify the City for any damages, penalties, or attorney’s fees arising from Operator’s failure to timely provide public records required under IPRA.

11. INSURANCE AND INDEMNITY.

11.1 Insurance.

11.1.1 Worker’s Compensation Insurance. The Operator shall keep in full force and effect at all times during the term of this Agreement workers’ compensation insurance for all workers employed pursuant to this Agreement in compliance with any applicable local, state, and federal statutes. If any work is sublet, the Operator shall require its sub-operator (s) to similarly provide worker’s compensation insurance for all of the latter’s employees unless all the employees are covered by the Operator.

11.1.2 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 (including Premises/Operations, Products/Completed Operations, Personal Injury/Advertising Injury, Contractual Liability and Commercial Liquor Liability), Business Auto Liability, and if necessary, Umbrella/Excess Liability insurance so as to provide total limits of liability of not less than \$3,000,000 per occurrence Combined Single Limit Bodily Injury and Property Damage, except \$1,000,000 each offense as respects Personal Injury/Advertising Injury and \$1,000,000) each Accident/Employee Stop Gap/Employers Liability. “The City of Alamogordo shall be included as an additional insured under each policy, whether liability is attributable to the Operator or the City, and coverage shall be primary and non-contributory with any insurance or self-insurance maintained by the City.

11.1.3 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 up to the attachment point of property insurance coverage.

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The Operator 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.

11.1.4 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 \$250,000 for employee dishonesty and coverage for theft, disappearance, and destruction of or to monies or funds of, in, or at the Golf Course in an amount as dictated by the exposure at any given time, but in no event less than \$50,000. All amounts set forth herein shall be per occurrence and in the aggregate. The City may require the Operator to purchase a fidelity bond 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 \$250,000 per occurrence. This cost shall be a direct insurance cost.

11.1.5 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 e30 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:

**The City of Alamogordo
Attn: Finance Department
1376 9th St.
Alamogordo, NM 88310**

Insurance certification shall not be mailed, but shall be delivered electronically (as may notice of cancellation/reinstatement) by email as an attachment in PDF or XLS format

11.1.6 Cost of Insurance. Operator shall bear the cost of all insurance required under this Agreement as a cost of doing business, except that the City may reimburse Operator only for those insurance costs expressly identified and approved in the Approved Annual Budget as directly attributable to the operation of the Golf Course on behalf of the City.

No insurance cost shall be reimbursed unless expressly approved in advance in writing by the City.

11.2 Indemnity. To the fullest extent permitted by law, Operator shall defend, indemnify, and hold harmless the City of Alamogordo, its elected officials,

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officers, employees, agents, and volunteers from and against any and all claims, demands, damages, losses, liabilities, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to:

- a) Any negligent or wrongful act or omission of Operator or its officers, employees, agents, or subcontractors;
- b) Any breach of this Agreement by Operator; or
- c) The operation or management of the Golf Course by Operator.

Operator's duty to defend shall arise upon written tender of defense by the City and shall be independent of Operator's duty to indemnify.

Nothing in this Agreement shall be construed as a waiver of the City's sovereign immunity or any limitation of liability under the New Mexico Tort Claims Act, NMSA 1978, §41-4-4 et seq. Indemnification shall apply only to the extent permitted by law.

In the event of concurrent negligence, Operator's indemnification obligation shall apply only to the extent of the Operator's proportional fault. Operator shall not be required to indemnify the City for damages arising out of the City's sole negligence.

The indemnity obligations set forth herein shall survive expiration or termination of this Agreement.

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 (type of organization) duly organized, validly existing, and in good standing under the laws of the State of Name the State (state)(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 the 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 have 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,

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delivery, and performance by the Operator of this Agreement do 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 and Warranties. The representations and warranties contained in this Agreement do not contain any untrue statement of 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 the 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, the 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 a 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 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 Course. The City may also avail itself of any other remedy provided by law.

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13.4 Immediate Termination for Cause. Notwithstanding any cure period provided elsewhere in this Agreement, the City may immediately terminate this Agreement upon written notice to Operator if the City determines, in its sole discretion, that any of the following has occurred:

- a) Failure to deposit City revenues as required by this Agreement;
- b) Fraud, embezzlement, misappropriation, or material financial misconduct involving City funds or property;
- c) Loss, cancellation, or material reduction of required insurance coverage;
- d) Material violation of applicable law, including but not limited to state procurement, ethics, or public records laws;
- e) Conduct that poses an immediate risk to public health or safety; or
- f) Unauthorized assignment or change in control.

Upon immediate termination, the City may exercise step-in rights to assume control of Golf Course operations and may withhold any payments otherwise due to Operator pending final reconciliation.

13.5 City Step-in Rights. In the event of Operator Default, termination, or circumstances reasonably threatening the continuous operation of the Golf Course, the City shall have the right, but not the obligations, to immediately enter upon the Golf Course and assume temporary or permanent operational control, without liability to Operator, for the purpose of protecting City property, revenues, and public access.

Operator shall fully cooperate with any step-in, including transfer of access credentials, records, systems, inventories, and personnel information necessary for continued operation.

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 Notice. 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

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- (a) the date actually received, or
- (b) 5 (Five) 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 Alamogordo
Attn: Parks & Recreation Director
1376 9th Street
Alamogordo, NM 88310

If to the Operator, to:

Contractor
Address

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. The City's willingness to enter into this Agreement with Operator is conditioned, in part, on the City's confidence in Operator's management structure. Operator shall not subcontract or assign any of its rights or delegate any of its duties under this Agreement to a third party unless

- (a) The Director 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 all the terms and conditions of this Agreement.

No assignment or subcontract shall release the Operator from any of the obligations under this Agreement, and the Operator shall remain jointly liable for performance of this Agreement unless expressly released by the Director, in writing. For purposes of this Section, any sale or transfer of company ownership or assets that results in a change in the voting or decision-making control of the limited liability company or a change in corporate structure shall also constitute an assignment.

Any change in ownership, voting control, or management authority of Operator shall require prior written approval of the City Commission. Failure to obtain such approval shall constitute a material default.

14.5 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one and 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.

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- 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 provision or the intent of this Agreement.
- 14.10 Mutual Non-Disparagement. Each party agrees that, until the expiration or termination of the Agreement, and until the sixth anniversary of the date of termination of this Agreement, it will cause each party and any of their Associates or Representatives not to directly or indirectly, in any capacity or manner, make, express, transmit, speak, write, verbalize or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward, the City or the Operator, or any of their directors, Commissioners, employees, agents, or representatives (collectively, the “City Representatives” and “Operator Representatives”), or that reveals, discloses, incorporates, is based upon, discusses, includes or otherwise involves any confidential or proprietary information of either party, their subsidiaries or Affiliates, or to malign, harm, disparage, defame or damage the reputation or good name of either party, their businesses or any of their Representatives.
- 14.11 Order of Precedence. In the event of any conflict, inconsistency, or ambiguity between this Agreement and any exhibit, attachment, or incorporated document, including the Awarded Financial Terms, the terms of this Agreement shall control.
- No Exhibit or Financial Proposal shall modify, waive, or supersede any provision relating to indemnification, insurance, termination, audit rights, public records, compliance with law, or City remedies.
- 14.12 No Post-Award Renegotiation of Financial Terms. The City shall have no obligation to negotiate or modify the Awarded Financial Terms following contract award, except as required by law or approved by the City Commission.
- 14.13 Exhibits. The following exhibits are incorporated and made a part of this Agreement:
- A. Golf Course Manual
 - B. Initial Hours of Operation.
 - C. Sample Financial Reporting Template.
 - D. Awarded Financial Terms
 - E. YEAR Operator Financial Results.
 - F. City Loss Form.

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- G. Request for Payment for Food and Gifts.
- H. Contractor Golf Food and Beverage House Policies.
- I. Reciprocal Play and Practice Policy.
- J. Greens Fee Schedule YEAR.
- K. Golf Finance Manual
- L. Low-Cost Access Points to Golf.
- M. Liquor License Contract