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MEMORANDUM

COMMUNITY SERVICES DEPARTMENT MEMO NO. 13-096

DATE: FEBRUARY 19, 2013

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*

FROM: MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR *MME*

SUBJECT: INTRODUCTION OF ORDINANCE NO. 4434 - AMENDMENT TO LEASE WITH LAS CORRIENTES, LLC

RECOMMENDATION: Staff recommends introduction and tentative approval of Ordinance No. 4434 amending the lease with Las Corrientes, LLC for the operation of Bear Creek Golf Complex.

BACKGROUND: On April 22, 1999 the City Council approved a contract with Las Corrientes, LLC, through Ordinance No. 2968 for the development and operation of Bear Creek Golf Complex. Since then the City Council has approved two amendments to that lease. They are as follows:

- Amendment No. 1, April 30, 1999: Change of date for the submission of a grading plan.
- Amendment No. 1, February 28, 2002: Reducing the rate the City charges to lessee for reclaimed water.

The third amendment would change the language in Article 9.17 Golf Carts, that reads "... electric golf carts..." to "...riding golf carts...". This change would allow a more generic reference to the provision of riding golf carts and allow the contractor the option of providing electric, gas or other future developed fuel source powered golf carts during the term of the lease. At the present time there are several quality manufacturers of both electric and gas powered golf carts from which the contractor would be able to select to maximize customer service and cost effectiveness.

FINANCIAL IMPLICATIONS: None.

MOTION: Move that Council introduce and tentatively approve Ordinance No. 4434 amending the lease with Las Corrientes, LLC for the operation of Bear Creek Golf Complex.

ORDINANCE NO. 4434

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE LEASE AGREEMENT BETWEEN THE CITY OF CHANDLER, ARIZONA AND LAS CORRIENTES, L.L.C.

WHEREAS, on April 22, 1999, the City Council approved the terms and conditions of the Lease Agreement with Las Corrientes, L.L.C. by approval of Ordinance 2968; and

WHEREAS, the City and Las Corrientes, L.L.C. have amended the Lease Agreement twice, first in August 1999 and the second time in February 2002; and

WHEREAS, both of which amendments were labeled as Amendment #1 to this Lease Agreement; and

WHEREAS, pursuant to Section 23.6 of the Lease Agreement, any modification of it must be in writing and signed by the City and Las Corrientes, L.L.C.; and

WHEREAS, this Amendment No. 3 has become necessary because the City and Las Corrientes, L.L.C. do not wish to specify the types of motorized riding golf carts that the Lessee must provide as set forth in Section 9.17 of the Lease Agreement;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION I. Council Finding:

- A.** It is in the interests of the City to amend its Lease Agreement by this Amendment No. 3.

SECTION II. Council Approval of Amendment:

- A.** City Council hereby approves the terms and conditions of Amendment No. 3 to the Lease Agreement between the City and Las Corrientes; and
- B.** City Council authorizes the execution of Amendment No. 3.

INTRODUCED AND TENTATIVELY APPROVED by the City Council this ____ day of February, 2013.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council this _____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I, HEREBY CERTIFY, that the above and foregoing Ordinance No. 4434 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2013, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

PUBLISHED:

**AMENDMENT NO. 3 TO
LEASE AGREEMENT BETWEEN
CITY OF CHANDLER
AND LAS CORRIENTES, L.L.C.,
DATED APRIL 30, 1999**

ARTICLE I. INTRODUCTION

CITY OF CHANDLER, an Arizona municipal corporation (hereinafter referred to as the "City") and Las Corrientes, L.L.C., an Arizona limited liability company ("Lessee") are Parties to a Lease Agreement, dated April 20, 1999, in which the City leased the Premises for a municipal golf course as well established terms and conditions for management and operation of the municipal golf course.

ARTICLE II. RECITALS

- A.** On April 22, 1999, the City Council approved the terms and conditions of the Lease Agreement by approval of Ordinance 2968.
- B.** Both Parties signed the Lease Agreement on or before April 30, 1999.
- C.** Pursuant to Section 23.6 of the Lease Agreement, any modification of the Lease Agreement must be in writing and signed by the Parties.
- D.** By their signatures below, the City and Lessee agree that it is in their mutual interests to amend their Lease Agreement by this Amendment No. 3 ("Amendment No. 3").
- E.** This Amendment No. 3 has become necessary because the Parties do not wish to specify the types of motorized riding golf carts that the Lessee must provide as set forth in Section 9.17 of the Lease Agreement.
- F.** The Parties have amended the Lease Agreement twice, first in August 1999 and the second time in February 2002. Both of which documents were labeled as Amendment #1 to this Lease Agreement.
- G.** City and the Lessee affirm to each other that they conducted all negotiations leading to this Amendment No. 3 in good faith and that they are entering into this Amendment No. 3 freely and without duress.

ARTICLE III. AMENDED PROVISIONS

NOW, THEREFORE, in consideration of the foregoing factual recitals and mutual covenants set forth in this Amendment No. 3 as well as the Lease Agreement, and other good and valuable consideration, the adequacy of which is hereby acknowledged, the City and the Lessee agree to the following modifications, amendments, changes and/or substitutions to the Lease Agreement.

- A. The terms used and capitalized in this Amendment No. 3 shall have the meanings set forth in the Lease Agreement, unless the context clearly requires otherwise.
- B. The Parties agree that this contract amendment will be called the Amendment No. 3 to the Lease Agreement.
- C. Section 9.17 in the Lease Agreement is hereby deleted in its entirety and replaced with the following:

9.17 Golf Carts.

Lessee shall provide, through purchase or lease as an expense to the operation, at no cost to the City, no less than ninety (90) riding golf carts and forty (40) pull carts. Lessee shall provide an additional fifty (50) riding golf carts at such time that number of rounds on the Championship Course exceed 50,000 in any Lease Year.

D. General Provisions

- 1. The effective date of this Amendment No. 3 shall be the date on which the last representative for the Parties executed the Amendment.
- 2. All terms, definitions, and provisions of the Lease Agreement, as modified by the two earlier Amendments, that are not specifically changed in this Amendment No. 3 remain the same and are binding between the Parties.
- 3. Upon amendment of the Agreement, by this Amendment No. 3 or any other subsequent amendment, references to "Lease" or "Lease Agreement" shall mean the Lease Agreement as amended by the earlier two Amendments, this Amendment No. 3, and any subsequent amendment(s).
- 4. If, after the effective date of any amendment(s), the Parties find it necessary to refer to the Lease Agreement in its original, unamended form, they shall refer to it as the "Original Lease Agreement." When the Parties mean to refer to any specific amendment to the Lease Agreement as if it were unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.
- 5. The Parties agree that the Recitals stated above are true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 of the Lease Agreement the day and year set forth below the Parties' signatures.

CITY

LESSEE

CITY OF CHANDLER, an Arizona municipal corporation

LAS CORRIENTES, L.L.C., an Arizona limited liability company

By: _____
Jay Tibshraeny, Mayor
Date: _____, 2013

By: Daniel M. Strand
Name: Daniel M. Strand
Its: Managing Partner
Date: Feb 14, 2013

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY GAB

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Acknowledgment

The foregoing instrument was acknowledged before me this 14th day of February 2013, by Daniel M. Strand, manager of Las Corrientes, L.L.C., an Arizona limited liability company.

Holly M Granillo
Notary Public

My Commission expires: 9/30/2015

