

GOLF COURSE USE AGREEMENT
Between the City of Madison and Change Golf Instruction LLC
For 2018-2022

THIS AGREEMENT, is made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and Change Golf Instruction, LLC, a Wisconsin limited liability company (“User”), and is effective as of the date on which both parties have signed hereunder.

WITNESSETH:

WHEREAS, User is the successor entity to a private business (Golf Revolution LLC) that began offering adult and junior golf lessons at the City’s four golf courses (Glenway, Monona, Odana Hills, and Yahara Hills, collectively the “Courses”) in 2015; and,

WHEREAS, User’s mission is to provide as accessible and affordable way to experience golf in Madison; and,

WHEREAS, it is in the City’s interests to expand interest in the game of golf at its Courses and in the Madison area; and,

WHEREAS, User, when operating as Golf Revolution LLC, and while acting pursuant to the terms of a preceding Golf Course Use Agreement, provided a valuable service, golf instruction, to customers of the City’s Courses from 2016-2017; and,

WHEREAS, by entering into a new Use Agreement with User that will make User a preferred golf instruction provider at the Courses, the City will be providing a service to its Course customers and helping to expand interest in the game of golf and the use of the Courses.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to grant User the status of a preferred golf instruction provider at the Courses, provide User with dedicated storage space at the Courses, and establish protocol for the User’s outside employment of City employees.
2. Term and Effective Date. This Agreement shall run for three-years and expire on December 31, 2020. It may be renewed for up to two (2) additional one-year periods, upon the mutual agreement of the Parties as set forth herein, with each additional period running from January 1 through the December 31 the following year.
3. Special Conditions of Use. In entering into this Agreement, City and User (the “Parties”) agree to the following special terms and conditions regarding the User’s use of the Courses:

- a. Use of Courses. User may conduct private golf lessons at the City's Courses. When conducting lessons, User shall notify the City as far in advance as possible so that Course availability may be determined.
- b. No Exclusivity. The Parties recognize that this Agreement does not exclude other golf instruction providers from using the Courses or their facilities to conduct golf lessons. The City may enter into agreements or arrangements with other lesson providers.
- c. Range Usage. City will provide range balls of sufficient quality and quantity to conduct golf instructional Users at the Courses' ranges. The City shall be responsible for maintaining the range facilities at the Courses, including, but not limited to, mowing and seeding as well as picking and washing range balls.
- d. Storage.
 - (1) Grant. City grants User the permission to store its equipment at the Courses in designated areas ("Storage Areas"). Only golf equipment, apparel, and promotional materials may be stored in the Storage Areas. User must provide the City access to the Storage Area with reasonable notice. User accepts all the risks associated with the storage of its equipment at the Courses, and releases City from any claims related to lost, damaged, stolen or missing equipment from the Storage Areas. User shall keep the Storage Areas in a neat and orderly manner.
 - (2) Surrender of Courses. Within ten (10) days of the expiration of this Agreement or the termination of this Agreement under Section 7, User agrees to vacate and surrender the Storage Areas, remove all personal property therefrom, and deliver possession of the same back to the City, in as good condition as the Storage Areas were in at the commencement of the Agreement, with the exception of unavoidable wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of User. User may be granted additional time to vacate and surrender the Storage Areas under this Subsection by written agreement with the Parks Superintendent, or his/her designee. Any damages to the Storage Areas beyond normal and expected wear and tear shall be the responsibility of User. If these damages are not repaired by User before surrender of the Storage Units to the City, the City shall cause the repairs to be made and invoice the cost thereof to User. Any balance owed shall be due within thirty (30) days of the invoice. No fixtures, whether or not purchased by User, shall be removed without the permission of the City. Any property of User remaining in the Storage Areas thirty (30) days after surrender of the Storage Areas will become the property of the City.
- e. Advertisements. User shall be allowed to advertise and market its services at the Courses, including providing flyers and other promotional materials for distribution in the Courses clubhouses. All materials must be approved by City before use.

- f. Report. On a monthly basis, User shall submit to City a report detailing the numbers or participants in lessons at the Courses. This report shall show the number of participants at each course, broken down by the type of lesson involved. In addition, this report shall include the information described below in subsection g.(2). This report shall be due no later than the 10th day of each month.

- g. City Employees. User may employ City employees as golf instructors, provided the following conditions are met:
 - (1) Hourly city employees working as golf instructors for User must clock-out prior to any lessons. Salaried employees must inform the Assistant Superintendent prior to providing any lessons of the times that they will be working for User.
 - (2) On a monthly basis, or as requested, User shall provide City with a detailed log of its employment of City employees showing how many lessons they provided, the location thereof, and the times of said lessons.
 - (3) City employees providing lessons through User may not identify themselves as City employees and must cover up any City logo or apparel. In addition, while providing lessons, City employees may not engage in any official City business, except in the case of emergencies.
 - (4) City employees may not be identified on any promotional material as a City of Madison employee. It is permitted for such employees to be identified based upon their job title and course assignment (e.g., Assistant Pro at Odana Golf Course, not City of Madison Assistant Golf Pro at Odana Golf Course or Assistant Golf Pro, City of Madison).
 - (5) While giving lessons through User, User acknowledges that said instructors are not employees of the City and are the responsibility of User. User shall maintain adequate insurance, including worker's compensation, to cover the actions of these instructors while providing lessons through User.

4. Fees.

- a. In return for the status granted User under this Agreement, User shall pay to the City the following fees:
 - (1) Annual Fee. User shall pay an annual fee of:
 - 2018: \$2,450
 - 2019: \$2,700
 - 2020: \$2,950
 - 2021: \$2,950
 - 2022: \$2,950

- (2) Instructor Fee. User shall pay to the City \$100 for each instructor utilized for lessons at the Courses during each month.
 - (3) Greens Fees. User shall pay to the City 80% of the advertised greens fee rate.
 - b. Payment. The annual fee shall be due no later than May 1 of each year of this Agreement. The instructor and greens fees shall be paid monthly at the time of the submission of the monthly report under subsection 3.f.
 - c. Signs Prohibited. No advertising signs or billboards shall be permitted at the Courses, except temporary ones used while at the location and removed upon vacating for the day.
 - d. Weapons Prohibition. User shall prohibit, and shall require its contractors and subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Courses under this Agreement, except with the prior consent of the Parks Division.
5. Assignment and Subcontracting. User shall not assign this Agreement or any interest therein, nor subcontract the use of Courses or the Storage Areas, without the prior written approval of the City.
6. Indemnification and Insurance.
- a. Indemnification. User shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the User's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
 - b. Hazardous Substances; Indemnification. User represents and warrants that its use of the Courses will not generate any hazardous substance, and it will not store or dispose on the Courses nor transport to or over the Courses any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. User further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local

environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

c. Insurance.

(1) Required Insurance. User will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. User shall not commence work under this Agreement, nor shall User allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

(a) Commercial General Liability. During the life of this Agreement, the User shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. User's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. User shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

(b) Property Insurance. User shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Courses. Such personal property includes, but is not limited to, User's golf instructional equipment. The City shall not be liable for any damage to or loss of property of User or others located on the Courses except to the extent such damage or loss was caused by the City's sole negligence or willful act.

(c) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. User shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. User shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- (3) Proof of Insurance, Approval. User shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. User shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. User shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice of Change in Policy. User and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- (5) Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, User shall immediately cease use of the Courses and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

7. Default and Termination.

- a. In the event User shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to User, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against User, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of User under this Agreement.
- b. Notwithstanding the above, either Party may terminate this Agreement for any reason at any time by mailing written notice of termination to the other with at least ten (10) days advance notice.

8. Binding on Parties; Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing signed by the duly authorized agent or agents who executed Agreement, except that for terms only affecting City and User, or where specifically set forth in this Agreement, only those Parties need enter into a written amendment of the terms of this Agreement for it to be effective.
9. Status of Parties. It is agreed that User is an independent contractor and not an employee or representative of the City, and that any persons who User utilizes and provides for services under this Agreement are employees or volunteers of User and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting User the right to use the Courses for the purposes set forth herein, that the City is not granting User the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and User arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
10. Notices. All notices required to be given under the terms of this Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City:	Superintendent of Parks City of Madison Parks Division 210 Martin Luther King, Jr. Blvd., Room 104 PO Box 2987 Madison, WI 53701
User:	Sue Shapcott Change Golf Instruction LLC 1424 Morrison St. Madison, WI 53703
11. Title to be Retained by City. City shall retain title and ownership of Courses together with all buildings, fixtures and improvements thereon without any payment whatsoever to User.
12. Non-Discrimination. In the performance of the services under this Agreement User agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. User further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
13. Nondiscrimination Based on Disability. User shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Users and

Activities.” Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, “City financial assistance” includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

User assures that, in providing any service at the Courses, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s User;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

User shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

14. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to User the right to use the City’s Courses for the purposes set forth herein. There is, therefore, no conveyance of any riparian rights to User, but only permission to make use of the riparian rights the City has as owner of the Courses.

15. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
16. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
17. Compliance with the Law. User agrees to comply with all laws and ordinances of the United States, the State of Wisconsin, Dane County and the City of Madison, and shall obtain and keep in good standing all licenses and permits that may be necessary for its use of the Courses as set forth herein.
18. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
19. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or User shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or User therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
20. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.
21. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.”
22. Authority. User represents that it has the authority to enter into this Agreement and that the person signing on behalf of User represents and warrants that he or she has been duly authorized to bind User and sign this Agreement on User’s behalf.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

CHANGE GOLF INSTRUCTION LLC

Sue Shapcott, President

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael P. May, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-18-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____.