

COUNCIL REQUEST FOR DECISION

MEETING DATE: March 11, 2019

SUBMITTED BY: Darrell Melvie, General Manager, Community and Protective Services

PREPARED BY: Rachel Yeung, Manager, Community Development

REPORT TITLE: Leduc Golf & Country Club – Memorandum of Agreement

REPORT SUMMARY

To provide Council an update on the discussions with the Leduc Golf & Country Club relating to the potential ownership and operations of the golf course lands and provide information and intent of the partnership through the Memorandum of Agreement and Statement of Intentions.

RECOMMENDATION

It is recommended that Council approve the signing of the Memorandum of Agreement and Statement of Intentions with the Leduc Golf & Country Club to continue the working relationship and establish the principles respective to the potential ownership and operations of the Golf Course Lands.

BACKGROUND

KEY ISSUE(S) / CONTEXT:

Administration was directed to continue discussions with the Leduc Golf & Country Club (Club) stemming from the Leduc Golf & Country Club Assessment provided by the consultant on September 24, 2018. The assessment provided an overview of the mutual benefits of the golf course, various golf course ownership models, regional course competition, industry trends and a preliminary review of the existing capital assets and recommendations moving forward. This report identified that the club operates on 160 acres of land that constitutes a significant portion of green space and opportunities within the community.

The Club had initiated discussions with the City of Leduc regarding the future of the facility and the potential for partnership. One option for partnership would include a transfer of land title to the City and potential City assistance in upgrading some of the Club's infrastructure. The following responsibilities between the City and Club have been outlined in the Memorandum of Agreement and Statement of Intentions (MOA):

1. The Club will gift the Golf Course Lands to the City in exchange for the City planning for and making capital improvements such as:
 - Pro-shop;
 - Clubhouse including banquet facilities;
 - updated cart paths;
 - all required parking;
 - irrigation system upgrades;
 - any necessary site related infrastructure upgrades;
 - new Windrose multiway;
 - any needed construction required for golf course access;

2. The Parties will negotiate an operating agreement/lease where the Club will operate the golf course as a public municipal course. The Club will hire appropriate staff to operate the facility and be responsible for the day-to-day operations of the facility. The composition of the Board may be expanded to include members from the City.

PAST COUNCIL CONSIDERATION:

- September 24, 2018 - Stemming from a request from the Leduc Golf & Country Club (Club) to discuss options regarding potential future partnership between the City of Leduc and Club a consultant was hired to assess the current Leduc Golf and Country Club and provide an overall assessment of potential partnership options for future operations, an assessment of the golf market in the capital region, and comparisons with other municipal operating modals. Information regarding overall findings and comparisons were presented by the consultant.

IMPLICATIONS OF RECOMMENDATION

ORGANIZATIONAL:

Further analysis of projected implications for existing work programs and staff workloads will be assessed as each stakeholder identifies roles and responsibilities of the partnership.

FINANCIAL:

At this time there is some funding set aside within the 2021 operating and capital budget. Should the City enter into a partnership with the Club, a more detailed financial review will take place to finalize the details of this financial arrangement and adjust the budgets as required.

Administration will also need to consider other operational and master plan impacts and complete a thorough assessment of the potential partnership. This will also be part of the financial review.

LEGAL:

Legal services has been consulted and there are no concerns with the content of the Memorandum of Agreement and Statement of Intentions as presented.

IMPLEMENTATION / COMMUNICATIONS:

This Memorandum of Agreement and Statement of Intentions symbolises the commitment each stakeholder has in the continued working relationship and establishing principles pertaining to the ownership and operations of the Golf Course Lands. Each stakeholder will be involved with the implementation and communication of outcomes resulting from this partnership.

Next steps will also include:

- Further development of the title transfer and operating lease considerations.
- Related community engagement pertaining to the potential development of an open space plan for the site.

ALTERNATIVES:

- That the City of Leduc not enter into a Memorandum of Agreement and Statement of Intentions with the Leduc Golf & Country Club.

ATTACHMENTS:

- Memorandum of Agreement and Statement of Intention
Others Who Have Reviewed this Report

P. Benedetto, City Manager / D. Melvie, General Manager, Community & Protective Services / M. Pieters, General Manager, Infrastructure & Planning / Jennifer Cannon, Director, Finance

THIS MEMORANDUM AND STATEMENT OF INTENTIONS dated the _____ day of February, 2019.

BETWEEN:

THE CITY OF LEDUC
(the "City")

- and -

LEDUC GOLF & COUNTRY CLUB
(the "Club")

MEMORANDUM OF AGREEMENT AND STATEMENT OF INTENTIONS

WHEREAS the Parties wish to:

- A. state their respective intentions respecting the future ownership and operations of the Golf Course Lands (the "Project");
- B. establish their initial working relationship relating to the Project;
- C. establish certain principles relating to the Project;

in a **non-binding** statement of intent, subject to the Conditions Precedent, all as and to the extent provided by this MOA;

NOW THEREFORE the Parties, in consideration of the mutual covenants contained in this MOA, agree as follows:

Article 1 – Definitions & Schedules

1.1 **Definitions** - In this MOA, the following terms shall have the following meanings:

- (a) **"Conditions Precedent"** means those conditions specified in Article 3 of this MOA, which conditions must be met before the Parties will be obliged to proceed with the Further Arrangements;
- (b) **"Confidential Information"**:
 - (i) means any information of a non-public, confidential or proprietary nature disclosed by a Party to the other Party that is reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this MOA, or by the nature of the information itself, examples of which include: legal opinions, business plans, designs, in-camera proceedings of the Parties, financial data, financial and other projections, customer lists and draft agreements and other arrangements with third parties;

- (ii) does include information that is readily available in the public domain.
- (c) **“Further Arrangements”** means all full and final agreements required in relation to the Project, and may include other agreements, in each case when and if applicable (i.e. lease, operating agreement);
- (d) **“Golf Course Lands”** means those lands legally described within Schedule “B” attached hereto;
- (e) **“Project Activities”** means all activities reasonably required to complete the Project including, but not limited to:
 - (i) investigating all potential means for establishing a project plan with mutually agreed to timelines;
 - (ii) engaging and carrying out the services of consultants retained by the Parties, or the City on behalf of the Parties, to assist in the development of options for the parties to consider in relation to the Project;
- (f) **“Term”** means, subject to the terms of this MOA and the execution of the Final Arrangements, from the date hereof until the close of business on January 29, 2021.

1.2 Schedules – The following schedules are attached to, and form a part of, this MOA:

Schedule “A” -	Proposed Project
Schedule “B” -	Legal Land Description

Article 2 - Memorandum of Agreement and Statement of Intentions

- 2.1 Purpose & Intentions** - The Parties agree to work cooperatively together during the Term with a view to enabling Parties to conclude the Project and achieve the goals established therein, all as provided by and subject to this MOA.
- 2.2 Project Characteristics** - The Parties agree that it is their common intention that the Project will have the following characteristics:
- (a) The Project shall undertaken jointly by the Parties;
 - (b) To maintain the Golf Course Lands as a full-sized regulation golf course;
 - (c) Capital improvements to the facilities shall be provided by the City in exchange for the transfer of the Golf Course Lands;
 - (d) The Golf Course Lands shall continue to be operated and managed by the Club on behalf of the City;
 - (e) To offer a full service golfing experience to the public;

- (f) To operate a municipal golf course for the City of Leduc integrated with year round recreational and other community access opportunities on the Golf Course Lands.

- 2.3 **Project Obligations** - The Parties agree to identify and undertake all Project Activities required to in order to address all applicable issues as expeditiously as possible and in accordance with budgets and operating plans prepared by the Parties from time to time.
- 2.4 **Standard of Performance** - Each of the Parties shall use best efforts (subject always to such duties, obligations and limitations as may be imposed by law) to perform all of its duties under this MOA. Without limiting the foregoing, each of the Parties will make best efforts intended to result in the successful completion of the Project.

Article 3 - Conditions Precedent

- 3.1 **Conditions Precedent** - Notwithstanding anything contained within this MOA, the Parties acknowledge and agree that the final decision to proceed with any steps, undertakings, arrangements or other matter whatsoever beyond the completion of the Project will not occur unless and until:

- (a) the Parties shall have formally approved the Project;

and it is accordingly agreed that the authorities provided by the Parties under this Agreement is limited to the conduct of the Project.

- 3.2 **Failure of Conditions** –if all of the Conditions Precedent specified in this Article have not been met by March 15, 2019, this MOA will be at an end.

- 3.3 **The Parties Authority** – The Parties acknowledge that:

- (a) the Club, its board of directors, and anyone acting on behalf of any of them have not made and make no representations, warranties, promises or agreements whatsoever relating directly or indirectly to the subject matter of this MOA or the Project, except to the extent specified in this MOA;
- (b) the City, its administration, its Council, and anyone acting on behalf of any of them have not made and make no representations, warranties, promises or agreements whatsoever relating directly or indirectly to the subject matter of this MOA or the Project, except to the extent specified in this MOA; and
- (b) each of the Parties are acting on their own behalf, and are not an agent of the other Party for any purpose relating to the Project or this MOA, and consequently each Party has no authority, and has had no authority, whether express or implied to bind or to make any representations on behalf of the other Party relating directly or indirectly to the Project or this MOA, save and except for as evidence in agreement, or as evidenced in the minutes, resolutions or records of meetings of the Parties or the committees contemplated within this Agreement.

Article 4 - Confidential Information

4.1 Confidential Information - Each Party may furnish Confidential Information to the other Party as it deems necessary or helpful for the purposes of this MOA. Each of the Parties agrees that it will use its best efforts to hold such Confidential Information in confidence and use it solely for the purposes of this MOA, and:

- (a) shall not reveal it to anyone other than in the case of the Parties, its council members, officers, employees and advisers who need to know the Confidential Information in connection with this MOA for purposes related to this MOA; and
- (b) subject always to any statutory or regulatory requirement to disclose such information.

Each of the Parties further agrees to return, where possible, all Confidential Information provided by the other Party forthwith upon the request of the other Party on the termination of this MOA.

4.2 Survive Termination - In the event of termination of this MOA, all Parties shall remain bound by the obligations of confidentiality set forth in Section 4.1 for a period of 3 years following the date of termination of this MOA.

Article 5 - Term & Termination

5.1 Term - This MOA shall be in effect for the Term, unless:

- (a) earlier terminated in accordance with this MOA; or
- (b) replaced by the Further Arrangements, which are intended to replace this MOA as provided by the Further Arrangements.

Article 6 - Miscellaneous

6.1 Announcements & Publicity - The Parties agree that the contents and timing of any announcements or media releases regarding any of the matters provided for in this MOA shall be subject to the prior approval of all Parties. The Parties each agree that it shall consult with the other Party in relation to the contents and timing of any announcements and media releases.

6.2 Notices - Any notice required or permitted to be given under this MOA shall be in writing and may be given by delivery to the following addresses, and if so given shall be deemed received at the time of delivery; or by facsimile transmission to the following numbers, and if so given shall be deemed received on the next business day following transmission:

(a) **THE CITY**

City of Leduc
#1 Alexandra Park
Leduc, AB T9E 4C4
Fax: 780-980-7127

(b) THE CLUB

Leduc Golf & Country Club
5725 Black Gold Drive
Leduc, AB T9E 8C4
Fax: 780- 986-1715

- 6.3 No Relationship** - Except as expressly agreed, no Party shall be or be deemed to be an agent or representative of the other Party, and nothing contained within this MOA shall be construed so as to create a partnership relationship. Without limiting the foregoing, no Party shall without the written approval of the other Party, be entitled to make any contract, commitment or expenditure binding on the other.
- 6.4 No Assignment** - No party shall assign any of its rights, duties and obligations set forth and provided for in this MOA, without the prior consent of the other Party, which consent may be arbitrarily withheld.
- 6.5 Capacity and Authority** - Each of the Parties represents to the other that it has full legal capacity and authority to execute and deliver this MOA, and perform any obligations which may arise from the provision of this MOA.
- 6.6 Enurement** - This MOA shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 6.7 Entire Agreement** - This MOA constitutes the entire agreement between the Parties pertaining to this subject matter, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties; and there are no warranties, representations, conditions, acknowledgements or other agreements whether direct or collateral, express or implied, that form part of this MOA except as specifically set forth herein.
- 6.8 Alteration and Amendments** - No change or modification of this MOA shall be valid or effective against a Party unless it is in writing and signed by the duly authorized representative of that Party.
- 6.9 Waiver** - A waiver by or on behalf of a Party of a breach of any term of this MOA shall not be binding upon that Party unless it is in writing and executed by its duly authorized representative, and such a waiver shall not release the Party in breach from strict compliance with that or any other term in any other instance.
- 6.10 Laws of Alberta** - This MOA shall be governed by the laws of the Province of Alberta. The Parties agree to exclusively attorn to the courts of the Province of Alberta to resolve any disputes that may arise under or pursuant to this MOA.
- 6.11 Counterpart** - This MOA may be executed in any number of counterparts, and each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.
- 6.12. Force Majeure** - In the event that any Party is rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such Party shall give written notice to the other Party stating full particulars of such force majeure. The obligation of the Parties

giving such notice shall be suspended during the duration of the delay resulting from such force majeure, to a maximum of One Hundred and Eighty (180) days.

The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the Queen's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the Party claiming a suspension, which, by the exercise of due diligence, such Party shall not have been able to avoid or overcome; provided however, the term "*force majeure*" does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

IN WITNESS WHEREOF the Parties have executed this MOA as of the date first above written.

THE CITY OF LEDUC

Per: _____
Mayor

Per: _____
City Manager

LEDUC GOLF & COUNTRY CLUB

Per: _____

Per: _____

SCHEDULE "A"

Proposed Project

1. The Club will gift the Golf Course Lands to the City in exchange for the City planning for and making capital improvements such as:
 - Pro-shop;
 - clubhouse;
 - banquet facilities;
 - updated cart paths;
 - all required parking;
 - irrigation system upgrades;
 - any necessary site related infrastructure upgrades;
 - new Windrose multiway;
 - any needed construction required for golf course access.
2. The Parties will negotiate an operating agreement/lease where the Club will operate the golf course as a public municipal course. The Club will hire appropriate staff to operate the facility and be responsible for the day-to-day operations of the facility. The composition of the Board may be expanded to include members from the City.

SCHEDULE "B"

Legal Land Description

MERIDIAN 4 RANGE 25 TOWNSHIP 49

SECTION 27

QUARTER SOUTH EAST

CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT

A) 6.50 ACRES MORE OR LESS

REQUIRED FOR RIGHT OF WAY OF THE LACOMBE AND NORTHWESTERN
RAILWAY COMPANY AS SHOWN ON PLAN 3274EO

B) 1.21 ACRES MORE OR LESS AS SHOWN ON PLAN 5047JY

C) 0.34 OF AN ACRE MORE OR LESS FOR ROAD AS SHOWN ON PLAN 618LZ

D) 8.79 ACRES MORE OR LESS FOR ROAD AS SHOWN ON PLAN 3368LZ

EXCEPTING THEREOUT ALL MINES AND MINERALS