

# Master Lease Agreement

## Gas Powered Motorized Golf Cars And Gas Powered Motorized Utility Vehicles

This Agreement is entered into by and between the City of Lincoln, Nebraska, hereinafter referred to as "City", Nebraska Golf & Turf, Inc., and Nebraska National Bank, hereinafter collectively referred to as "Lessor".

### 1. PROVISION OF EQUIPMENT.

- 1.1 Lessor shall provide to the City Parks and Recreation Golf Division 225 motorized golf cars and 14 utility vehicles in accordance with Specification No. 04-010 and Lessor's proposal which are attached hereto and marked as Exhibit 1 and made a part hereof by reference.
- 1.2 In the event of conflict between the provisions of this agreement, the specifications, and the Lessor's proposal, the order of precedence shall be as follows: this agreement (including attachments and exhibits), the specifications, Lessor's proposal.

### 2. DELIVERY.

- 2.1 Lessor Nebraska Golf and Turf shall deliver the equipment at City of Lincoln, Nebraska's designated locations upon request and mutual agreement, throughout the six (6) year term of the lease.
- 2.2 All delivery shall be at no cost to the City.
- 2.3 The Superintendent of Administration of Lincoln Parks and Recreation Department shall be responsible for authorizing in writing all requested deliveries.

### 3. TERM.

- 3.1 The term of this agreement shall commence on the date of execution by the City (on or about April 1, 2004), and continue for a period of 72 months; provided, however, the City may terminate this agreement upon providing to the Lessor written notification of termination specifying that funds will not be appropriated for continued lease of the equipment.

3.1.1 City agrees that its administration will, on an annual basis throughout the term of this lease, propose in its proposed budget the funding of this lease.

3.2.2 At the time of execution of this agreement, Lessee asserts a reasonable belief that funds required for the full term of this agreement will be obtained on an annual basis. Despite such reasonable belief, City cannot guarantee the continued funding of this agreement, and reserves the right to terminate for lack of funding pursuant to section 3.1 of this agreement.

3.2 Such termination notification must be sent to Lessor at least 30 days prior to the proposed date of termination.

3.3 Upon expiration of the term of this agreement Lessor shall remove the equipment from City property, along with any of Lessor's supplies, at no cost to the City.

4. **COMPENSATION.**

4.1 The City shall make semi-annual payments to the Lessor Nebraska National Bank in the amount of **\$51,705.00** according to the schedule set forth in Lessor's proposal, which is attached hereto and marked as Exhibit 2 and made a part hereof by reference.

4.2 This charge includes and covers all required service, maintenance and supplies excluding fuel, oil and minor preventative maintenance as may be agreed upon by the parties. All such service, maintenance and supplies shall be performed and provided by Lessor Nebraska Golf and Turf.

5. **TAXES.**

5.1 All taxes, including sales, income, use and personal property taxes associated with this agreement, shall be paid by Lessor and shall not be the responsibility of the City.

6. **TITLE TO EQUIPMENT.**

6.1 Title to the equipment shall remain with Lessor at all times and the City shall have no right, title, or interest therein except as expressly set forth in this agreement.

6.2 Risk of loss, except loss resulting from negligent operation by the City, its employees, or golf patrons shall be assumed by the Lessor.

7. **CITY'S RESPONSIBILITIES.** The City agrees to:

- 7.1 Provide a delivery site at each of the five designated locations;
- 7.2 With City's approval, permit Lessor's field maintenance staff to enter its premises at all reasonable times to service the equipment;
- 7.3 Provide suitable space for Lessor's field maintenance staff to service the equipment;
- 7.4 Provide suitable space for storage of a minimum stock of preventative maintenance supplies at each of the five sites;
- 7.5 Provide a designated key operator at each of the five sites for training in the use of the equipment and, in the event of personnel turnover, notify Lessor immediately for training of a new key operator;
- 7.6 Provide minor preventative maintenance for the equipment as may be agreed upon by the parties;
- 7.7 Upon expiration or termination of this agreement, permit Lessor to remove the equipment;
- 7.8 Provide insurance coverage, either by virtue of the City being self-insured or by obtaining an insurance policy, for physical damage to the equipment caused by or as a result of any person other than Lessor, Lessor's assigns, agents, or employees.

8. **ADD, DELETE AND RELOCATION OF EQUIPMENT.**

- 8.1 The Superintendent of Administration of Lincoln Parks and Recreation shall coordinate with Lessor to determine the quantity of vehicles to be delivered and maintained at each site, their placement and movement, relocation, addition and deletion of equipment and supplies.

9. **SERVICING OF EQUIPMENT.**

- 9.1 Lessor warrants the equipment provided under this agreement will be maintained in proper functioning order during the term of this agreement.

- 9.2 Lessor makes no other warranties, express or implied, or of merchantability for this equipment.
- 9.3 If this equipment does not function properly during the contract term, it shall be repaired or replaced without charge to the City within 24 hours of notification.
- 9.4 Equipment which requires excessive service calls shall be replaced by Lessor instead of being repaired, excessive being measured by the industry standard.
- 9.5 Lessor Nebraska Golf and Turf is responsible for all maintenance and repair/replacement services of the equipment, without charge to the City, except those services City may specifically agree to assume.
- 9.5.1 At its own cost and expense, Lessor Nebraska Golf and Turf will provide all necessary maintenance parts and supplies unless otherwise specifically agreed by the parties.
- 9.6 During normal working hours, a customer equipment service representative of Lessor Nebraska Golf and Turf will, at the City's request, provide equipment repair service on the City's premises.
- 9.6.1 The request for repairs shall be acknowledged by Lessor Nebraska Golf and Turf within eight (8) hours after request is made by the City.
- 9.6.2 For purposes of this agreement, normal working hours shall mean 7:00 a.m. to 3:00 p.m., seven days per week.
- 9.6.3 The City agrees to make the equipment immediately available for scheduled maintenance and repair.
- 9.7 In the event that any repair or servicing requires removal of the equipment from the City's premises for a period of more than 24 hours, Lessor agrees to provide, at no cost to the City, replacement equipment equal to the equipment being provided under this agreement, to deliver the same, and to maintain the same, until such time as the equipment provided under this agreement is repaired or serviced and returned.

**10. DEFAULT.**

- 10.1 If the City fails to pay any invoice within 60 days after receipt thereof or if the City fails to perform any of its other obligations under this agreement, or if the City attempts to sell, transfer or encumber the equipment provided hereunder, Lessor, in addition to any other remedies that may be legally available to it, at its

option, may terminate this agreement and immediately repossess all items of equipment.

10.1.1 On termination for City's default, the City shall permit Lessor's representative to enter its premises to remove the equipment and shall pay all outstanding invoices for services actually rendered on or before the date of notice of termination. Lessee agrees to surrender the equipment promptly upon termination of this agreement without protest or legal order being obtained by Lessor.

10.2 If the Lessor fails to perform its obligations under this agreement, the City may, in addition to any other remedies legally available to it, do any one or more of the following:

10.2.1 In the event that Lessor Nebraska Golf and Turf fails to properly service or maintain or repair the equipment, the City may obtain maintenance servicing or repairs from another factory trained source and deduct the cost thereof from future invoices; or

10.2.2 In the event that Lessor fails to provide additions, deletions or replacement equipment when required within the terms of this agreement and specification, the City may obtain substantially equal equipment from another source and charge the Lessor the cost of obtaining such replacement equipment over and above the amount such services and equipment would have cost the City under this agreement if the Lessor had not defaulted; or

10.2.3 The City may, at its option, terminate this agreement upon five days written notice to the Lessor, in which event Lessor shall immediately remove its equipment from the premises of the City.

10.3 Repeated failure on the part of the Lessor to provide repairs in a timely fashion or to provide supplies shall entitle the City to immediately terminate this agreement upon five days written notice to the Lessor advising it of such termination.

## 11. INDEMNIFICATION.

11.1 Lessor shall indemnify and hold harmless the City, its officers, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to, attorney fees arising out of or resulting from performance of this agreement, the results and any claims for damages whatsoever, including, without limitation, bodily injury, death, or any injury or destruction of tangible or intangible property including any loss of use resulting therefrom that is caused in whole or in part by Lessor or anyone directly or indirectly employed by Lessor.

11.2 This section shall not require Lessor to indemnify or hold harmless the City for any losses, claims, damages, or expenses arising out of or resulting from the sole negligence of the City, its employees, or golf patrons.

**12. FAIR EMPLOYMENT PRACTICES.**

12.1 In the performance of this agreement, the Lessor shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges or employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status, pursuant to the requirements of Chapter 11.08 of the Lincoln Municipal Code and Neb. Rev. Stat. § 48-1122 (Reissue 1998).

**13. INTEGRATION.**

13.1 This agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this agreement.

**14. AMENDMENT.**

14.1 This agreement may be amended or modified only in writing signed by the City and the Lessor.

**15. GOVERNING LAW.**

15.1 This agreement will be interpreted and governed in accordance with the Laws of the State of Nebraska.

**16. NON-ASSIGN ABILITY.**

16.1 Lessor may not assign this lease or service agreement or subcontract any portion thereof without the prior written consent of the City.

16.1.1 Lessor Nebraska National Bank may subcontract a portion of this agreement to First National Bank of Junction City, Kansas. Such subcontracting shall pertain solely to the financing of this agreement and shall not in anyway impact upon the delivery, service, or maintenance of the equipment as otherwise provided for herein. Lessee shall continue to make payments only to Nebraska National Bank.

16.2 Notwithstanding any assignment or subcontracting, Lessor shall continue to be obligated for the performance of the terms of this Agreement.

17. **NO REMEDY EXCLUSIVE.**

17.1 No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

18. **LIABILITY.**

18.1 Lessor Nebraska Golf and Turf and Lessor Nebraska National Bank shall be jointly and severally liable under the terms of this agreement, and breach by one may result in termination of the agreement by the City as to both. Lessor Nebraska National Bank specifically has no obligation to provide service or maintenance of the golf cars or utility vehicles under the terms of this agreement, but failure of Nebraska Golf and Turf to perform under this agreement will result in the termination of the agreement as to either or both Lessor, non-payment by the City to Lessor Nebraska National Bank, and/or any other remedies provided by law.

19. **INSURANCE.**

19.1 Lessor Nebraska Golf and Turf agrees to maintain such insurance, subject to the approval of the City Attorney, as will fully protect both Lessor and Lessee from any and all claims of whatsoever kind or nature for damage to property or for bodily injury, including death, made by anyone whomsoever which may arise from the work performed under this agreement, by either Lessor or by anyone directly or indirectly engaged or employed by either of them.

19.1.1 The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- A. Bodily Injury \$1,000,000 Each Occurrence  
\$1,000,000 Aggregate
- B. Personal Injury \$1,000,000 Per Person Aggregate  
\$1,000,000 General Aggregate
- C. Property Damage \$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

19.2 The insurance specified above shall be written by a company duly authorized and licensed to do business in the State of Nebraska and shall be maintained during the life of this agreement. A certificate of insurance evidencing policies required shall indicate that Lessee be given at least thirty days written notice in the event of cancellation of or material change in any of the policies. Such certificate of insurance shall specify that the City of Lincoln, its officials, employees, and volunteers are additional insureds.

**20. NOTICES.**

20.1 Any notice required or permitted to be sent by this agreement shall be sent to the following individuals at the following addresses unless the party to whom notice is to be sent advises the other party of a change:

20.1.1 to the City of Lincoln:

Mr. Stephen M Hiller  
2740 A Street  
Lincoln, NE 68502

20.1.2 to the Lessor Nebraska Golf and Turf:

Mr. Don Brudny  
4515 N 56<sup>th</sup> Street  
Lincoln, NE 68504

20.1.3 to the Lessor Nebraska National Bank:

Mr. Douglas King  
President, Nebraska National Bank  
3110 North 2nd Avenue  
Kearney, NE 68848-0397



IN WITNESS WHEREOF the City and Lessor have executed this agreement as of the day and year first written above. The persons signing below acknowledge that he/she is authorized to bind his/her entity to the terms of this agreement.

**EXECUTION BY CITY OF LINCOLN, NEBRASKA**

ATTEST:

City of Lincoln, Nebraska

\_\_\_\_\_  
City of Lincoln Clerk

By: \_\_\_\_\_  
Mayor

**EXECUTION BY LESSOR**

ATTEST:

Nebraska Golf & Turf, Inc.

D. Brandy (Seal)  
Secretary

By: Ray Bank  
Duly Authorized Official (Signature)

GM  
Legal Title of Official

ATTEST:

Nebraska National Bank

\_\_\_\_\_  
Secretary (Seal)

By: \_\_\_\_\_  
Duly Authorized Official (Signature)

\_\_\_\_\_  
Legal Title of Official

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
02/27/04

**PRODUCER**  
**REVISED**  
**FEDERATED MUTUAL INSURANCE COMPANY**  
 Home Office: P.O. Box 328  
 Owatonna, MN 55060  
 Phone: 507-455-5200

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### COMPANIES AFFORDING COVERAGE

COMPANY A FEDERATED MUTUAL INSURANCE COMPANY OR FEDERATED SERVICE INSURANCE COMPANY

**INSURED** 217-810-1  
**NEBRASKA GOLF & TURF INC**  
 4515 N 56TH ST  
 LINCOLN NE 68504

COMPANY B

COMPANY C

COMPANY D

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	9088752	08/02/03	08/02/04	GENERAL AGGREGATE \$ 2,000,000
	PRODUCTS - COMP/OP AGG \$ 2,000,000				
	PERSONAL & ADV INJURY \$ 1,000,000				
	EACH OCCURRENCE \$ 1,000,000				
	FIRE DAMAGE (Any one fire) \$ 100,000				
	MED EXP (Any one person) \$				
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	9088752	08/02/03	08/02/04	COMBINED SINGLE LIMIT \$ 1,000,000
	BODILY INJURY (Per person) \$				
	BODILY INJURY (Per accident) \$				
	PROPERTY DAMAGE \$				
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
	OTHER THAN AUTO ONLY: \$				
	EACH ACCIDENT \$				
	AGGREGATE \$				
A	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	9088755	08/02/03	08/02/04	EACH OCCURRENCE \$ 1,000,000
	AGGREGATE \$ 1,000,000				
	\$				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> THE PROPRIETOR/PARTNER/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL <input type="checkbox"/> OTHER	024901	08/02/03	08/02/04	<input checked="" type="checkbox"/> WE STAYD. TRY LIMITS <input type="checkbox"/> OTHER \$
	B. EACH ACCIDENT \$ 500,000				
	B. DISEASE - POLICY LIMIT \$ 500,000				
	B. DISEASE - EA EMPLOYEE \$ 500,000				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
 CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED AS APPLIES TO THE MAINTENANCE, SERVICE AND REPAIR OF GOLF CARTS OWNED BY NEBRASKA GOLF & TURF INC PER ENDORSEMENT CB-F-11. IT DOES NOT APPLY TO THE OPERATION OF THESE

GAME GOLF CARTS.

2178101

CITY OF LINCOLN  
 2740 A ST  
 LINCOLN NE 68502

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SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE