

**SERVICE AGREEMENT BETWEEN
CITY OF LINCOLN AND TIMOTHY ROWLAND
FOR PROFESSIONAL GOLF SERVICES
AT PIONEERS GOLF COURSE**

1. **INTRODUCTION.** This Agreement is between the City of Lincoln, Nebraska on behalf of Lincoln Parks and Recreation Department ("City") and Timothy Rowland ("Manager"), a PGA Professional, for Pioneers Golf Course for services as outlined below. City is the owner of Pioneers Golf Course ("Course") and operates a municipal golf course and clubhouse therein, and Manager is a Class "A" PGA Professional who shall serve as golf professional for the business operation of the Lincoln City Golf Program and is qualified to perform these services.

2. **TERM OF AGREEMENT.** City grants to Manager the exclusive privilege of operating all food and beverage services, merchandising, and rendering professional golf services at the Course and clubhouse for the period of time commencing February 1, 2015 up to and including December 31, 2018 in accordance with the terms and conditions hereinafter set forth.

3. **GENERAL SERVICES.** Manager and City enter this Agreement for Manager to serve as the Pro-Manager of the Course. Manager shall make professional golf services, food and beverage services and golf-related merchandise available to the patrons of the Course at all reasonable times as determined by the Director of the Parks and Recreation Department. Said services shall include, but not be limited to, the following: operation of the food and beverage service including sale of soft drinks and alcoholic beverages, clubhouse management, public relations, teaching, coaching, promotion of golf play, leagues, tournaments, rental of pull carts, rental of riding carts, sales and rental of golf related merchandise and equipment from the pro shop, operation of the driving range, and coordination of the golf course marshalling program.

4. **COMPENSATION.**

- a. In return for promoting rounds played and collection of fees, City shall pay the Manager a base amount of \$.60 for each round played at the Course during the initial year of the Agreement. The base amount per round played at the Course paid to the Manager will be increased by three percent (3%) during each subsequent year of the Agreement. An incentive of \$0.05 per round is offered when the combination of 9-hole rounds and 18-hole rounds reaches the identified threshold during a given calendar year. This incentive payment will be retroactive to include the rounds played up to achieving threshold and additional rounds beyond the threshold played at the Course during the calendar year. The incentive threshold for Pioneers Golf Course is 44,600 rounds. The
- b. Manager shall be entitled to the gross proceeds generated from food and beverage sales, pro shop merchandise, and provision of individual golf instruction.
- c. Manager shall be entitled to ninety percent (90%) of the revenue from use of the driving range. Manager will provide hitting mats, targets range balls, baskets, and be responsible for retrieving range balls. City shall receive ten percent (10%) of the revenue from use of the driving range. City shall be responsible for maintenance of the driving range.
- d. In return for renting golf carts, keeping the cart fleet clean and presentable, and monitoring the fleet for damage City shall pay the Manager seventeen percent (17%) of

the revenue generated from cart rental.

- e. Manager shall pay City \$5.00 per registrant in group golf lessons to assist with marketing and promotion of player development programming.
- f. City shall reimburse Manager for eighty percent (80%) of credit card fees assessed for sales at the Course.
- g. City shall pay Manager an incentive payment of \$1,000 if the composite ratings from point in time surveys for a calendar year are 4.5 or greater on a five-point (5-point) scale in all of the following categories: customer service, food and beverage service, merchandising, and cleanliness of the clubhouse facility.

5. **PAYMENT OF TAXES.** Manager shall pay all applicable sales taxes, occupation taxes, or other taxes and fees associated with operating the Course and shall indemnify, defend, and hold harmless City for any tax obligations or fees.

6. **SUPERVISION BY MANAGER.** Manager shall supervise all activities, duties and services within the clubhouse, Course and areas adjacent thereto as may be included in this Agreement. Manager shall oversee the starting of all golf patrons, monitor the Course at all times, and observe playtime on days of heavy play. Manager shall coordinate the golf course marshalling program including recruiting, training and overseeing volunteer marshals. Manager or staff shall remain on duty during events, including facility rentals, for food and beverage sales, facility supervision, and securing of the buildings at the close of all events. Minimum operation time shall be determined by City and shall recognize the time of year and playing conditions.

7. **GOLF BUSINESS OPERATIONS PERSONNEL.** Manager shall employ the needed personnel to conduct the business and carry out the operations associated with the clubhouse and related services including custodial maintenance. Manager will be responsible for selection, training, scheduling and supervision of golf business operations personnel. Manager shall have a written training manual and policies and procedures manual available for review by City. Manager shall pay all applicable payroll taxes, social security, Medicare, federal and state income tax withholding, unemployment insurance, and any benefits or other costs for himself and any of his employees or staff for operating the Course. Any repeated issues that Manager may have with personnel, such as behavior issues or failure by personnel to follow policies and procedures, may in City's discretion be grounds for termination as provided herein.

8. **FOOD AND BEVERAGE SERVICE OPERATION.** All materials, supplies, and assistance required in the operation of the food and beverage service shall be furnished at Manager's expense. Manager shall conduct and operate the food and beverage service strictly in accordance with all the ordinances of the City and laws of the State of Nebraska now and hereafter in effect during the terms of this Agreement and in a manner wholly acceptable to the City. Manager shall maintain a current liquor license and obey all laws and rules set forth by the State Liquor Control Commission. Manager shall keep all food and beverage service areas open seven (7) days of the week during such hours, meetings, or special events as the City's Director of Parks and Recreation Department shall determine.

9. **MAINTENANCE.** Manager shall keep the clubhouse in a clean and sanitary condition at all times. This shall include food preparation area, restrooms, lounge, pro shop, office, mechanical areas, storage areas and general interior and immediate exterior maintenance. All papers, rubbish, broken and empty bottles, garbage, and other trash accumulating in the operation of the clubhouse shall be picked up by Manager or his designee and placed in suitable containers. Manager shall keep food and beverage service premises in a neat, clean, orderly, and sanitary condition at all times in conformance with the standards required by the Lincoln-Lancaster County and State Departments of Health. Manager shall be responsible for providing custodial equipment and supplies associated with building custodial services and restrooms. City shall provide refuse and recycling containers and be responsible for refuse and recycling services. City shall also be responsible for maintenance of mechanical and electrical systems and building infrastructure.

10. **GOLF CARTS.** Manager shall keep all city golf carts in a clean and safe working condition at all times. This shall include washing and removal of trash after each round, filling ball and club washers when needed, examining each cart for damage after each round, staging golf carts in the morning and securing in the evenings. An annual visual audit shall be completed by a representative of the City and the Manager in November or December. Every effort should be made by the Manager and all staff members to reduce cart damage. Any damage that is documented shall be pursued by the Manager. If the Manager is unable to collect from the responsible third party, the City shall be notified and may assist with this collection. Proper cart incident forms shall be forwarded to the Director of the Parks and Recreation Department along with all reasonable effort to collect from responsible party within twenty (20) days of notice of the damage. Any damage that is not documented with the approved forms will be determined to be the responsibility of the Manager. Any golf cart damage that is documented and cannot be collected shall be shared by the City and the Manager on an 83% City/17% Manager basis unless otherwise agreed in writing.

11. **MONEY COLLECTION.** Manager agrees to collect greens fees and to issue greens fee cash register receipts; motorized golf cart rental fees, memberships, surcharges, league fees, and sales tax utilizing the point of sale (POS) system provided by City. Manager shall collect all money, keep records of all such transactions, and properly account for and remit to City documentation of the transactions, including individual and group golf lessons. Manager shall complete a daily sales report, which shall be balanced to match all rounds played, all golf cart rentals, and all sales made. All funds for transactions shall be remitted weekly without delay as specified by the Finance Director of the City. Manager shall submit monthly reports on approved forms in order to be reimbursed for compensation as defined in Section 4(a-e) above for the previous month if the Course are open for play. Manager and staff shall follow all guidelines outlined within the City's Golf Policy and Procedures Manual.

12. **GOLF COMMITTEE; ANNUAL PLAN.** Manager will participate in regular and special meetings of the Lincoln Municipal Golf Committee. Manager will also participate in preparation of the annual plan for the Lincoln City Golf program, and will assist with implementation of the plan including marketing and promotion.

13. **IMPROVEMENTS.** Manager shall not remodel the clubhouse or install any permanent fixtures or additions to the clubhouse without first obtaining the written approval of the City. All

approved improvements shall become the property of the City upon termination of this Agreement unless the parties hereto agree otherwise in writing.

14. ADVERTISING. Manager shall not display paid advertising outside the clubhouse or on the Course. Advertising inside the clubhouse shall be confined to that portion of the clubhouse designated for the exclusive use of Manager and shall relate directly to the golf operation for the Course. No display signs shall be attached or affixed to the buildings in any manner, except upon written approval of the City in advance.

15. CITY EQUIPMENT. Manager shall exercise general supervision and responsibility for the proper use and care of all equipment and furniture owned by City located in the clubhouse. Such property shall be maintained specifically for the use and convenience of all public users of the clubhouse. An inventory of this property, as taken by a representative of each of the parties, is marked Exhibit "A" and attached hereto and made a part hereof

16. CITY SUPERVISION. City reserves the right to exercise general supervision over the Course with respect to advertising on the premises; food and beverage service; kind, character, and quality of goods dispensed; and the cleanliness and sanitation of the buildings and adjacent grounds. Manager shall operate under the provisions of this Agreement in such a manner as to conform with all the ordinances of the City of Lincoln and the laws of the State of Nebraska, and shall give assistance to City in seeking conformity with the ordinances of the City and laws of the State by public users. Further, Manager shall enforce all rules and regulations adopted by City or the Director of Parks and Recreation Department covering the conduct of the public and services offered in the use of park property.

17. INDEPENDENT CONTRACTOR. City is interested only in the results produced by this Agreement. Manager and his employees and agents have sole and exclusive charge and control of the manner and means of performance. Manager and his employees and agents shall perform as independent contractors and it is expressly understood that Manager and his employees and agents are not employees of City and not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

18. FREE PLAY. Manager, members of the PGA of America, PGA Assistants, members of the LPGA of America, LPGA assistants and GCSAA members may play the Course at no cost. Visiting PGA Professionals, PGA Assistants, LPGA Professionals, LPGA Assistants and GCSAA Members shall play at no charge on a limited basis and shall be tracked by association membership card number. This privilege applies to other City golf courses as well. The names of PGA members and assistants shall be given to the Director of Parks and Recreation. Except for the preceding, special privileges shall not be granted to anyone under any circumstances. Failure to comply shall result in termination and cancellation of said Agreement.

19. PGA LICENSE. During the full term of this Agreement, Manager shall maintain a Class "A" PGA Golf Professional Classification. Should Manager cease to be a Class "A" Professional, this Agreement shall immediately and automatically terminate and Manager shall no longer be entitled to the rights and privileges granted hereunder.

20. FINANCIAL STATEMENTS. Manager shall submit to City annual financial statements on approved forms of the entire operation covered by the terms of this Agreement. Said financial statement shall include a detailed operating statement setting forth all operating revenues and personnel service costs and other operating expenses in accordance with the requirements set by the Finance Director of the City. Annual financial statements shall be due by May 1st of each year this Agreement is in force and effect. In the event that this Agreement is terminated, either at its expiration or for any other reason during the course of a calendar year, a financial statement shall be submitted within thirty (30) days of such termination covering the period from the prior financial statement to the date of termination.

21. TERMINATION. It is an express condition of this Agreement that Manager shall perform the Agreement as set out herein. If Manager breaches any of the terms of this Agreement or fails to make payments provided for herein, City may, upon thirty (30) days written notice to cure, cancel and terminate this Agreement if such breach is not cured within the thirty (30) day notice period. City has the right to terminate this Agreement for any reason for its own convenience when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the City. If City terminates this Agreement for convenience or lack of funding, City shall provide Manager with one hundred twenty (120) days written notice of the termination. Upon termination, City shall pay Manager for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

For good and substantial cause, including but not limited to, continued absenteeism, drunkenness, gambling, or conduct which reflects discredit on the City or is a direct hindrance to the effective performance of this Agreement or in the event City shall conclude that the operation of the clubhouse in any respect is substantially detrimental to the best interest of the City, City may, upon written notice delivered to Manager personally or to the clubhouse, terminate said Agreement and order Manager to vacate the premises within five (5) days, all without further liability to City. The exercise of any remedy provided herein shall not preclude City from exercising any other remedy, legal or equitable, that it may have.

Manager may terminate this Agreement with or without cause by giving one hundred twenty (120) days written notice to City.

22. INSURANCE. Manager shall maintain General Liability Insurance for each Course named herein at its own expense during the life of this Agreement, naming and protecting Manager and City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Manager and Manager's employees, or those directly or indirectly employed by Manager. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- a. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- b. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and

- c. Personal Injury Damage- \$1,000,000 each Occurrence; and
- d. Contractual Liability - \$1,000,000 each Occurrence; and
- e. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
- f. Medical Expenses (any one person) - \$10,000;
- g. Fire Damage (any one fire) - \$100,000; and
- h. Liquor Liability - \$1,000,000 each Occurrence.

The following shall be provided and attached to this Agreement by Manager:

- a. A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
- b. Proof of Workers Compensation Insurance, where appropriate.

Manager is required to provide City with thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

23. INDEMNIFICATION. To the fullest extent permitted by law, Manager shall indemnify, defend and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Manager, its employees, or anyone for whose acts any of them may be liable. This section shall not require Manager to indemnify or hold harmless City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of City. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

24. RISK OF LOSS. City shall not be responsible for the property of Manager kept, stored, or maintained on the Courses or leased premises and assumes no responsibility for loss of Manager's property through fire, theft, pilferage, malicious mischief, or any other happening whatsoever.

25. INSPECTION AND AUDIT. Manager shall be subject to audit pursuant to Lincoln Municipal Code Chapter 4.66 and shall make available to a contract auditor of City, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. It is understood and agreed between the parties that the operation and services performed by Manager under this Agreement shall be subject at all times to inspection and control by designated representatives of the City. Manager shall confer only with said representatives on all problems of general policy in connection with this Agreement.

26. FAIR EMPLOYMENT AND OPPORTUNITY. Manager shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms,

advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended; nor shall Manager nor anyone acting under or by virtue of the terms of this Agreement discriminate against any such patron of said Course or against anyone else because of race, color, religion, sex, disability, national origin, ancestry, age or marital status.

27. FAIR LABOR STANDARDS. Manager shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

28. LIVING WAGE. If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, Service Provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. City shall have the authority to terminate this Agreement and to seek other remedies for violations of the ordinance.

29. NEBRASKA LAW. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

30. INTEGRATION, AMENDMENTS, ASSIGNMENT. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned or sold, nor the premises sublet in whole or in part by Manager without the prior written consent of City. Any reference to Course or clubhouse in the singular and plural shall solely be in reference to the Course(s) listed in the Introduction above.

31. SEVERABILITY & SAVINGS CLAUSE. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section.

32. E-VERIFY. In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Service Provider agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Service Provider shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. § 1324b. Service Provider shall

require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

33. CAPACITY. The undersigned person does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Manager to this Agreement.

IN WITNESS WHEREOF, Manager and City do hereby execute this agreement.

Manager Signature: _____

Print Name and Address: _____

Mayor's Signature: _____

Date of Execution: _____

EXHIBIT A**INVENTORY OF PROPERTY OWNED BY THE CITY AT PIONEERS GOLF COURSE****QTY DESCRIPTION**

1	NECO alarm and security system
1	Victory two-door commercial refrigerator
1	Manitowoc ice maker, Model SY 0505W
1	Continental freezer, Model A1FDA-15
1	True sandwich/salad unit, Model TSSU 4812
1	Panasonic microwave oven, Model NE 7970
10	Square café tables
40	Haworth stackable chairs – gray
20	Krueger stackable chairs – black
2	Sanitaire upright vacuum
1	Bogan amplifier system
1	Phillips AED unit, Model HSI

Cash register / POS system:

3	Computer CPU's
2	Cash drawers
1	Computer keyboard
2	Bar code scanner
2	Receipt printers

Inventory completed by Tim Rowland, Jerry Shorney and Lynn Johnson on December 24, 2014