ADVERTISING AGREEMENT BETWEEN CITY OF LINCOLN PARKS & RECREATION CITY GOLF COURSES AND BENCH CRAFT COMPANY

1. **Introduction.** This Agreement is between the City of Lincoln, Nebraska on behalf of **Lincoln Parks & Recreation Department** ("City") and **Bench Craft Company** ("Service Provider") for services as outlined below. City golf courses will consist of all five (5) municipal courses: *Ager*, 3671 Normal Blvd., Lincoln, NE; *Highlands*, 5501 NW 12th Street, Lincoln, NE; *Holmes*, 3701 South 70th Street, Lincoln, NE; *Mahoney*, 7900 Adams Street, Lincoln, NE; and *Pioneers*, 3403 W. Van Dorn Street, Lincoln, NE.

2. **Services.** Service Provider and City enter this Agreement for Service Provider to:

- Provide, at no cost to City, an annual supply of **custom designed score cards,** with Service Provider having the right to sell advertisements thereon, to be placed at the five (5) golf shops and other locations at the golf courses, to be used exclusively by the golf courses. Each scorecard will display the par, yardage, handicap, course layout, photo of the golf course, contact information, rules and regulations particular to the City golf courses. Service provider agrees to provide and authorize use of electronic images of golf courses to the City for possible use in marketing and promotion of the Lincoln City Golf program.
- Provide, at no cost to City, up to 5,000 **custom designed course guides** per year, with Service Provider having the right to sell advertisements thereon, to be placed at the five (5) golf shops and other locations at the golf courses, to be used exclusively by the golf courses. Each course guide will display the par, yardage, handicap, course layout, photos of the golf course, contact information, rules and regulations particular to the City golf courses.
- Provide, at no cost to City, eighty-one (81) **custom cedar benches**, which will include delivery, installation, major maintenance, restoration, and/or replacement, with Service Provider rights to sell and retain the advertising signage, to be placed at the tees and other locations at the five (5) golf courses, and are to be used exclusively by the golf courses. Each bench will display the par, yardage, handicap, and the hole number of the golf hole where the bench is to be placed and is to remain unless the City specifies otherwise.
- Provide, at no cost to City, eighty-one (81) **golf ball washers**, which will include delivery, installation, major maintenance, restoration, and/or replacement, with Service Provider rights to sell and retain the advertising signage to be placed at the tees and other locations at the five (5) golf courses, and are to be used exclusively by the golf courses.
- Provide, at no cost to City, five (5) **golf course display boards**, which will include delivery, installation, major maintenance, restoration, and/or replacement, with Service Provider rights to sell and retain the advertising signage to be placed at the tees and other locations at the five (5) golf courses, and are to be used exclusively by the golf courses.
- Right to present and sell the 12" x 12" sign spaces on existing golf course granite tee signs, and retain the advertising revenues from selling said ad spaces.
- Supply for FREE the production costs, travel expenses of their installation crew, delivery, installation, major maintenance and/or replacement and restoration.
- Pay all applicable taxes, including sales/use and excise taxes, local and federal taxes, which may be due as a result of this Agreement.For all advertisement sold, Service Provider shall routinely screen ad sponsors of acceptable quality and will not sell or place any sponsor that is questionable on moral or ethical grounds based on City's discretion. City may exercise right of approval for any and all sponsors or advertisement. Service Provider shall honor all

decisions made by City in its sole discretion regarding advertisement. All questions or concerns shall be directed to the Director of Parks & Recreation or designee. The following types of advertising shall not be accepted by the Vendor for placement on either the printed materials or sponsorship items on the golf courses:

a. Any advertising prohibited by federal, state or local law.
b. Feminine hygiene products or contraceptive of any kind or nature.
c. Advertisements of a sexually explicit nature or advertisements which advertise shows, movies, pictures, books, or other materials, exhibitions, or performances of a sexually explicit nature.
d. Advertising copy that is false, misleading, deceptive, and/or offensive to the moral standards of the community, or contrary to good taste.
e. Advertising copy which is contrary to the best interest of the golf system or which may result in public criticism of the golf system or golf advertising.
f. Advertising which could reasonably be deemed to be slanderous or libelous, or advertising which is directed at a particular individual, group or organization, or advertising of a politically controversial nature.
g. Advertising of or related to: beer, wine, alcoholic liquors or tobacco products.
h. Advertising of promotional events such as concerts, show or other events that are sponsored or promoted by a beer, wine, alcoholic liquors or tobacco company is allowed. Promotional event advertising by these companies may include the company name, brand and a slogan but no photos of the product itself.
i. Advertising by or on behalf of any candidate for political office, or relating to any ballot issue, or relating to any other issue of a political nature whereby the advertiser attempts to influence public opinion.
j. Advertising which appears as if Lincoln Parks and Recreation or the City of Lincoln endorses or approves in any way of the advertising itself or of any subject of such advertisements.
k. Any ad as the Mayor or sitting City Council may prohibit.

3. **City.** The golf course staff shall provide occasional ad sign replacement and shall be compensated for the time involved. Signs come with pre-drilled holes and screws. The City shall be paid $10.00 for the first sign, and $5.00 for each additional sign replaced and installed in each sign replacement packet.

4. **Term.** The term of this Agreement shall commence on June 1, 2015 and shall continue for two (2) years. City and Service Provider may both mutually agree to extend this Agreement for an additional two (2) year terms under the same terms provided herein. The parties acknowledge that under the City's Charter and Lincoln Municipal Code, contracts over one (1) year require City Council approval to be authorized and may only run for a period of four (4) years.

5. **Compensation.** For the services provided pursuant to this Agreement, Service Provider agrees to pay City a total of Twenty-Thousand Dollars (**$20,000.00**) per year for the rights to sell and retain the advertising signage revenue as provided herein. City shall receive payments of $10,000 every six (6) months, beginning six (6) months after the commencement of the Agreement.

6. **Termination.** Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. City may terminate this Agreement immediately, without penalty or expense, in whole or in part, 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 City. Upon termination, City shall pay Service Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

7. **General Duties.** Service Provider agrees as follows: (a) To timely and professionally complete the services as described above, and to furnish their labor and pay all their own costs, including any taxes, required to complete their services; (b) To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement; (c) To apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the services; (d) To conduct all activities related to the services in a lawful manner; (e) Provide and perform all necessary labor in a professional and workmanlike manner and in accordance with this Agreement.

8. **Independent Contractor.** City is interested only in the results produced by this Agreement. Service Provider has sole and exclusive charge and control of the manner and means of performance. Service Provider shall perform as an independent contractor and it is expressly understood that neither Service Provider nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

9. **Insurance.**

A. Service Provider shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Service Provider 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 Service Provider and Service Provider's employees, or those directly or indirectly employed by Service Provider. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - $1,000,000 each Occurrence; $2,000,000 Aggregate; and
2. Bodily Injury/Property Damage - $1,000,000 each Occurrence; $2,000,000 Aggregate; and
3. Personal Injury Damage - $1,000,000 each Occurrence; and
4. Contractual Liability - $1,000,000 each Occurrence; and
5. Products Liability and Completed Operations - $1,000,000 each Occurrence; and
6. Medical Expenses (any one person) - $10,000;
7. Fire Damage (any one fire) - $100,000.

B. The following shall be provided and attached to this Agreement by Service Provider:

1. 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.

2. Proof of Workers' Compensation Insurance, where appropriate.

C. Service Provider 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.

10. **Indemnification.**

A. To the fullest extent permitted by law, Service Provider 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 Service Provider, or anyone for whose acts any of them may be liable. This section will not require Service Provider 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.

B. Without exception, Service Provider represents that the consideration for this Agreement includes any payment for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the services provided herein by Service Provider pursuant to this Agreement. Further, Service Provider shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Service Provider represents that all materials, processes, or other protected rights, if any, to be used in the advertising have been duly licensed or authorized by the appropriate parties for such use. Service Provider agrees to furnish the City upon demand written documentation of such license or authorization and if unable to do so, Service Provider agrees that the City may withhold a reasonable amount from Service Provider's compensation herein to defray any associated costs to secure such license or authorization.

C. Service Provider shall indemnify the City and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Service Provider has used in the course of performing this Agreement.

D. Service Provider represents and warrants to City that it is free to enter into this Agreement and that its performance thereunder will not conflict with any other Agreement to which Service Provider may be a party. Service Provider represents and warrants to City that the advertising is clear of any claims or encumbrances and does not infringe on the rights of any third parties. City shall not prevented from entering into other advertising agreements with other companies, which shall not be in conflict with this Agreement.

11. **Audit.** Service Provider shall be subject to audit per Lincoln Municipal Code Chapter 4.66 and shall make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

12. **Fair Employment.** Service Provider 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.

13. **Fair Labor Standards.** Service Provider shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

14. **Integration, Amendment, Assignment, Severability, Waiver.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. All prior verbal or written agreements entered into between the parties, without or without duly granted authority, are hereby null and void and terminated by signature of this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each 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 thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

15. **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. § 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.

16. **Capacity.** The undersigned person representing Service Provider does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Service Provider to this Agreement.

IN WITNESS WHEREOF, Service Provider and City do hereby execute this Agreement.

Service Provider Signature: _____

Bench Craft Company
P. O. Box 6343
Portland, OR 97228

City Signature: _____

Chris Beutler, Mayor of City of Lincoln

Date of Execution: _____