

- (a) For the purpose of this agreement, a “Golf Season”, in each year, shall mean the period from March 1 until December 31.
 - (b) The duties to be completed by the Contractor are to be carried out during the Golf Season unless otherwise excepted in this agreement.
 - (c) The term Director of Community Services shall mean the Director of Community Services of the City.
 - (d) That Darcy Myers shall be employed by the Contractor throughout the term of this agreement and shall act as the Head Golf Professional for the Golf Course (hereinafter referred to as the “Head Professional”), it being further understood and agreed that the remuneration and benefits of Mr. Myers shall be the exclusive responsibility of the Contractor.
 - (e) Notwithstanding any other provision of this Agreement, the Contractor acknowledges and agrees that its relationship to the City shall be one of an independent contractor.
2. The term of this Agreement shall be three years from January 1, 2021, until December 31, 2024 or sooner if terminated as hereinafter provided.
3. The Contractor covenants and agrees that it shall during the currency of this agreement:
- (a) Meet weekly with the management team consisting of the Head Professional, Greens Keeper and Director of Community Services or his/her designate, to ensure the efficient operation of the Golf Course, driving range, and Golf Pro Shop.
 - (b) Obtain with its own funds, at no expense to the City, and sell at reasonable profits, golf balls, clubs and other usual accessories of the game of golf as they may from time to time require; all profits accruing from such sales may be kept by the Contractor.
 - (c) When requested to do so by individuals, undertake to provide instruction in the game of golf to players through the Head Professional at such rates as may be in keeping with industry standards retaining the sums so paid.
 - (d) Undertake the supervision, maintenance and control of the buildings and equipment belonging to, rented or leased by the City for the purpose of the Golf Course and used by the Contractor or other persons acting under its direction.

- (e) Obtain prior permission from the Director of Community Services before incurring expenditures on behalf of the City, which have not been specifically approved in the operation budget.
- (f) During the Golf Season each year during which golf can be played and maintenance work may be done on the Golf Course, driving range, and Golf Pro Shop devote its whole time and attention promoting the interests and welfare of the Golf Course, driving range, and Golf Pro Shop and not engage in any business during the said Season, outside of the scope of this agreement.
- (g) During the Golf Season as well as such times during the month of December as may be specified by the Director of Community Services, collect from all players, seasonal fees and green fees which may be set from time to time by the City Council.
- (h) Remit weekly to the Director of Financial Services, or more frequently if required, all monies collected under the preceding subsection and shall keep such records as the Director of Financial Services may from time to time require to be kept with respect to the collection of any remittance of said monies, it being understood and agreed that the Contractor shall utilize any software which may be available from the City to record point of sale transactions. Such records of account shall, at any reasonable time, be open and available for inspection by the Director of Community Services, the Director of Financial Services or his agent, or by the City Auditors.
- (i) To provide the City interim monthly financial statements of all revenues and expenditures related to the operation and management of the Golf Course, driving range, and Golf Pro Shop, for which the Contractor is responsible, for the period May 1st ending December 31st for each year during term of the Agreement or any extension thereof.

These revenues shall include but not be limited to:

- i. green fees
- ii. seasonal fees
- iii. cart rental
- iv. driving range

The expenditures shall include but not be limited to:

- i. marshall and starter remuneration
- ii. golf pro shop staff remuneration
- iii. administrative
- iv. marketing expenditures

- (j) To provide annual unaudited financial statements on or before March 31, 2021, and every year thereafter during the term of this Agreement, provided the Contractor shall provide audited financial statements on request of the City to be carried out by an accounting firm of the City's choosing and at its expense.
- (k) Render full and accurate account of all expenditures, incurred by it for materials, equipment or services, in connection with the Golf Course, driving range, and Golf Pro Shop in such form as the Director of Community Services may direct.
- (l) Provide comprehensive reports to the Director of Community Services on all matters relative to the development, and operation of the Golf Course, driving range, and Golf Pro Shop, as may be required on a regular basis or from time to time as determined by the Director of Community Services.
- (m) Assist with budget preparation and prepare equipment programs for the Golf Course, driving range, and Golf Pro Shop as mutually agreed to by the Director of Community Services and the Contractor outside the Golf Season.
- (n) Collect and remit all cart fees payable from time to time by the users of motorized golf carts at such rate as may be established from time to time by City Council to the Director of Financial Services and retain 10% of sales as a commission for those sales.
- (o) Financially cover any shortfall of revenue to the City which may occur through theft or fraud of its employees.

4. The Contractor agrees:

- (a) To employ and supervise with its funds, at no expense to the City, sufficient personnel to provide adequate service for patrons in the Golf Pro Shop satisfactory to the Director of Community Services during the period that the Golf Course opens until October 15 of each season. The said employees are to work in the Golf Pro Shop to assist the Contractor in collecting golf fees, scheduling and controlling tee bookings, and such other services for patrons, which will promote use of the Golf Course that shall be assigned to them by the Contractor.
- (b) That the performance of the said employees must be acceptable to the Director of Community Services and if for any reason the Director of Community Services considers such performance to be otherwise, for just cause, the Contractor shall immediately terminate the service of the

said employee from further duties in or upon any premises owned or leased by the City.

- (c) The City of Prince Albert encourages the Contractor to have each of his employees working under this contract properly bonded with respect to theft, pilfering and/or similar offenses, in amounts deemed adequate by the Contractor to satisfy his obligations to the City of Prince Albert as identified in Section 3 (p) of this Agreement.
 - (d) To pay all the wages of its employees, assistants and agents engaged by it to carry out its duties under this Agreement, to comply with all the laws, bylaws, rules and regulations pertaining to them and that under no circumstances shall its employees, assistants or agents be or be deemed to be the employees, assistants or agents of the City.
- 5.
- (a) The City shall maintain a driving range and related building on the Golf Course to be operated by the Contractor during the same period as established in Sub-clause 4 (a) hereof.
 - (b) The Contractor shall be responsible to purchase and maintain all golf supplies necessary to operate the driving range facility including the equipment to retrieve the golf balls.
 - (c) The Contractor shall be responsible to employ at no expense to the City, sufficient personnel to provide adequate service for patrons at the driving range facility satisfactory to the Director of Community Services during the period that the Golf Course opens for the Season until Thanksgiving Day of each Season. The said employees are to work at the driving range facility to collect fees from the patrons, retrieve the golf balls and supervise the driving range activity to ensure the safety of its patrons and shall be subject to the conditions specified in Section 4 herein.
 - (d) The Contractor shall supply golf balls and golf clubs, which will be available to the patrons on a rental basis at such rates as may be approved from time to time by the Director of Community Services with the understanding that the Contractor shall be entitled to retain the sums so paid. It is to be clearly understood that the patrons utilizing the driving range facility will be obliged to rent the golf balls from the Contractor but may supply their own golf clubs for the activity.
 - (e) All supervision of the maintenance of the driving range facility including the fence, buildings and grass areas shall be the responsibility of the Contractor in accordance with terms specified in this Golf Course Management Agreement.

6.
 - (a) It is agreed that the Contractor shall have the exclusive right to manage the Golf Pro Shop, sell merchandise, rent golf equipment, provide golf club repair and cleaning services, rent pull carts, offer lessons and operate the driving range during the term of this Agreement.
 - b) It is agreed that the Contractor shall have the exclusive right to sell advertising on golf carts and cairns, and shall receive a 10% commission from all amounts collected from such advertising sales achieved by the Contractor.
 - c) It is agreed that the Contractor will have right to sell the advertisement on the scorecards and at the driving range at the Golf Course and retain all revenues derived therefrom.
7. It is understood the Contractor shall have the right to continue to operate in the Golf Pro Shop at the Cooke Municipal Golf Course during the period of time of the year outside of the Golf Season.
8. It is agreed the Contractor shall have the exclusive right to place memorabilia in the Golf Pro Shop and shall retain ownership and responsibility of said memorabilia including all costs related thereto.
9.
 - (a) The Contractor hereby agrees to indemnify and save harmless the City against all or any claims which may be made against it by reason of the negligence of its employees in the operation of the Golf Pro Shop solely related to the business carried on by the Contractor in the Golf Pro Shop.
 - b) The Contractor shall obtain an insurance policy in such amount as is deemed adequate by the Director of Financial Services to carry out the provisions of Sub-clause 9(a) hereof and shall supply a copy of such insurance to the City. The City shall be named as an additional insured on the contractors insurance policy. The City shall be given 15 days notification prior to the contractor changing or cancelling the policy.
 - c) The City shall be liable for all other claims caused by negligence or otherwise arising from the operation of the Golf Course and the driving range.
 - d) The City shall insure all the buildings on the Golf Course in respect to fire or other casualties and public liability.
10. All photos taken by the Head Professional for any professional use of Cooke Municipal Golf Course shall be the property of the City of Prince Albert.
11. The Contractor agrees to employ, train and supervise Course Starters and Marshalls at the Golf Course for the number of hours and at the rates as

established under the City's approved budget for the Golf Course annually. In this regard the Contractor shall be responsible to employ the required number of staff to fulfill requirements of these positions which costs shall be reimbursed by the City plus a 15% administrative fee related thereto.

12. If the Contractor carries out all his obligations under this Agreement honestly, faithfully, and diligently, the Contractor shall receive by way of payment for its services the following monies:
 - (a) An annual management fee in the amount of \$65,000.00 plus Goods and Services Tax effective the date of this Agreement, and to be payable in equal monthly installments on the first day of each month and every month during the currency of this Agreement. After the first year of the term of this Agreement, the annual management fee shall be increased by one per cent (1%) of the annual management fee on each anniversary date during the remaining term of the Agreement or any extension thereof. The Contractor shall be responsible for all payroll deductions as may be required; plus
 - (b) A sum equivalent to 8.0% of the total season ticket fees and green fees sales benchmarked at the previous year's sales to the signing of the term, minus applicable taxes collected at the Golf Course annually. This sum of money is intended to cover the financial obligations of the Contractor contemplated under Section 4 for the nine month period April 1 to December 31 plus those hours the Contractor may be directed to open the Golf Pro Shop during the months of March and December annually.
13. The City agrees to grant the Contractor the sole right to collect golf balls from water hazards at the Golf Course and utilize the same for purposes as it may deem appropriate.
14. It is also agreed that the City is responsible for all utility, maintenance and repair costs associated with use of the Golf Pro Shop.
15. It is agreed by the City that the Contractor is authorized to utilize the computer equipment owned by the City and located in the Golf Pro Shop, by paying the monthly sum of \$167.26 as authorized by City Council through Resolution No. 0057 dated January 16, 1995. In addition, the City will provide for the Golf Pro Shop one photocopy machine, a fax machine and related supplies and the appropriate alarm and telephone equipment. The Contractor will be permitted to utilize the equipment at no cost; however, it will be responsible for any long distance telephone charges that may be incurred by the Contractor for business purposes only. All costs associated with any surveillance equipment utilized shall be the responsibility of the Contractor.

16. This Agreement may be suspended, canceled or terminated upon written notice from either party in the event that the performance of all or part of this Agreement is or will be prevented due to an event of Force Majeure. Notice pursuant to this provision shall be provided within 60 days of the event of Force Majeure. In the event of Force Majeure, each party will assume its own costs and fees incurred from the date of suspension, cancellation or termination of the Agreement without any liability, penalty and/or compensation to the other party. In particular and without limitation, the following are deemed to be events of Force Majeure: dangerous atmospheric conditions that prevent the safe presentation of cultural events or shows, floods, fires, interventions of civil or military authority, epidemics, pandemics or any similar event (including but not limited to COVID-19), strike, riot, demonstration, act of terror or terrorism and/or unionized labor shortages, or prohibitions by any court or governmental board, department, commission, or agency, or emergency declaration made pursuant to *The Emergency Planning Act*, SS 1989-90, c E-8.1. For certainty, inclement weather and lack of funds shall not be deemed an Event of Force Majeure. The parties further recognize and agree that the public health issues related to COVID-19 and its consequences are each deemed to be an event of force majeure. Either of the parties may validly suspend or terminate this contract at any time without any liability, indemnity, penalty and/or compensation, for any reason related to COVID-19 even if the COVID-19 situation and/or one or more of its consequences are currently foreseeable, known, existing or later become foreseeable, or known during the duration of this Agreement.
17. The parties agree that if a medical report advises that the Head Professional is unable to complete his duties within a 12 month period from the date of his initial absence the City may be at liberty to cancel this Agreement.
18. If the Contractor fails to perform, observe or keep any of the covenants and agreements herein contained, the City may give notice in writing requiring the Contractor to remedy any such default within 14 days or such longer period of time as the City may in its sole discretion deems reasonable and if the contractor does not remedy such default within the time prescribed by the City, the City may, by notice in writing, terminate this agreement and any rights and privileges of the Contractor hereunder, and on the day of such notice of termination, this agreement will terminate, together with such rights and privileges, whether or not the City or its agent has re-entered the premises, and the contractor will have no claim against the City for any losses or damaged due to such termination.
19. (a) The Contractor may terminate the Agreement by giving written notice of termination on or before September 30 in any given year in which event this agreement shall terminate on the 31st day of December in the same year notice is given.

- (b) The City may, at its discretion, extend the existing term by three, three year terms.
- (c) Notwithstanding the foregoing, the City shall be at liberty to terminate this Agreement at any time without notice in the event that the Contractor:
 - i. neglects, fails or refuses to carry out their obligations under this Agreement, or any of them;
 - ii. if the Contractor becomes insolvent.
- (d) The City and Contractor agree to complete a review of the management fees upon submittal of annual audited statement from Darcy's Golf Shop Inc. after March 31st 2021.

20. That any notice which is required to be given under the terms of this Agreement may be effectually given by the Parties hereto by mailing the same by registered mail as follows:

Contractor's Address: #201, 1100 – 1st Avenue East
Prince Albert, SK S6V 2A7

City's Address: The City of Prince Albert
1084 Central Avenue
Prince Albert, SK S6V 7P3

Any such notice shall be deemed to be given on the second day following the day on which such mailing was registered by the sender.

- 21. It is expressly understood and agreed that reference to individuals in this Agreement shall include corporations, executors, administrators, successors and permitted assigns and references in the singular number shall include the plural number, and references in the masculine gender shall include the feminine gender of the neuter gender, whenever the context so requires.
- 22. This Agreement shall replace and supersede all previous Agreements, as amended, which may be in place prior to the execution of this Agreement.
- 23. In the event of any dispute with respect to any of the terms of this Agreement that cannot be reasonably resolved by negotiation between the Contractor and the Director of Community Services, the Contractor shall be at liberty to submit the issue to the Council of the City, whose decision shall be final and binding.
- 24. Time shall be of the essence.

