

## FOX RUN GOLF COURSE FULL-LEASE AGREEMENT

This Agreement is made and entered into by and between City of Yankton, South Dakota, a South Dakota municipal corporation (hereafter referred to as "City"), whose address is 416 Walnut Street, P.O. Box 176, Yankton, South Dakota 57078, and GL Management L.L.C. (a.k.a. GreatLIFE Golf and Fitness), hereafter referred to as "GL", whose address is 4600 South Tennis Lane, Sioux Falls, SD 57106.

**WHEREAS**, the purpose of this agreement is to provide services, on a contract basis, related to public recreational golfing for Fox Run Municipal Golf Course, consistent with the mission and goals of the City of Yankton.

**WHEREAS**, the MISSION of the City of Yankton is to provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage, and thrive.

**WHEREAS**, the City desires to continue to provide a high quality and well-maintained public golf facility with competitive fees and a customer service level commensurate with the best public access golf courses in the region. The City has identified goals for Fox Run Golf Course (listed in Exhibit A); and

**WHEREAS**, the City of Yankton is the owner of Fox Run Golf Course; and

**WHEREAS**, GL Management L.L.C. desires to lease Fox Run Golf Course under this agreement for use as a public golf course.

**NOW, THEREFORE**, in consideration of the promises, agreements and mutual covenants made herein, it is agreed by and between the City of Yankton and GL Management L.L.C. as follows:

1. PREMISES. For and in consideration of the sum to be paid annually by GL, the City does hereby lease unto GL a nonexclusive right to the real property commonly described as the Fox Run Golf Course, together with the buildings and related improvements erected thereon (hereafter the "Premises"), and with all the fixtures, tools, equipment, and other moveable property owned by the City and utilized in connection with the golf operations, with all of the rights, privileges, easements and appurtenances thereto according to the terms and conditions of this agreement.

2. TERM. This Agreement shall be effective as of the 1st day of January, 2019, and shall continue until the 31st day of December, 2022, at which time the contract shall terminate. This Agreement may be renewed, renegotiated, extended, or terminated with mutual written agreement between the parties.

3. COMPENSATION. GL agrees to compensate City, Forty Thousand Dollars (\$40,000.00) each of the fiscal years 2019, 2020, 2021, and 2022. Rent shall be paid in twelve equal monthly installments prospectively due on the first day of each month. Rent shall be considered delinquent if not tendered to City by the 10<sup>th</sup> day of the month in which it is due.

3.1 PERFORMANCE BOND. GL will be required to provide the City with a performance bond in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) for the faithful performance of its obligations under this Contract, which shall be posted upon the execution of this contract. The bond shall remain in place during the pendency of this Agreement. Bonds may be renewable bi-annually, for both the initial term and the renewal terms, provided that neither non-renewal nor cancelation by the Surety, nor failure, nor

inability of the Vendor to file a replacement bond shall not constitute a loss or claim recoverable under the bond.

4. OPERATION OF FACILITY. GL shall operate Fox Run Golf Course as an 18-hole public golf course. GL, as the lease-holder, shall be an independent contractor and shall furnish all management, supervision, and labor, including, but not limited to, golf course maintenance, golf course operations, clubhouse operations, retail operations, concessions, special events, promotion/marketing, and facility maintenance and improvements (in accordance with paragraphs 6 and 7 below), consistent with generally accepted operations of a public golf course facility.

4.1 GL shall notify the City in writing if it is proposing to subcontract any of the golf course operations. GL shall not be permitted to subcontract without written consent of the City Manager or his or her designee.

4.2 City shall have no obligation regarding payment of overtime, FICA or income tax withholdings, retirement or other benefits, unemployment insurance, workers compensation insurance or any other cost obligations associated with the employees of GL.

5. LEASE HOLDER PERFORMANCE OBLIGATIONS. GL shall maintain the course with excellent playing conditions and continue to operate as an accessible, affordable, nondiscriminatory, and user-friendly golf facility for players of all ages and skill levels. In addition, GL shall:

5.1 Provide high-quality, state-of-the-art golf course operations with emphasis on excellent course playability and an exceptional level of customer service.

5.1.1 GL shall provide a full-time Class A PGA Golf Professional or equivalent professional through related experience and education to supervise those who operate, manage and supervise the clubhouse employees, and to supervise those who plan and implement tournaments, outings, merchandise selection and sales, and the golf instruction programs.

5.1.2 GL shall provide a full-time maintenance superintendent dedicated to these facilities.

5.1.3 GL shall provide a staffing matrix identifying the key personnel and their current contact information.

5.1.4 All services to be provided by GL pursuant to this Agreement shall be provided by personnel experienced and properly trained in their respective fields and in a manner consistent with the standards of care, diligence, and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices.

5.2 Operate and manage the pro shop, golf cart operation, and golf cart facilities.

5.2.1 Parties acknowledge that the four golf cart storage buildings are a part of the leased golf course and shall be maintained by GL along with all other structures located upon the premises. As tenant, GL shall be solely responsible for ordinary

and routine maintenance and repair of all buildings. The Capital Improvement Plan for the course, which shall be proposed by GL and subject to approval by the City Manager or City Manager's designee, may allow for the significant repairs or replacement of any buildings, the cost of which shall be shared by the parties in accordance with Section 7.6 below. Any repair or replacement is "significant" if the total project cost exceeds Five Thousand Dollars (\$5,000.00) or is otherwise included within the capital improvement plan. GL shall not charge the City for storage of the City's leased golf carts within the golf cart storage buildings.

5.2.2 GL shall permit the use of private carts at Fox Run Golf Course. However, GL shall be permitted to restrict the use of private carts only as follows:

- (a) GL may restrict use of private carts to those who pay an annual trail fee, and who purchase a GL membership that includes golf privileges at Fox Run;
- ((b) GL may not prohibit, but may determine the policy and fees for storage of private carts in the golf cart storage buildings, subject to reasonable cart storage capacity;
- (c) GL may determine the policy and fees for private cart use at Fox Run;
- (d) GL may rescind the right of an owner to utilize a private golf cart for violations of GL golf cart policies; and
- (e) GL may require private cart users to sign an indemnification and release that holds the City and GL harmless from any damage and/or casualty or liability associated with the use or storage of private carts at the Course.

5.3 Provide food, refreshment, and event catering service in the clubhouses and on the course.

5.4 Promote and market the course to grow Fox Run's regional golf market.

5.5 Exercise reasonable efforts to accommodate and host tournaments and outings (existing and new), including the possibility of hosting local/sectional qualifiers of USGA tournaments.

5.6 Foster existing programs, and/or initiate new programs and services to increase usage of the golf course.

5.6.1 Provide high-quality golf instruction programs for players of all ages and abilities, including individual and group lesson opportunities with well-qualified instructors.

5.7 Continue to enhance and promote golf leagues (men's, women's, seniors, juniors) as a mechanism to promote increased activity and group camaraderie at the facility.

5.8 Cooperate with the City in good faith to reasonably accommodate the City's requests to utilize the golf course facilities for hosting special events on terms mutually agreeable between the parties. In addition, GL shall reasonably cooperate and coordinate with the Yankton School District (YSD) and Mount Marty College to:

- (a) Provide use of the golf course by the Yankton High School golf teams for practices and meets at no charge on terms and on a schedule mutually agreed to between GL and YSD;

- (b) Provide use of one of the nine-holes of the golf course to host YHS cross-country meets at no charge on terms and on a schedule mutually agreed to between GL and YSD;
  - (c) Work with Mt. Marty golf teams to coordinate practices and meets on the golf course on terms and on a schedule mutually agreed to between GL and Mount Marty College; and
  - (d) Work with Mt. Marty to host cross-country for meets at the golf course on terms and on a schedule mutually agreed to between GL and Mount Marty College;
  - (e) Honor existing scheduled cross-country and golf meets to which the City has already committed to hosting as of the date this Agreement becomes effective on the same terms as agreed to by the City when the event was scheduled.
- 5.9 Establish and maintain effective working relationships with City officials, golf patrons, and the general public.
- 5.10 Prohibit smoking in any building and strictly enforce the prohibition.
- 5.11 Obtain and maintain all alcohol licenses, permits, and insurance necessary for alcohol operations on the golf course property.
- 5.12 Provide and maintain equipment, procedures, and systems for the security of the golf course, clubhouse, and other buildings on the premises, including but not limited to a fire and burglar alarm system.
- 5.13 Follow all applicable federal, state, county and city laws and regulations pertaining to the operation of the golf course and covenants not to discriminate or engage in any practice that has the effect of discriminating against any person on the basis of religion, race, creed, color, national origin, sex, sexual orientation, age or disability, in furnishing or by refusing to furnish to such person or persons the use of any facility or participation in any program, including any and all services, privileges, accommodations and activities provided therein.
- 5.14 Maintain and improve facilities in a manner designed to exceed accessibility requirements whenever possible and not simply provide the minimum level required consistent with the GL capital improvement plan approved by the City Manager or the City Manager's designee.
- 5.15 Within thirty (30) days of a request by the City Manager or the City Manager's designee, provide the City Manager with data regarding golf course operations to help the City responsibly evaluate the ongoing physical and financial health of its public golf course, including, but not limited to the number of rounds played, course conditions, unforeseen maintenance and capital improvement needs outside of the capital improvement plan, and other data reasonably requested. GL agrees that it will have an "open book" policy as it relates to its gross revenues at or attributable to the Fox Run business operations, and that the City may utilize the services of either its internal or external auditors to review such records on the City's behalf at reasonable times.
- 5.16 Maintain and update a website and/or use social media to keep the public informed of course hours and important information regarding course operations.

5.17 Honor all gift certificates and golf shop credit issued by the City prior to the effective date of this Agreement, which shall be reimbursed within Thirty (30) days by the City to GL upon proof of such redemption (i.e. return of the paper certificates and/or accounting for credit utilized) tendered by GL to the City.

6. MAINTENANCE AND REPAIR. GL has examined the Premises and accepts it in its present condition. GL will maintain the golf course, all structures and facilities, and property to preserve and enhance the City's investment. GL will maintain all areas of the Premises reasonably litter and trash free. GL shall comply with all environmental laws in the operation and maintenance of the golf course.

6.1 GL shall maintain the golf course and property consistent with generally accepted operations of a public golf course facility in accordance with the Golf Course Maintenance Standards & Guidelines attached hereto as Exhibit B and fully incorporated herein by this reference.

6.2 GL shall maintain the clubhouse and buildings consistent with generally accepted operations of a public golf course facility as per attached Exhibit C- Building Maintenance Standards/Custodial Maintenance Standards. City shall be responsible for snow and ice removal at City's expense if any portion of the facilities are open to the public when snow or ice is present. City shall be responsible for garbage and recycling collection at City's expense in accordance with the City's waste collection terms and conditions and its ordinary collection schedule.

6.3 During the term of this Agreement, GL shall be permitted to utilize all City-owned golf course equipment located at and intended for use at the Fox Run Golf Course. All City equipment utilized by GL shall be reasonably maintained by GL at its sole expense, subject to the following:

6.3.1 City of Yankton shall complete an inventory of all of its equipment at Fox Run Golf Course, which shall be provided to GL by Dec. 31, 2018.

6.3.2 GL will create an inventory of equipment purchased by GL for use exclusively at Fox Run and provide the inventory list to the City of Yankton by Dec. 31 of each year.

6.3.3 Except as agreed between the parties in writing, all fixtures or equipment purchased as part of the capital improvement plan with cost-sharing of the City shall be deemed owned by the City at the conclusion of this Agreement.

6.3.4 When City-owned equipment is no longer needed for GL operations, GL shall return such equipment to the City so that it can be surplus and sold or disposed of in accordance with applicable law.

6.4 GL shall not make any significant alterations, additions or improvements to the Premises not within the capital improvement plan without the prior written consent of City Manager or City Manager's designee, which shall not be unreasonably withheld. Any alteration, additions or improvement is "significant" if the total project cost exceeds Five Thousand Dollars (\$5,000.00).

- 6.5 All erections, alterations, additions and improvements, whether temporary or permanent in character, which may be made upon the premises either by City or GL, except furniture or movable trade fixtures installed at the expense of GL, shall be the property of City and shall remain upon and be surrendered with the premises in the event of termination, without compensation to GL, unless otherwise agreed to between the parties in writing.
- 6.6 At the discretion of the City Manager or the City Manager's designee, GL shall submit to an annual City-led maintenance audit, inclusive of all structures and grounds. Recommendations to GL may be made from these audits for implementation in the following season. Responsiveness to these audits will be considered in the contract extension negotiations.
- 6.7 Inspection. City shall have the privilege of inspecting the premises during normal business hours without prior notice of such inspection. The City Manager or the City Manager's designee may maintain one full set of keys to access all structures upon the Premises for purposes of inspection. GL shall keep and provide to the City records of all individuals to whom GL has issued keys or granted access to the Course facilities and shall immediately notify the City if any keys are lost, stolen, or remain in the possession of individuals whose authority to utilize such keys has been rescinded.
- 6.8 Damage or Destruction. In the event that any structure upon the Premises is destroyed or otherwise rendered unusable by an insured cause (i.e. fire or weather damage), the City shall restore and/or rebuild such structures utilizing insurance proceeds unless the parties have otherwise agreed in writing.

7. CAPITAL IMPROVEMENT PLAN. In budget year 2019, the City shall make capital improvements as budgeted. GL will work with and assist the City in making the improvements. If GL desires additional capital improvements in 2019, GL may make such improvements subject to City approval by the City Manager or the City Manager's designee.

Beginning in budget year 2020, GL shall work with the City annually to formulate, submit, and execute a proposed five-year plan for capital improvements. Any capital improvement, which may include building construction, significant repairs or renovations, cart path construction, City equipment replacement, and redevelopment of holes, shall be subject to City approval by the City Manager or the City Manager's designee.

- 7.1 Annually assess needs and develop plans, including implementation strategies, for necessary and desirable capital level improvements to the golf course, training facilities, clubhouse, pro shop, food and beverage facilities, and maintenance facilities. GL shall describe all proposed capital work and provide to the City cost estimates for each capital project, along with a timetable that clearly outlines proposed improvements and the anticipated commencement and completion dates for these improvements.
- 7.2 GL shall be responsible for all planning, expenses, permits, contracting, etc. for capital improvement projects. Significant renovation and improvement projects in excess of Five

Thousand Dollars (\$5,000.00) shall be subject to City review by the City Manager or City Manager designee and shall require written City approval by City Manager or City Manager designee prior to implementation.

- 7.3 Prior to commencing construction of any alteration, addition or improvement exceeding the statutory limits for competitively bid work and where GL intends to use an outside non-affiliated third party contract, GL shall utilize the competitive bidding process required by law and shall obtain and provide the City with a copy of payment and performance bonds in a manner and form approved by the City Manager or City Manager's designee.
- 7.4 The City makes no representations regarding the adequacy of utilities currently in place upon the Premises. GL will be required to connect to, maintain, and/or upgrade any utility service necessary to the performance of this Agreement, and obtain the appropriate permits and approvals.
- 7.5 All capital improvements and fixed assets become the property of the City upon installation, unless otherwise agreed to between the parties in writing. All debts or obligations related to the improvements by GL will remain GL's sole obligation, and the City shall not be responsible for any of these debts or obligations.
- 7.6 Beginning in 2020 and consistent with the capital improvement plan approved by the parties, GL shall be required to make all necessary repairs and necessary/desirable facility improvements and the City shall fund the approved capital improvement projects on an annual basis at seventy-five percent (75%) of proposed costs up to a maximum amount of Seventy-Five Thousand Dollars (\$75,000). Beginning in 2021, the City shall fund the approved capital improvement projects on an annual basis at fifty percent (50%) of proposed costs up to a maximum amount of Fifty Thousand Dollars (\$50,000.00) per year. All capital work by GL shall be completed in such a manner so as to create a minimum amount of interference with golf course availability to customers.
- 7.7 Cost Reduction. GL is encouraged to identify alternative approaches or methodologies, which if adopted, would reduce capital project costs. GL and the City should work together to identify and modify aspects of GL's ongoing operations that contribute unnecessarily to increased capital costs. The parties also shall work together to identify cost savings opportunities within the capital improvement plan and its implementation.
8. LICENSED ENGINEER. GL will be required to retain a professional South Dakota state-licensed engineer or registered architect for design of proposed capital new construction and renovation projects involving structural changes to existing facilities. GL will be required to submit the engineer's or architect's qualifications and designs to the City Manager or City Manager's designee for approval.
9. CHARGES AND TAXES. GL shall pay all of the following, when due, during the term hereof:
  - 9.1 All charges for utilities incurred at the premises including user fees, deposits, and repairs. All utilities must be placed in the name of GL during the term of this Agreement.

- 9.2 All Service contracts (i.e. cable, phone, security systems and cameras, IT security firewalls, and system(s), golf software, credit card security, Toro irrigation maintenance contract, etc.) shall be the exclusive responsibility of GL during the term of this Agreement, excepting only the NB Golf Cars Inc. cart lease and the Shark Experience (or similar applicable cart screen) base contract which shall remain the City's exclusive responsibility. GL shall be permitted to add to the carts additional available screen module subscriptions and/or Bluetooth speaker equipment at GL's expense. The parties recognize that the City will exercise reasonable efforts to terminate the Shark Experience program. If successful, GL shall be permitted to work within the existing leased cart screen system to sell advertising.
- 9.3 All taxes and other such amounts required by federal, state and local law, including but not limited to federal income tax and FICA withholdings, workers' compensation, unemployment insurance, sales taxes, and property tax imposed as a result of operation of facility during the term of this Agreement.

10. INSURANCE. It shall be the responsibility of GL to carry the following insurance:

- 10.1 Comprehensive General Liability. GL shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$2,000,000 each occurrence, including coverage for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall add the City and its employees and volunteers as additional insureds.
- 10.2 Alcohol Liability. If any alcoholic beverages are involved (including beer or wine), the Golf Operations Manager shall maintain Liquor Liability insurance with a limit of not less than \$1,000,000 each accident. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall add the City and its employees and volunteers as additional insureds.
- 10.3 Workers' Compensation and Employers Liability Insurance. GL shall provide proof of workers' compensation coverage as required by the State of South Dakota, for all its employees who are to work per this Agreement. GL shall also supply proof of workers' compensation and employer's liability insurance on each and every subcontractor before allowing that subcontractor on the job site.
- 10.4 Equipment Casualty and Liability Insurance. GL shall during the entire term of this Agreement maintain casualty insurance on all of the City's equipment utilized by GL during the term of this agreement sufficient to provide for replacement value of said equipment. GL shall also maintain liability insurance covering use of all of the City's equipment utilized during the term of this agreement with a limit of not less than \$1,000,000 for each occurrence.
- 10.5 Facility Casualty Insurance. City shall during the entire term of this Agreement maintain casualty insurance on all of the City's structures utilized during the term of this agreement sufficient to provide for replacement value of said facilities.



- 10.6 Coverage. All policies required under this Agreement shall be in effect for the duration of this Agreement and projects. All policies shall be primary and not contributory. GL shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the City.
- 10.7 Additional Insured. All insurance policies required by this contract, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents and employees. GL shall provide a Certificate of Insurance showing the coverage outlined above and showing the City of Yankton as an additional insured.
- 10.8 City's Right To Reject. City reserves the right to reject a certificate of insurance if GL's insurance company is widely regarded in the insurance industry as financially unstable.
- 10.9 Cancellation. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from GL or their insurers to CITY. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to CITY and its division, officers and employees.

11. DEFAULT. Any one or more of the following acts or omissions of this Agreement shall constitute an event of default hereunder (Event of Default):

- (a) Failure to satisfactorily perform any obligation set forth herein;
- (b) Failure to submit any report or provide notice required hereunder;
- (c) Failure to maintain the course or facilities in accordance with Exhibits B or C or to perform any other covenant or condition required herein;
- (d) Failure to meet, or the existence of a reasonable basis of a party to believe that a prescribed assurance and/or commitment outlined in this Agreement may not be met;
- (e) Failure to apply City funds in accordance with this Agreement;
- (f) Bankruptcy or insolvency of the GL; or
- (g) Acting in any manner construed as being fraudulent, materially incorrect, or materially misleading.

11.1 Breach of contract; remedy process. In the event either party believes the other party has committed an Event of Default, the aggrieved party shall serve notice of such Event of Default to the other party in accordance with Section 13.15, and within ten (10) days of the date the notice is given, both parties agree to meet and negotiate in good faith to resolve such matter. If the parties are unable to resolve the matter, both parties agree to submit to non-binding mediation with a neutral mediator agreed upon by both parties and

to negotiate in good faith resolution of the default within such process. The costs of mediation shall be equally shared by the parties.

12. TERMINATION. This Agreement may only be terminated in accordance with this Section. Upon termination for any reason, all customer information gathered by GL during the term of this Agreement shall be turned over to the City. It is agreed this contract may be terminated for good and sufficient cause by either party upon 180-days written notice. Such good and sufficient cause shall include, but not be limited to, the following:

- 12.1 Failure to cure an Event of Default within thirty (30) days following receipt of notice by the defaulting party or upon failure of mediation to resolve the default to the satisfaction of the non-defaulting party;
- 12.2 Dissolution of GL by the South Dakota Secretary of State for any reason;
- 12.3 Dishonest, illegal, or immoral conduct by GL employee(s) or agent(s);
- 12.4 Persistent or repeated disregard of laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction;
- 12.5 Filing by GL of a voluntary petition for protection under federal bankruptcy laws; or the failure to obtain the dismissal of an involuntary petition under federal bankruptcy laws within 90 days;
- 12.6 Discontinuance of business activities or abandonment of the facilities; or
- 12.7 Intentional damage to the Course or facilities by GL employee(s) or agent(s); or
- 12.8 Any other substantial breach of the Lease Agreement.

13. GENERAL PROVISIONS.

- 13.1 Public Information Requests. Information, documentation, and other materials submitted under this agreement are subject to public disclosure under open records laws. GL is hereby notified that the City strictly adheres to this open records requirement and the interpretations thereof rendered by presiding courts and tribunals. GL shall be deemed to have knowledge of these laws and how to protect the legitimate interests of the City.
- 13.2 Amendments. Both parties recognize the need for flexibility and that unforeseen conditions may arise during the term of this contract which could give rise to the need for amendments to this contract. Either party may suggest to the other party, during the term of this contract following execution of this contract, that changes or modifications are desirable. The parties agree to negotiate such matters in good faith. All changes shall be mutually agreed upon and executed in writing and attached to the original contract. Any verbal agreement or conversation shall be nonbinding.
- 13.3 Applicable Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of South Dakota. The Courts of appropriate

jurisdiction in and for Yankton County, South Dakota shall have jurisdiction over this Agreement and the parties.

- 13.4 Compliance with Law. GL represents and warrants that it has and shall continue to comply with all federal, state and local laws and regulations applicable to GL's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment. GL warrants that it possesses current valid appropriate licensure, including, but not limited to, driver's license, professional license, or permits, required to perform the work.
- 13.5 Entirety of Agreement. Only those terms in writing are enforceable. No other terms or oral promises not contained in this written agreement may be legally enforced and the parties hereto may change the terms only by another written agreement or an amendment as provided in 13.2.
- 13.6 Force Majeure. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- 13.7 Customer Information. The parties agree to not use customer-specific information for any purpose other than carrying out their obligations under this Agreement.
- 13.8 Independent Contractor. In the operation of the golf course, GL is an independent contractor and not an agent, officer or employee of City. The parties mutually understand that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association with the City. As an independent contractor, GL is not subject to the direction and control of City except as to the final result under this Agreement. Any persons employed by GL shall be under GL's exclusive direction, supervision, and control. GL shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment. GL shall assume sole responsibility for any debts or liabilities that may be incurred and for the payment of all federal, state and local taxes that may accrue in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing GL or its agents and/or employees to act as an agent or representative for or on behalf of City, or to incur any obligation of any kind on the behalf of the City. City agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of GL's agents and/or employees as a result of this Agreement.
- 13.9 Indemnification. GL shall indemnify and hold harmless the City and its agents, employees, Commissioners, and volunteers from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from (i) the management of the Premises or of any business therein by GL, (ii) any act, omission, or

negligence of GL or the partners, directors, officers, agents, employees, customers, invitees or contractors of GL.

13.10 Assignment/Transferability. This agreement shall only be assignable to another party upon the consent of the original parties and such assignment must be agreed to in writing as an amendment pursuant to 13.2. Any unauthorized assignment shall be void and shall, at the option of City, act as a termination of this Agreement.

13.11 Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties and obligations contained herein shall operate only between the parties and shall inure solely to their benefit. The provisions hereof are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties hereto intend and expressly agree that only signatories shall have any legal or equitable right to seek enforcement, any remedy arising out of a party's performance or failure to perform any terms or conditions hereof, or to bring an action for the breach of this Agreement.

13.12 Americans with Disabilities Act. GL shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

13.13 Nondiscrimination. In rendering services under this Agreement, GL shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, or other protected status.

13.14 Kickbacks. GL certifies and warrants that no gratuities, kickbacks or contingency fees were paid, nor were any fees, commissions, gifts, or other considerations made in connection with or contingent upon the execution of this Agreement.

13.15 Liaison and Notice. GL's and City's Designated Representatives. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to all parties at the addresses provided in this agreement, either by regular mail, email, or delivery in person.

13.15.1 City's designated representative is the City Manager, whose address is P.O. Box 176, 416 Walnut Street, Yankton, South Dakota 57078; telephone number (605) 668-5221.

13.15.2 GL's designated representative is the GL President, whose address is 4600 South Tennis Lane, Sioux Falls, SD 57106; telephone number (605) 275-0999.

13.15.3 If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail or through another carrier (e.g., UPS or FedEx), notice is effective as of the day following the date of mailing or the

date of delivery reflected upon a return receipt, whichever occurs first. If notice is given by email, notice is effective as of the date sent.

- 13.16 Severability. The provisions of this agreement shall be deemed severable. If any part of this agreement is held to be invalid, illegal, or unenforceable, the remainder of this agreement will remain fully enforceable and in effect as written or subsequently amended.
- 13.17 Contingency. This Agreement is contingent upon the City Commission's approval of this Agreement and the City continuing to have sufficient funding allocated to GL in its budget.
- 13.18 Signature Authority. The parties executing this Agreement represents, covenants, and warrants that the making and execution of this agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary corporate action of each such party and are valid, binding, and enforceable obligations of each party in accordance with the respective terms. Following the execution of this Agreement, the City Manager or the City Manager's designee shall have lawful authority to grant any consent of the City for any matter requiring the City's consent in this Agreement.
- 13.19 Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.
- 13.20 Waiver. Any failure of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right or any provision hereof.
- 13.21 Time is of the Essence. Time is of the essence in all provisions of the Agreement.
- 13.22 Binding effect. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

DATED THIS \_\_\_\_\_ DAY OF NOVEMBER, 2018.

Fox Run Golf Course  
City of Yankton

Lease Holder  
GL Management, L.L.C.

\_\_\_\_\_  
By: Amy Nelson, City Manager

\_\_\_\_\_  
By: Donn Hill, President

ATTEST:

\_\_\_\_\_  
Al Viereck, Finance Officer

## **FOX RUN FULL-LEASE AGREEMENT Exhibit A**

### City of Yankton Goals for Fox Run Golf Course:

- Provide a guaranteed annual payment (or limitation of losses) to the City for operation of the golf course (turn-key operating lease).
- Provide the citizens of Yankton with a great and affordable customer experience—including ease of obtaining tee times.
- Enhancement of golf facilities.
- Eliminate or reduce future taxpayer support for golf course operations.
- Limit City expenditure growth by efficient golf course management.
- Ensure that the golf course assets (both existing and new) are properly maintained.
- Continue capital improvements and timely maintenance.
- Work with the Lease Holder to develop a comprehensive capital improvement plan.
- Maintain highly effective customer communication and support in the operation of a public golf course.
- Continue to provide leagues, tournaments, outings, and other types of organized play and programming while maintaining good public access to the course.

## FOX RUN FULL-LEASE AGREEMENT Exhibit B

### Golf Course Maintenance Standards & Guidelines

The work includes maintenance of grass on greens (including putting greens and perimeter slopes), tees (including practice tees), approaches, collars, ditches, fairways, roughs, sand traps, driving range, ponds and maintenance of trees, shrubs and landscaping throughout the entire acres covered by this contract. Note: Where specific fertilizers, chemicals, seed, supplies, products, or techniques are specified below, similar items or techniques of equal or better effectiveness that are without additional cost to the City may be used if preapproved by the Director of Parks and Recreation or appointee.

The maintenance practices included in this section are intended to be an overall outline for the agronomic, horticultural, and recurring service practices of Lease Holder's golf course maintenance operations. While the guidelines are detailed, they are intended to be only minimum rules of operation. The Lease Holder's primary responsibility is for ensuring the integrity of the golf course. Variances from the guidelines will be necessary at times to allow for adjustments resulting in climatic conditions, pest infestations, golf course traffic, tournaments, and other unforeseen problems.

If the course does not have needed equipment to meet guidelines, the Lease Holder will make arrangements to rent or utilize another organization's equipment, or the specific piece of equipment will be incorporated into the Capital Improvement Plan outlined in Section 7 of this agreement.

#### 1. Mowing Guidelines:

- a. Greens will be mowed every day the course is open for play at a height of cut that is acceptable to the City without causing undue stress to the turf. Typically, a cutting height between 1/8 inches to 1/10 inch will be maintained. Greens should be maintained to achieve at least an "8-foot stimpmeter" reading. The integrity of the original size of greens shall be maintained.
- b. Tees will be mowed three times per week. A mowing height of 1/4 inch to 1/2 inch will be maintained. The integrity of the original size and design of tees shall be maintained.
- c. Fairways, approaches, and collars will be mowed a minimum of three times per week during the height of the active growing season and two times per week during the cooler periods. A height of cut of 1/2 inch to 3/4 inch will be maintained. There may be certain times during the summer when this frequency may increase or decrease due to changes in climatic conditions. The integrity of the original size of fairways shall be maintained.
- d. Tee and green slopes and roughs will be mowed weekly during the active growing season and as needed the balance of the year. A height of cut of 2 inch to 2-1/2 inch will be maintained.
- e. Growth regulators may be utilized.

## 2. Aeration Guidelines:

- a. Greens will be aerated as needed to provide the soil with the proper air, water, and soil ratio required for healthy putting surfaces. A minimum of one conventional core aeration (3 inches deep on 2-inch centers, minimally) or one deep tine aeration during the year. Spiking of all greens shall be performed between aerations to maintain proper water infiltration.
- b. Tees will be aerated once during the year with a conventional aerator to alleviate compaction and help control thatch.
- c. Fairways will be aerated one time a year to alleviate compaction. Also, supplemental aerations will be done on the heavily compacted areas and may be accomplished with a deep-tine aerator.
- d. Roughs will be aerated as needed and determined by the Lease Holder or when over-seeding the roughs.

## 3. Verticutting/Spiking Guidelines:

- a. Greens will be vertically mowed during the active growing season to help promote quality putting surfaces. Typically, once or twice a month during the active growing season. Spiking of the greens will be performed regularly.
- b.

## 4. Top Dressing Guidelines:

- a. Greens will be top dressed in conjunction with the verticutting/spiking and aeration operations. This will be accomplished with a soil/sand mix.
- b. Greens will be top dressed at least once a month during the active growing season to help maintain a smooth putting surface.
- c. Tees will be top-dressed in conjunction with the aeration operations. In addition, the divots will be filled in on a weekly basis, minimally, to ensure an even playing surface.

## 5. Fertilization Guidelines:

- a. Greens will be fertilized at a rate of 4 pounds of nitrogen per year with an analysis or ratio of N, P, and K determined by soil and tissue testing. Only "miniprill" and materials specifically formulated for putting surfaces will be utilized. Minor nutrients will be applied as a foliar application in addition to what is available in the granular fertilizer.
- b. Tees will be fertilized at a rate of .75 pounds of nitrogen four times a year.
- c. Fairways, irrigated roughs, and slopes will be fertilized with .75 pounds of nitrogen 3 to 4 times a year through granular applications. Supplemental amounts of fertilizer will be applied to weak and thin areas. Any additional amounts of N, P, and K will be determined by soil tissue tests and adjusted accordingly.



#### 6. Bunker Maintenance Guidelines:

- a. Mechanical raking of the bunkers will be performed three to five times per week. In addition to mechanical raking, the bunkers will be spot hand raked during the days the bunkers are not mechanically raked.
- b. Edging of the bunkers will be performed as needed to ensure a manicured appearance at all times.
- c. Mowing of the bunker faces will be performed weekly throughout the growing season and as needed throughout the remainder of the year.
- d. Additional sand will be added as needed throughout the year to maintain consistent playing conditions.

#### 7. Equipment Repair Maintenance Guidelines:

- a. The Lease Holder will follow all manufacturers' guidelines in the maintenance and repair of equipment. All of the Lease Holder's equipment technicians will be qualified and are encouraged to attend industry workshops and seminars to stay updated on the latest trends and repairs of equipment.
- b. If the equipment is City owned and the repairs needed are beyond normal golf course maintenance staff abilities/knowledge, the City will manage repairs.

#### 8. Irrigation Guidelines:

- a. The irrigation systems will be repaired and maintained on a regular basis by qualified staff of the lease holder.
- b. These employees should attend service seminars to keep updated on the latest irrigation development and trends in the industry.

#### 9. Integrated Pest Management Guidelines:

- a. The goal is to have the City of Yankton Fox Run Golf Course weed and insect free as possible and to prevent any damaging outbreaks of pests. The Lease Holder's approach to the control of damaging pests and weeds will include curative and preventative types of control measures using the most appropriate products available. The removal of ash trees on the course, due to the spread and eventual infestation by the Emerald Ash Borer will be the responsibility of the City of Yankton as a part of its EAB Mitigation Plan.
- b. The Lease Holder will be responsible for the implementation of an integrated pest management (IPM) program for all playing areas of the courses including roughs via regular monitoring, problem and potential problem identification, preventative measures, diagnosis and treatment. All greens will be inspected daily for the presence of damaging pests, insects, or fungus. All greens shall be treated as required to prevent or control fungus and insect activity and damage to the turf. An application of Merit, or Sevin, or equivalent shall be applied to

control the insect population in the fairways and roughs to allow optimum turf root growth. All fairways will be inspected weekly for the presence of damaging pests, insects, or fungus and treated appropriately to prevent turf damage.

c. Ant mounds throughout the golf course will be controlled on an as-needed basis.

d. Fairways should be treated preventively for fungal diseases three times per year.

10. Other Maintenance/Service:

The Lease Holder will be responsible for properly moving the cups and tee markers and repairing ball marks every day the courses is open for play. In addition, all trash will be removed, divot buckets will be filled, and the ball washers checked for clean towel and soap solution daily. The ball washer soap will be changed a minimum of once per week throughout the year.

11. Trash and Debris Removal:

During the course of the day, any trash or nonorganic debris on the golf course will be picked up. This will be hauled to the City provided dumpster and disposed of. Trash removal from the provided dumpster will remain the responsibility of the City.

12. Organic Materials and Tree Debris Removal:

During the course of the day, any tree debris or organic materials on the golf course will be picked up. This debris will be hauled to the established on-site disposal area and unloaded. Removal from the City property, when necessary and with notification from the Lease Holder, will be handled by the City.

13. Deep Rough/Natural Areas Maintenance:

a. The Lease Holder will maintain the natural areas within the boundaries of the Premises. These areas are to be kept free of fallen limbs, sucker growth, undesirable vegetation, and weeds. Any removal of healthy trees (with the exception of the Ash trees that the City will be removing) is the responsibility of the Lease Holder, with City Manager or City Manager designee approval. Approval is not needed for trees which are determined to be dead, diseased, hazardous, or are leaning at more than a 45-degree angle.

b. The Lease Holder will be responsible for pruning any plant material and clearing debris that obstructs the cart paths throughout the golf courses.

14. Cart Path Maintenance:

Standing water problems on cart paths will be promptly corrected by the Lease Holder. The City will continue to allow the use of crushed asphalt/concrete material for gravel paths. The City will deliver the crushed asphalt/concrete material when requested by the Lease Holder and as City supplies allow. The Lease Holder will be responsible for hauling, spreading, and packing the material on the Premises. The Lease Holder will repair or is responsible for repair to cart path breaks due to irrigation repairs.

15. Lakes, Ponds and Streams Maintenance:

All aquatic weed control is the responsibility of the Lease Holder. The Lease Holder's personnel will remove litter and trash from the water bodies on a regular basis. All lakes and ponds shall be kept free of all unwanted aquatic plant life.

16. Landscape Beds Maintenance:

The Lease Holder will install and maintain flowering plants in select landscape beds in the parking lot, around the clubhouse, and throughout the golf course. This will include weed control, watering, fertilization, and pest control. The Lease Holder will work with the City Parks Department Staff in determining planting varieties and designs.

17. Buildings:

The Lease Holder will maintain the landscapes surrounding the maintenance building, comfort station, cart sheds, and clubhouse building on the golf course in an attractive, operable, and sanitary order. Any required repairs, replacement, rebuilding, and restoration of buildings or property should be brought to the attention of the Director of Parks and Recreation immediately. All such repairs, replacements, rebuilding, and restoration will be the responsibility of the Lease Holder unless the amount is above \$5,000. If the amount is above \$5,000, then the project will be incorporated into the Capital Improvement Plan outlined in Section 7 of this agreement.

**FOX RUN FULL-LEASE AGREEMENT Exhibit C**

Building Maintenance Standards/Custodial Maintenance Standards

Daily Custodial Duties and Requirements for Clubhouse and Comfort Stations.

- 1 Empty waste receptacles and replace plastic liners as needed. Refuse removal is the responsibility of the Lease Holder.
- 2 Pick up litter, trash and debris at entryways, parking lots and grounds, as needed; this is to include areas around the trash dumpsters and recycling corral.
- 3 Vacuum all areas of the building's interior carpet. Vacuum any floor mats and entry mats located at entry/exit doors. Spot clean carpets and hard floors as needed.
- 4 Dust mop all non-carpeted floors then damp mop afterwards.

- 5 Clean and sanitize drinking fountains and remove encrustations, watermarks, etc. Polish as needed, using approved metal polish.
- 6 Remove cobwebs on walls, ceiling corners, or any other places.
- 7 Vacuum all fabric upholstery on chairs. Spot clean as necessary. Clean all vinyl upholstered chairs.
- 8 At entranceways, remove lint, cobwebs, debris, and mud from walkways, steps, floors, canopies, and ceiling corners. If necessary, remove bird droppings.
- 9 Clean and sanitize public telephones and any ledges and side panels of phone area.
- 10 Clean entry door surfaces, door glass, and adjacent glass and frames. Clean entry door handles, push plates, and kick plates.
- 11 Clean top surface of exterior patio tables and chairs.
- 12 In restrooms and kitchen area, clean sinks and counter tops using sanitizing agent.
- 13 In eating areas, clean counter tops, table tops and chairs.
- 14 In kitchen, clean microwave oven inside and outside and exterior surface of refrigerator door.
- 15 In restrooms, clean mirrors, countertops, sinks, and fixtures using germicidal solution.
- 16 Clean toilet seats, inside bowl, bowl rims of toilet, base (including hold-down bolts), using germicidal solution as well as unclog toilets as necessary. Clean urinals in like manner. DO NOT USE ACID BASED TOILET BOWL CLEANER ON ANY METAL SURFACES.
- 17 Resupply towels, paper towels, soap, toilet paper, and other items as required.
- 18 Mop bathrooms with germicidal solution.
- 19 In restrooms and comfort stations, spot clean ceramic tile/concrete walls, removing stains, heavy soil, graffiti, candy, gum, or any other foreign material. Clean stall partitions in like manner.
- 20 Clean and polish all stainless steel and chrome.
- 21 Clean and organize custodial closet at end of each shift.
- 22 Report needed building repairs to Director of Parks and Recreation.

#### Weekly

- 23 Blinds and other window coverings are to be dusted or vacuumed on both sides.
- 24 Dust around cleared areas of furniture tops, desk tops, vacant shelves, windowsills, ledges, chairs, benches, door frames, top of doors, frames of cork boards, etc.
- 25 Wipe dust accumulation on wall artwork, photographs, white boards, bulletin boards, plants, etc.
- 26 Vacuum behind equipment using a vacuum wand. This will avoid damage to equipment and/or equipment cords.
- 27 Clean all washable non-fabric seating.
- 28 Clean interior and exterior window surfaces.
- 29 Spot clean walls and cubicle partitions.
- 30 Sanitize the interior and exterior surface of all trash containers

- 31 Heavy sweep all loose soil, rocks, debris, etc. from patio areas, vestibules, building stairwells/steps, and handicap ramps.
- 32 Spot clean baseboards to remove build-up of dirt and foreign matter.
- 33 Cart barns- clean and sweep floors in cart barns A, B, C, and leased cart shed.
- 34 Pour one-gallon germicidal or detergent solution into floor drains. Clean grate to remove mildew or other stains.

#### Monthly

- 35 Buff floors coated with floor finish restoring luster and dust mop afterwards.
- 36 Vacuum and clean HVAC supply, return vents, and surrounding ceiling.
- 37 Clean ceiling and light diffusers/covers (only if diffusers and covers are removable without tools).  
Dust/wipe bulbs.
- 38 Remove any floor finish, dirt, or other foreign matter from all baseboards.
- 39 Clean stairwell rails, landings, and steps. Clean rails located on handicap ramps to remove dust accumulation and residue.

#### Semiannual or as Needed

- 40 Strip, seal, and refinish all floors.
- 41 Machine scrub and apply four coats of floor finish to all VCT floors.
- 42 Extract/shampoo all carpeted areas.

#### Additional Duties as Needed (but not limited to)

- 43 Change ceiling tiles.
- 44 Paint facilities' interior/exterior.
- 45 Repair sheetrock.
- 46 Replace base covers.
- 47 Change out lightbulbs.
- 48 Change out flags.
- 49 Minor plumbing repairs.