

Public Finance, Judiciary, and Personnel Committee
Tuesday, November 10, 2020 4:00 PM
Council Chambers
1369 25 Avenue
Columbus, NE 68601

1. **Statement of Compliance with Open Meetings Act and roll call.**

84-1407. Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions.

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public

power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site; and
- (e)(i) Except as provided in subdivision (2)(e)(ii) of this section, no more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference; or
- (ii) In the case of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act, such organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conferencing.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if:

- (a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county;
- (b) Reasonable advance publicized notice is given which identifies each telephone conference location at which there will be present: (i) A member of the educational service unit board, council, community college board of governors, governing body of a public power district, governing body of a public power and irrigation district, Nebraska Brand Committee, or entity's or pool's governing body; or (ii) A nonvoting designee designated under subdivision (3)(f) of this section;
- (c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or entity or pool or at a place which will accommodate the anticipated audience;
- (d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site;

(g) The telephone conference call lasts no more than five hours; and

(h) No more than one-half of the board's, council's, governing body's, committee's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that:

(i) The governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing; and

(ii) An organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act may hold more than one-half of its meetings by telephone conference call if the organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Effective Date – September 1, 2019

Distributed by the League of Nebraska Municipalities



2. **Golf Professional's contract.**



The City of Columbus

RESPONSIBLE • RESPONSIVE • REPUTABLE

Administration Office (402) 562-4232

Fax (402) 563-1380

memorandum

DATE: November 5, 2020
TO: Public Finance Committee Members
FROM: Tara Vasicek, City Administrator
RE: Golf Professional Contract

RECOMMENDATION:

Approval to the City Council of the 1-year Golf Professional Contract.

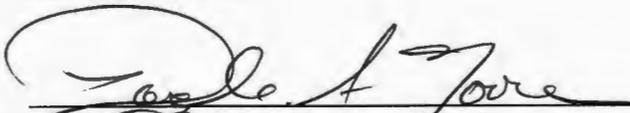
DISCUSSION:

Over a year ago, a Golf Committee was created; members of the Golf Committee include the Public Property Director, Golf Course Maintenance Supervisor, Golf Professional, one Columbus Golf Association Member and myself.

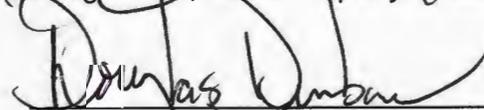
The committee together reviewed the current contract and discussed a few minor changes. The most significant change over the last year is that the Golf Professional has started preparing a monthly financial report. This has been a great tool to help all members of the committee better understand the Golf Professional operation of the municipal courses.

The Golf Professional, Public Property Director and myself together are recommending that a one year contract be approved. We are recommending this because we all feel that an in-depth study of rates at the golf courses is necessary for a number of reasons, including that the Golf Professional is not generating enough revenue at the courses to operate as he is required to in the contract. We believe it is best for the City and for the Golf Professional to develop a rate schedule and longer term contract concurrently.

CONCURRENCE:



Doug Modre, Public Property Director



Doug Dunbar, Golf Professional.



GOLF AGREEMENT

This AGREEMENT is made and entered into between the City of Columbus, Nebraska, a municipal corporation, hereinafter referred to as "CITY" and golf professional DOUGLAS DUNBAR, hereinafter referred to as "MANAGER"; and

WHEREAS the CITY is the owner of Quail Run and Van Berg Golf Courses and operates municipal golf courses and clubhouses therein; and

WHEREAS, MANAGER is a Class "A" PGA Golf Professional; and

WHEREAS, the CITY desires the services of a qualified manager to operate the concessions and serve as golf professional for Quail Run and Van Berg Golf Courses.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein, the parties agree as follows:

1. AGREEMENT

CITY grants to MANAGER the exclusive privilege of operating business concessions and rendering professional golf services at Quail Run and Van Berg Golf Courses and Clubhouses for the period of time commencing on January 1, 2020 and ending December 31, 2021, in accordance with the terms and conditions hereinafter set forth. Prior to the end of the contract the CITY together with the MANAGER will perform a Rate Study and negotiate a new, longer term contract by August 31, 2021.

2. SERVICES

MANAGER is to be recognized as the Pro-Manager of Quail Run and Van Berg Municipal Golf Courses and shall make professional golf services and concession services available to the patrons of said golf courses at all reasonable times as determined by the CITY. Said services shall include, but not be limited to, the following:

- sale of alcohol (beer, wine and spirits)
- public relations
- teaching
- coaching
- promotion of golf play
- leagues
- tournaments
- outings
- pull carts
- motorized carts
- sales of equipment from the pro shop
- operation of the driving range
- operation of concession facilities

It is recognized that in providing the previously described services the MANAGER will spend a considerable amount of time in service on the courses for the benefit of the CITY and area

golfers. Accordingly, CITY and MANAGER agree the MANAGER shall be granted paid rest and recuperation time as follows: at the conclusion of each golf season, MANAGER shall be permitted off-time each year beginning December 24th through the last Wednesday in January. MANAGER agrees and shall ensure that adequate, trained staff is available to operate the CITY course(s) during such off-time should weather conditions allow play.

3. SUPERVISION BY MANAGER

In addition to the services to be rendered by the MANAGER as set forth in No.2, MANAGER agrees to:

- supervise all activities within the part of the clubhouses designated by the CITY for use by the public
- supervise all personnel in the employ of MANAGER
- supervise the performance of such duties and services in the clubhouses of both golf courses or adjacent thereto as may be included in the Agreement.

4. GENERAL UPKEEP

MANAGER agrees to keep the clubhouses in a clean and sanitary condition at all times. This shall include the concession areas, public restrooms, public lounges, pro shops, and general interior and immediate exterior maintenance (exterior maintenance shall include parking lots and cart storage area) at both Quail Run and Van Berg Golf Courses. All papers, rubbish, broken and empty bottles, garbage and other trash accumulating in the operation of the clubhouses shall be picked up by MANAGER or his designee and placed in suitable containers. Goods, bottles, or empty containers shall not be sold, piled, or stored outside or inside of the clubhouses except upon written permission of the CITY. MANAGER shall keep concession premises in a neat, clean, orderly, and sanitary condition at all times in conformance with the standards required by the City of Columbus and the State Department of Health.

5. SOFTWARE

The CITY shall provide and maintain software to serve the functions needed to operate the courses without cost, to the MANAGER, golf point of sales software to record all receipts. The CITY shall provide for training of the MANAGER and his personnel on the software program.

6. TELEPHONE

The CITY will waive reimbursement up to \$200 for non-personal business-related long distance telephone call each year of the contract.

7. MONEY COLLECTION

MANAGER agrees to collect liquor sales, concessions, range fees, greens fees, pass and punch card fees and to issue tickets/tapes/cash register receipts for: green fees, motorized and pull cart fees, driving range, liquor and concessions, surcharges, and sales tax; to keep records of all such transactions; and to properly account for and remit to the CITY such documentation as described in Sections 18 and 19.

8. PLAY

MANAGER agrees to provide supervisory services during play to provide smooth starts on number one and ten tees and to monitor closely the transition from hole number nine to number ten tee at all times. Marshaling of play and course rules is required. MANAGER is required to provide help to leagues, outings, and tournaments for scoring, handicaps, scoring sheets, and etc. thereby enabling events to run smoothly.

9. INSPECTION AUDIT

MANAGER shall permit the examination and audit of all books and records of MANAGER relating to this Agreement by officers or representatives of CITY, and shall make said books and records available at all reasonable hours.

10. STAFF

MANAGER shall have adequate trained staff on duty in readiness to serve the public at such times as necessary to provide concession and professional golf services.

11. IMPROVEMENTS

MANAGER shall not remodel clubhouses and outside around clubhouses or install any permanent fixtures or additions to the clubhouses without first obtaining the written approval of CITY. All improvements shall become the property of the CITY upon termination of this Agreement unless the parties hereto agree in writing otherwise. Items such as signage, reserved parking, and building improvements need to be approved by the CITY.

12. CITY SUPERVISION

CITY reserves the right to exercise general supervision and control over the clubhouses with respect to the management of advertising displays; employees; concessions; kind, character, and quality of goods dispensed; and the cleanliness and sanitation of the buildings and adjacent grounds.

Petitions and solicitations on golf courses are prohibited without approval of the Board of Park Commissioners.

MANAGER shall operate under the provisions of this Agreement in such a manner as to conform to all ordinances of the City of Columbus and the laws of the State of Nebraska, and shall give assistance to the City in seeking conformity with the ordinances of the City and laws of the State of Nebraska by public users.

Further, MANAGER agrees to enforce all rules and regulations adopted by the CITY representatives covering the conduct of the public and services offered in the use of CITY property.

The Golf Course Superintendent together with the Public Property Director shall determine when the course will be closed and when carts are allowed on the course. The MANAGER must keep the Superintendent and his staff informed on all events scheduled on the course.

Schedules of events will also be provided to the Golf Board and other CITY staff that may have a need.

13. CITY EQUIPMENT

MANAGER shall exercise general supervision over and shall be responsible for the proper use and care of all equipment and furniture owned by the CITY now located in and around the clubhouses. Such property shall be maintained specifically for the use and convenience of all public users of the clubhouses. MANAGER will keep pull carts and motorized carts clean and presentable, to include checking batteries for water and other maintenance to the carts, including the beverage cart. If repairs are necessary to any CITY equipment, MANAGER must contact the Superintendent so he might make the repairs as soon as possible. (This shall include, but not be limited to the carts and beverage cart.)

14. RISK OF LOSS

CITY shall not be responsible for the property of MANAGER kept, stored, or maintained on the premises and assumes no responsibility for loss of MANAGER owned property through fire, theft, pilferage, malicious mischief, or any other happening whatsoever.

15. MANAGER COMPENSATION

Subject to Sections 27 and 28 below, MANAGER shall be entitled to the gross proceeds generated by operation of the pro shops' equipment and repairs, golf lessons, along with a total monthly payment of \$6,498, effective January 1, 2021. The monthly payment includes \$2,145.00 for the Van Berg Golf Course and \$4,353.00 for the Quail Run Golf Course. The monthly payment shall be increased each year based upon a cost of living factor; the cost of living adjustment shall be the same percentage paid to city employees as identified in the CITY Pay Plan and Budget. Each annual cost of living adjustment shall be made in January of each year provided the MANAGER has received a favorable performance appraisal for the preceding year, prepared by the City Administrator. The City Administrator will consider, among other issues, the ability of MANAGER to: deal with the public in a positive manner; to complete required reporting forms in an accurate and timely manner; to attract customers to the city courses; and, to operate the courses in a professional manner. The City Administrator may consult with the Public Property Director, Board of Park Commissioners and the Golf Course Superintendent in completing this performance appraisal. MANAGER will also receive the following percentages of gross sales, less sales tax:

DRIVING RANGE:	Manager.....80%	City.....20%
MOTORIZED CARTS:	Manager.....10%	City.....90%
PULL CARTS:	Manager15%	City.....85%
CONCESSIONS (as defined in No. 17)	Manager.....90%	City.....10%
LIQUOR (as defined in No. 16):	Manager.....50%	City.....50% of net gross revenues
GREEN FEES (INCLUDES PUNCH CARDS)	Manager.....4.5%	City.....95.5%
PASSES	Manager..... 4.5%	City.....95.5%
CREDIT CARD PROCESSING	Manager.....20%	City.....80%

16. LIQUOR SALES

Liquor is defined to include beer, wine, and all other alcoholic beverages. The price of liquor sales shall be established mutually by the CITY and MANAGER. All income from liquor and alcohol sales shall belong to the CITY subject to Section 15. "Net Gross Revenues" shall be defined as gross revenue generated by the sale of liquor, less the CITY cost of said liquor and alcohol, taxes, and licenses to acquire and sell the same. The MANAGER shall furnish all supplies (other than the liquor) and all labor required for the liquor sales. The MANAGER agrees to conduct and operate the liquor business strictly in accordance with all ordinances of the City of Columbus and the State of Nebraska.

17. CONCESSIONS

Concessions are defined to include food, snacks and soft drinks. The price of concession sales shall be established mutually by the CITY and MANAGER. All materials, supplies, and assistance required for the operation of the concession shall be furnished at the MANAGER expense. MANAGER agrees to conduct and operate the concession strictly in accordance with all ordinances of the City of Columbus and the State of Nebraska.

18. DEPOSITS

Deposits into CITY accounts for liquor, green fees, pass and punch card fees, motorized and pull golf carts shall be made pursuant to the following schedule: 1) For all sales occurring on Monday, Tuesday, Wednesday, and Thursday shall be made before 3:00 p.m. on the following Friday of that same week; and 2) For all sales occurring on Friday, Saturday, and Sunday shall be made before 3:00 p.m. on the following Tuesday.

The CITY shall maintain a special bank checking account for the purpose of depositing gross revenues from the sale of liquor. The MANAGER shall be authorized to withdraw monies from the City Liquor Account to pay vendors current on all liquor purchases. Monthly, CITY will disburse to the MANAGER, his share of the gross net revenues for the previous month.

All sales shall be deposited into the MANAGER owned bank account by 10:00 a.m. the following business day for redistribution as described above.

The CITY shall be paid its share of driving range receipts by the tenth day of each month for the previous month.

19. REPORTS

MANAGER shall supply reports as requested by CITY. Daily revenue reports shall be submitted by the MANAGER to CITY with each deposit. The Liquor Daily Report shall be separate from the other reports. The report which details golf play for the preceding day, shall be balanced to match all rounds played, all motorized and pull cart rentals, and driving range. Monthly reports shall be supplied by the fifth day of the following month to all appropriate City personnel. The City Finance Director's end of the month financial report shall be considered the official report. Items may be, but not limited to the following: rounds of golf in all categories, outing report that would include the number of participants, fees collected, liquor and alcohol, green fees, pass and punch card fees, motorized and pull golf carts, and anything else CITY deems necessary for budget preparation.

20. MANAGER'S PERSONNEL

It will be the responsibility of MANAGER to employ, train, and pay wages to the needed personnel to conduct the business and carry out the operations associated with the clubhouses which includes, but not limited to, the concession operation, collection of fees, and custodial maintenance. MANAGER and his agents and employees shall not be considered to be employees of the CITY, and shall not be eligible for any fringe benefits or compensation benefits from the CITY.

21. CONFLICT OF INTEREST

During the term of this agreement, MANAGER shall not be named or recognized as a Director of Golf, Head Golf Professional, or other staff title at any other golf course. Nor shall MANAGER be associated in the management of any other golf course or golf business; i.e., Board of Directors or running a Golf Pro Shop.

22. CONCESSION, RANGE, AND GOLF COURSE OPERATION

MANAGER agrees to keep concession, range, and golf courses open seven (7) days of the week during such hours, as CITY shall determine. One of the golf courses shall remain open during the winter months if conditions permit play. The decision as to which golf course shall remain open shall be made by mutual agreement of the MANAGER, Superintendent, and Public Property Director.

23. PGA MEMBERSHIP

During the full term of this Agreement, MANAGER must maintain a Class "A" PGA Golf Professional Classification. CITY shall pay annual dues to maintain this PGA classification. Should MANAGER cease to be a Class "A" Professional, this Agreement may be immediately and automatically terminated at the sole discretion of the CITY. CITY shall pay the cost of continuing education required by the PGA, as mutually agreed to by MANAGER and City Administrator in advance of any course enrollment.

24. FINANCIAL STATEMENT

MANAGER shall submit to the CITY a monthly financial statement of the entire operation covered by the terms of this Agreement for each calendar year. Said financial statement shall include a detailed operating statement setting forth all operating revenues and personnel service costs and other operating expenses in accordance with the requirements set by the City Administrator and Finance Director. Monthly financial statements shall be due by 15th of each month this Agreement is in force and effect. The MANAGER shall supply the City with a copy of Schedule C from income tax return Form 1040 or Corporation Income Tax return following one year of employment as Manager with the City of Columbus and annually thereafter. CITY may conduct its own audits during the term of this Agreement and for a period of one year thereafter pursuant to item No. 9.

25. FREE PLAY

MANAGER and his two immediate assistants may play Quail Run or Van Berg golf courses at no cost. This includes the use of a motorized cart. However, if the passenger is not one of the above, then payment for one rider is required. All other members of the MANAGER staff must pay regular fees. The names of the two immediate assistants shall be submitted to the

CITY. Except for the above mentioned, special privileges shall not be granted to anyone under any circumstances unless approved by the CITY. The City Administrator and MANAGER must agree to any professional courtesy extended during agreement negotiations, to include any play by other Golf Course Superintendents. A Rain Check Policy shall be determined by agreement of CITY and MANAGER.

26. EQUAL EMPLOYMENT

Neither MANAGER nor anyone acting under or by virtue of the terms of the Agreement shall discriminate against an employee or applicants for employment with respect to such person's hire, tenure, terms, conditions, or privileges of employment because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of Section 48-122, Nebraska Revised Statutes (revised issue 1998).

Nor shall neither the MANAGER nor anyone acting under or by virtue of the terms of this Agreement discriminate against any such patron of said golf courses or against anyone else because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status. Special privileges shall not be granted to anyone under any circumstances.

27. SURETY BOND

Manager, on signing this Agreement, shall furnish and keep in force a Surety Bond in the amount of twenty-five thousand dollars (\$25,000), or an acceptable equivalent, to protect CITY against (1) loss or damage directly arising by reason of the failure of MANAGER to faithfully make required payments as they become due in this Agreement; (2) theft and dishonesty. This bond shall cover MANAGER and all employees and agents of MANAGER.

Such bond shall be written by a corporate surety authorized to do business in the State of Nebraska and shall be approved by the City Attorney.

Failure to provide the bond within fifteen (15) days shall entitle CITY to cease making any payments to the MANAGER and/or terminate this Agreement without further notice.

28. INSURANCE

MANAGER shall indemnify and hold harmless the City of Columbus, Nebraska, from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the conduct of the MANAGER that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the MANAGER, any subcontractor (directly or indirectly employed by any of them), or anyone for whose acts any of them may be liable. This section will not require the MANAGER to indemnify or hold harmless CITY for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the CITY.

MANAGER shall take out and maintain during the life of this Agreement the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance in the State of Nebraska covering all of his employees.

MANAGER shall secure and maintain in full force and effect during the entire period of this Agreement liability Insurance naming and protecting MANAGER and CITY, its officials, employees, and volunteers as insured, against claims for damages resulting from the

negligence of the MANAGER and/or his agents and employees which results in personal injury or property damage. The limits of the liability insurance coverage shall be:

- (a) \$1,000,000 per individual
- (b) \$2,000,000 per occurrence

All Liability Insurance policies shall be written on an "occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's rating of not less than A:VII, unless specific approval has been granted by the City.

All Certificates of Insurance shall be filed with CITY on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by this section and showing CITY as an additional insured. Such certificates shall specifically state that insurance policies are to be endorsed to require the insurer to provide the CITY thirty (30) days written notice of cancellation, non-renewal, or any material reduction of insurance coverage.

Failure to provide insurance as herein named within fifteen (15) days shall entitle the CITY to cease making any payments to the Manager and/or terminate this Agreement without further notice. The MANAGER shall have the option to purchase and to participate in health care coverage, single or family, under the City of Columbus insurance plan.

29. ASSIGNMENT

This Agreement shall not be assigned or sold, nor the premises sublet in whole or in part by the MANAGER except with the prior written consent of the CITY.

30. TERMINATION AND CANCELLATION

It is an express condition of the Agreement that the MANAGER shall do and perform the Agreement as set out herein.

If MANAGER breaches any of the terms of this Agreement or fails to make payments provided herein, the CITY may, upon seven (7) days written notice, cancel and terminate this Agreement if such breach of failure is not corrected and/or resolved within said seven (7) day notice period. In addition to or in lieu of such cancellation or termination, the City may recover on the bond retained by MANAGER in the event of failure to make payments provided for herein.

In the event CITY, in its sole and absolute discretion, shall conclude the conduct of MANAGER in any respect is substantially detrimental to the best interest of CITY, the CITY may, upon written notice delivered to MANAGER personally, terminate said Agreement, for cause, and order MANAGER to vacate the premises, without further liability to CITY.

In the event CITY, in its sole and absolute discretion, shall cease to fund and/or operate Quail Run Golf Course or Van Berg Golf Course, the CITY may, upon 120 days written notice delivered to MANAGER personally, terminate and/or negotiate a new agreement.

The exercise of any remedy provided herein shall not preclude the CITY from exercising any other remedy, legal or equitable, that it may have.

IN WITNESS WHEREOF, the parties have set their hands as of the dates indicated below:

Douglas Dunbar, Manager Date

CITY OF COLUMBUS, NEBRASKA

James B. Bulkley, Mayor Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

3. Adjournment.