

MINT VALLEY GOLF COURSE CONTRACTOR SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, by and between the CITY OF LONGVIEW, a municipal corporation, hereinafter referred to as "City" and Nicholas Van, doing business as NV Golf & Property Management", hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, the City is the owner of the Mint Valley Golf Course (hereinafter referred to as "Golf Course") for the use and benefit of the public; and

WHEREAS, City desires to provide golf services and opportunities for the convenience and enjoyment of the public; and

WHEREAS, the Contractor is desirous of obtaining the concession for the operation of the Golf Course; and

WHEREAS, the Contractor represents that he is qualified in all respects for the operation of a golf course;

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein contained, it is hereby agreed as follows:

GENERAL PROVISIONS

DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 Director

Director means the Director of Parks and Recreation of City, and any of his or her authorized representatives.

1.02 Business Year

Business Year means the calendar year commencing January 1 and ending December 31. Any amounts which are required by this Agreement to be calculated on the basis of a Business Year shall be prorated on a monthly basis.

1.03 Pro Shop, Pro Shop Area, Pro Shop Facilities

Pro Shop, Pro Shop Area, and Pro Shop Facilities (collectively "Pro Shop") all mean the area where concession activities are carried out pursuant to this Agreement. The Pro Shop Facilities shall include the clubhouse and pro shop building, the driving range, golf course, the cart storage building and any other areas that may be considered part of the Pro Shop Area as designated by the Director.

SPECIAL CONDITIONS

2.01 The City hereby grants to the Contractor the concession of Golf Contractor at the Golf Course and the use of the entire Pro Shop Area and the facilities therein, for a period of five (5) years, commencing the 1st day of January, 2014, and expiring on the 31st day of December, 2018.

2.02 It is hereby understood, agreed and declared that the Contractor (including Contractor's employees) is an independent contractor and not an agent or employee of the City, and that no liability shall attach to the City by reason of entering into this Agreement, except as may expressly be provided herein. The Contractor's performance of duties and responsibilities shall be evaluated by the Director or his designated representative. If, in the performance of this Agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment of such third persons, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor.

2.03 The Contractor shall, during the term of this Agreement, devote his time, skill and attention to promote and market the total operation of all golf facilities at the Golf Course, including the activities of junior golf, men's and women's associations, tournaments, clinics and exhibitions, as well as any other matters of public recreation which the Contractor and the Director mutually agree will be beneficial in promoting the game of golf. To this end, Contractor agrees to be physically present at the Golf Course a minimum of thirty-two (32) hours per week.

OBLIGATIONS OF CONTRACTOR

3.01 Contractor shall operate such concession every day, including Sundays and holidays, with the exception of Christmas Day, and during such hours as are approved by the Director. Closure is permitted only with the approval of the Director or his or her designees during inclement weather. The Contractor shall not be absent from the premises for a period of more than three (3) consecutive days without first notifying the Director of said absence. During any time of absence, suitable personnel shall be placed in charge of the Contractor's duties.

3.02 The Contractor shall be entitled, at his expense, to participate in up to six (6) out-of-town golf pro/am tournaments per year, and he shall notify the Director of the tournaments and their dates. He shall be allowed to participate in such additional tournaments as are mutually agreeable.

3.03 The Contractor shall provide, at his own expense the services of a PGA Professional and such other employees as he may deem necessary to aid and assist him in the performance of his duties. The Contractor shall provide adequate supervision over all personnel employed by him and the services of such employees shall be available to the public at all times while the golf course is open. Any complaint about such employees or other persons working on or about the Golf Course under the direction of the Contractor shall be subject to review by the Director and/or the City's Golf Advisory Committee.

3.04 Contractor's personnel shall at all times while on duty be clean and neatly groomed, courteous, efficient, and attired appropriately for the Pro Shop. Any personnel collecting green fees or any other fees on behalf of City shall have completed a background check satisfactory to the City and shall display his/her name for customer identification.

3.05 Contractor's personnel shall at all times maintain a high standard of services to the public, to the satisfaction of the Director. Upon written notice by the Director that the conduct of any of Contractor's personnel at the Golf Course may have been detrimental to the best interests of the public, or to City, Contractor shall, within seventy-two (72) hours thereafter, furnish evidence satisfactory to the Director either of non-existence of such detrimental conduct or of correction of such conduct through appropriate disciplinary action up to and including termination.

3.06 Contractor shall staff the Pro Shop with personnel to conduct the operations authorized hereunder, in sufficient number to meet public expectations for prompt, courteous, and efficient service. Contractor shall adjust the number of his assigned personnel, or Pro Shop hours of operation, as mutually agreed upon with the Director. At the beginning of each Business Year Contractor shall, in writing, inform the Director of the full name and work responsibilities of each of his personnel. Contractor shall thereafter notify the Director, in writing, within one week following any change to personnel or assignments on such list.

3.07 Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, disability, marital status or national origin, in violation of the law. Contractor shall take affirmative action, as necessary, to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, age, national origin, disability, or marital status, in violation of the law. Such action shall include but not be limited to employment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall comply with all applicable

Federal, State, and City statutes, ordinances, regulations, directives, and laws.

3.08 Contractor shall not discriminate in the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and all other applicable laws and regulations requiring no discrimination. Contractor shall also comply with Federal, State, and City Equal Employment Opportunity requirements.

3.09 Contractor shall comply with the Americans with Disabilities Act as it relates to all Golf Course operations under his jurisdiction including but not limited to rounds of play, instructional lessons, tournament play, use of carts, and retail sales. It is the responsibility of Contractor to make reasonable accommodations for qualified individuals with disabilities. Reasonable accommodations may include but not be limited to modifications to rules and equipment, pairing or grouping of individuals for reservations, co-participation between golfers and/or staff and a golfer, instructional techniques, and consideration of any other means of allowing for full participation of an individual.

3.10 During the period of this Agreement, the Contractor shall enter into an Agreement with a person, firm or corporation for golf course reservation services, provided that the Contractor shall not enter into such an Agreement except upon the concurrence of the City. As set forth in Paragraph 3.12 (e), the Contractor shall be responsible for all costs associated with the operation and maintenance of the reservation system.

3.11 The parties hereto mutually pledge to work together in a spirit of cooperation and to negotiate in all areas and among all parties involved in order to develop and operate the Golf Course to its full potential and to give the best service to the patrons of Golf Course facilities. The City and Contractor shall, no less often than annually, jointly negotiate, prepare and participate in a joint marketing and promotion program. Contractor shall, as

a part of this Agreement, work with the Director, City officials, golf organizations and tournament promoters in promoting golf and the Golf Course. Contractor shall use his best efforts to develop and maintain cooperative working relationships with the aforesaid persons and other interested organizations in order to provide the best programs and services possible for the public. Contractor shall expend no less than \$3,000.00 per year in advertising designed to promote golf at the Golf Course. In addition, Contractor shall pay 20% of the cost of jointly offered advertising programs agreed upon by both Parties. Contractor shall develop, maintain, and use, with reasonable effort, a data base of Golf Course customers and potential customers and shall provide such data base to City upon request.

3.12 The Contractor shall provide, and be responsible for, the following:

(a) The Contractor shall maintain and operate a reputable professional golf pro shop with competent personnel, and provide an adequate inventory of golf equipment, apparel and supplies that is compatible in quantity, quality and selection to that of other courses in the region and that meets the public demand therefor. Contractor shall also feature good quality merchandise and service at fair and reasonable prices. Such prices shall be posted on or near the merchandise. The Contractor may also operate and maintain a facility for repairing golf equipment.

(b) The Contractor shall be responsible for the enforcement of all rules and regulations governing the use of the Golf Course, including the use of golf carts, driving range, practice green, and other golf facilities. The Contractor shall provide golf course marshaling and starting services as outlined in the Marshaling Program Manual which Manual shall be subject to the approval of the Director. Should an adequate number of volunteers not be available to provide serviceable volunteer coverage, the marshaling and starting responsibilities shall be provided by the Pro Shop staff.

(c) The Contractor shall work cooperatively with the Golf Course Maintenance Superintendent and other course maintenance staff who are responsible for the Golf Course grounds and who may provide Contractor advice, opinions, ideas and assistance on service and operations as requested.

(d) The Contractor shall be under the direct responsibility of and accountable to the Director who may review pricing of services and merchandise. Contractor and Director shall together establish the hours and schedules which shall apply for the Golf Course. Fees for play are established by Resolution of the Longview City Council. Contractor shall

attend meetings of the City's Golf Advisory Committee upon request and shall report information about his services and Golf Course operations to Director and such committee.

(e) The Contractor shall be fully responsible for the collection of all green fees, reservation fees, and other moneys associated with the operation of the Golf Course and, at his sole cost and expense, provide complete golf course reservation services including but not limited to: controlling starting times, taking reservations for tee times and scheduling tournaments. Contractor shall provide, at his sole cost and expense, all supplies necessary for the operation of the registration system with the exception of the computer hardware equipment which is the property of the City but maintained and repaired by the Contractor over and above maintenance provided by the City Information Technology Department staff. Contractor shall provide telephones, software and all equipment necessary for the operation of the registration/point-of-sale system. Requests made by the City for technical assistance and software upgrades shall be funded as mutually agreed upon. This system shall have the capabilities of transferring to the Parks and Recreation Department and the Finance Department of the City on a daily basis customer participation, sales and accounting records in a detail and format as requested by the Director. Contractor shall keep and provide to City complete and accurate records of accounts with regard to all moneys collected from all separate revenue streams applicable hereunder including the information that would be shown on paper starting sheets including a detail of daily rounds (i.e., 9 hole, 18 hole, Par 3, pass, volunteer and employee rounds), to be available to the City on a daily basis with a monthly summary report.

Contractor shall, throughout the term of this Agreement, comply with City policy statement(s) regarding the collection of all fees, reporting requirements for fees collected, and the system of accountability and procedures therefor. Contractor shall be responsible for the submission of all designated golf fee moneys to City on a daily basis, segregated by day of the week collected, and shall provide a daily summary sheet which documents the accounting for both totals and the resulting payments due City. All accounting records of electronic starting sheets shall at all times be completely available for examination by the Director, the City Finance Director or an authorized representative. Contractor shall employ qualified and bondable reservation staff. The Director shall reserve the right to approve reservation staff, it being understood that such approval is appropriate because these employees will handle City funds while performing reservation operation functions. Contractor shall be permitted to waive green fees for visiting Class A members of the Golf Course Superintendents Association with the approval of the Golf Course Superintendent, and visiting

Class A Golf Professionals who are members of the Professional Golf Association or the Ladies Professional Golf Association of America.

(f) The Contractor will procure, at his expense, all janitorial supplies including paper products, cleansers, light bulbs, etc., and will be responsible for all janitorial functions within the clubhouse and maintain the interior of the clubhouse, the outside porches and the exterior grounds of the clubhouse and the parking lot in a safe, neat, sanitary, and orderly condition in compliance with City's direction, any and all applicable present and future laws, and general rules and regulations of any governmental authority in force now or at any time during the term of this Agreement relating to sanitation, public health, safety, or welfare. The City will establish basic and realistic standards for the janitorial function and shall monitor those standards. Contractor shall remedy without delay any defective, dangerous, or unsanitary conditions. Contractor shall correct such situation within a reasonable time, or City may, at its option, do so at Contractor's sole cost and expense, payable upon demand, provided that City shall have first provided reasonable notice of such condition to Contractor, and Contractor shall have failed or refused to correct such situation within a reasonable period of time. Contractor is not responsible for the replacement of plumbing, the heating and air-conditioning plant, painting of the clubhouse, floor coverings, driving range nets or other capital improvements or repairs related to the clubhouse or other Golf Course facilities and infrastructure. Contractor shall not be responsible for striping or repairing potholes in the parking lot.

(g) The Director may, at any time, without notice, enter the Pro Shop Area to determine if repairs, housekeeping and maintenance satisfactory to City are being performed. If it is determined that said housekeeping or maintenance is not satisfactory, City shall so notify Contractor in writing. If said housekeeping or maintenance is not performed by Contractor within thirty (30) day after receipt of written notice, City, or its agents, shall have the right to enter the Pro Shop Area and perform the maintenance therefor. However, maintenance required to prevent substantial harm to the public, the building or its contents may be performed immediately. The reasonable cost thereof shall be borne by Contractor payable on demand.

(h) Contractor shall conduct his operations in a first-class, businesslike, efficient, courteous, and accommodating manner. The Director shall have the right to make reasonable objections to the quality and character of articles sold and services offered to the public, the prices charged and the appearance and condition of the premises utilized by the Contractor for his operations. The Director also reserves the right to prohibit the sale or rental of any items of merchandise which are deemed objectionable or completely unrelated to golf. Contractor shall promptly meet and confer with

the Director regarding any such objectionable items or practice upon written notification by the Director.

(i) Contractor agrees to have the Pro Shop operations evaluated bi-annually, through a mutually developed and administered service audit program with the results to be provided to the Director. The service audit shall evaluate the Pro Shop operations and make recommendations relative to quality, quantity and selection of merchandise, customer service provided by the Contractor's personnel, merchandising and retail sales of golf equipment, apparel and related supplies, golf lesson programs, Pro Shop displays and decor, Golf Course range operation, golf cart operations, tournament program, tee time reservation process, green fee collection process and all other aspects of the services provided under this Agreement. Examples of the tools and methods to be used in the service audit include, without limitation, comment cards, shopper programs and evaluation forms.

(j) The Contractor shall keep records of all revenue generated by the Golf Course operation, and the expenses incurred in the Golf Course operation, and shall remit daily or as necessary to the City Finance Department all detail receipts for green fees and other moneys paid to him for the privilege of using the facilities of the Golf Course. The records of both revenue generated and expenses incurred shall be identified and segregated monthly for the restaurant (food and beverages) operation, the range operation, and the rental cart operation. The Contractor shall provide to the City a full financial disclosure according to generally accepted accounting principles of his entire operation, including merchandise sales and lesson revenue, at the Golf Course by April 30th for the previous year, and shall make available his books and records for audit at a mutually convenient time and place. If at any time the Director or the Finance Director deems Contractor accounting practices or procedures inadequate or not in accordance with general accepted accounting principles, Contractor shall make requested adjustments to its practices and procedures. Any other internally prepared financial or statistical reports reasonably requested by the Director from time to time during the term hereof shall be provided by Contractor, without cost to City, within a reasonable period of time. To the extent permitted by law, City shall keep the financial reports and records referred to above confidential. Contractor shall retain all books and records of account for the term hereof for not less than two (2) calendar years following the last day of such term. Such books and records of account shall show all Contractor's gross receipts, commissions, and other income derived from his operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement. At any time within two (2) calendar years following the last day of the term hereof, upon written notification to Contractor, City may, at its sole cost and expense, inspect, audit, and copy Contractor's books, records of account, and

supporting documentation relating to Contractor's operations at the Pro Shop for City's purposes in determining the correctness of the computation of the concession fee as set forth by the annual financial statement submitted by Contractor.

(k) Contractor shall, at his sole cost and expense, obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses and payment of taxes which may be required by any law, including administrative regulations and local ordinances, for the conduct of Contractor's operations hereunder, including a City of Longview business license.

(l) Contractor shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Contractor's use of premises, or from the conduct of Contractor's business, or from any activity, work or thing done, permitted, or suffered by Contractor's business, or from any activity, work or thing done, permitted, or suffered by Contractor in or about the premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

(m) The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Contractor's operation and use of the premises.

1. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

- a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Contractor's General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
- b. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- c. Property insurance shall be written on an all-risk basis.

d. Workers' Compensation coverage shall be as required by the Industrial Insurance laws of the State of Washington.

2. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

- a. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- b. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- c. Property insurance shall be written covering the full value of Contractor's property and improvements with no coinsurance provisions.

3. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

- a. The Contractor's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
- b. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

4. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

5. Certification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor.

6. Waiver of Subrogation

Contractor and City hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7. City's Property Insurance

City shall purchase and maintain during the term of the lease all-risk property insurance covering the buildings for their full replacement value without any coinsurance provisions.

8. City and Contractor shall each give the other prompt and timely written notice of any accident claim for in excess of one thousand dollars (\$1,000), and of any lawsuit coming to its knowledge, when either such claim or lawsuit arises out of or in any way connected with the operations of Contractor hereunder or the operation of the Golf Course by City which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement. Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and, if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

9. City shall not be liable for, and Contractor hereby releases City from any and all liability to Contractor, Contractor's insurance carrier, or to any person claiming under or through Contractor for any loss or damage whatsoever to the buildings, structures, areas and contents thereof constituting the Complex resulting from fire, the discharge of water or other substance, from pipes, sprinklers, conduits, containers, appurtenances thereof or fixtures thereto, or from any damage resulting from the discharge or failure of electric current regardless of cause or origin, save and except for that which is caused by the intentional wrongful act and/or active negligence of City, its officers, agents, or employees. Further, Contractor shall be solely responsible for the safety and security of its property, equipment, supplies, merchandise, and commodities used or offered for sale by Contractor at the Complex. City shall have no liability or responsibility whatsoever to Contractor, Contractor's insurance carrier, or to any person claiming under or through Contractor, and

Contractor shall make no claim against City, with respect to such matters. The Contractor shall have the right to obtain insurance against such losses and any proceeds would be paid to the Contractor.

(n) The Contractor may provide free rounds of golf on the Golf Course as an incentive to the obtaining of Pro Shop employees, Course Marshals and volunteers. Free rounds of golf are also recognized as a viable means of educating Marshals and volunteers about the condition of the Golf Course. Contractor shall report to the City on an annual basis the number of free rounds provided and the basis for the granting of a free round. Contractor shall use its reasonable efforts to ensure that the granting of free rounds does not interfere with access to the Golf Course by paying customers.

COMPENSATION

4.01 In consideration of the services to be performed by the Contractor, it is hereby agreed that the Contractor shall receive the following compensation:

(a) The Contractor shall have the exclusive right to sell, repair and rent golf clubs, balls, bags, clothing and any and all golf equipment and accessories customarily provided by golf Contractors in golf pro shops, within the area of the Golf Course, together with any other merchandise approved by the Director. The Contractor shall retain all revenue resulting from the operation and sale thereof together with all revenue produced from vending machines located around the clubhouse. The Contractor shall provide an accounting to the City on a monthly basis of all revenue received pursuant to this section 4.01(a).

(b) The Contractor shall have the exclusive privilege of giving golf lessons and the Contractor and assistants shall be entitled to retain all fees charged for such lessons, excluding the agreed-upon distribution of fees for lessons provided through the City's recreation program. In consideration of this exclusive privilege, the Contractor shall provide a full range of golf instruction including, but not limited to, beginners to advanced, individual and group, and all age groups. In furtherance of this obligation Contractor shall, at his own cost and expense, contract with a PGA Golf Professional, to provide lessons and facilitate participation in pro/am tournaments. Fees for instructions shall not exceed the market rate, shall afford reasonable discounts to youth, and include package discounts when applicable. The fee schedule shall be posted and a copy supplied to the Director. Contractor shall make a concerted and consistent effort to promote junior golf among Longview area youths which should include golf etiquette training programs to instruct youth golfers in the rules of golf and appropriate behavior on the course. The Contractor shall provide an accounting to the City on a monthly basis of all revenue received pursuant to this section 4.01(b).

(c) The Contractor shall be responsible for the management and operation of the driving range. The City and the Contractor shall equally share the costs of obtaining driving range mats and practice golf balls and all other equipment and supplies necessary for suitable operation of said driving range (excluding new netting which shall be the City's exclusive obligation to purchase). Both parties shall share ownership of jointly purchased range supplies and equipment. Contractor shall create and maintain an inventory of such range supplies and equipment and provide same to the City on the first of each year. All equipment and supplies shall be replaced when end of useable life is reached. Contractor shall provide adequate yardage signage on the range. Contractor is not responsible for maintenance of the turf and the irrigation system of the driving range, but will assist in the maintenance of the hitting area by spreading top dressing and grass seed provided by the Golf Course Superintendent. Contractor shall retain a sum equal to fifty percent (50%) of the gross receipts for the use of the driving range, less appropriate sales and use tax. The remaining fifty percent (50%) shall be remitted to the City. The Contractor shall provide an accounting to the City on a monthly basis of all revenue received pursuant to this section 4.01(c).

(d) The Contractor shall provide and maintain a minimum of 24 power driven golf carts and shall increase the number of carts provided if necessary to reasonably meet the demands of the public patronizing the Golf Course. All of the required carts shall be new or kept in good mechanical and aesthetic condition. All of the 24 required power driven carts shall have shade tops. Fees for golf cart rentals shall be established each year and changes must be approved through advance written approval of the Director, which approval shall not be unreasonably withheld. Contractor shall retain a sum equal to eighty-five percent (85%) of the gross receipts for the rental of power driven golf carts, less appropriate sales and use tax. The remaining 15% shall be remitted to the City. Contractor shall, at his sole cost and expense, provide golf cart(s) for inspection of the Golf Course by the Director and City Golf Advisory Committee. The Contractor shall provide an accounting to the City on a monthly basis of all revenue received pursuant to this section 4.01(d).

(e) The Contractor shall have the right to operate or sublet a food and beverage concession, subject to the City's approval of any sublease. Contractor shall retain a sum equal to ninety-five percent (95%) of the gross receipts from the food and beverage concessions, less appropriate sales and use tax. The remaining 5% shall be remitted to the City. The Contractor

shall provide an accounting to the City on a monthly basis of all revenue received pursuant to this section 4.01(e).

(f) Contractor shall be responsible for all utility expenses associated with Pro Shop operations except as provided as follows:

(i) The parties shall share equally the electric utility costs, provided that Contractor's share shall be capped at \$6,500.00 per year and the Contractor's share shall not include electric utility costs associated with irrigating the course, the private cart storage facilities, or the course maintenance facilities;

(ii) The City shall provide office phone lines, provided that Contractor shall pay all phone usage charges.

(g) Contractor accepts the Pro Shop in the condition existing prior to this agreement. City shall repair or replace any part of the Pro Shop damaged or destroyed by casualty. Contractor shall, at his sole cost and expense, equip and maintain such facilities with all such appliances and equipment as may be necessary or convenient to Contractor's operations hereunder. City shall have no obligation to equip or improve such facilities. However, all equipment proposed to be installed or otherwise provided by Contractor shall be subject to the inspection and approval of the Director. Contractor shall make no refurbishment or alterations to the clubhouse, whether in whole or in part, nor construct additional improvements upon the said premises without the prior written approval of the Director. Any such work shall be at Contractor's sole cost and expense. Any such improvements shall be the property of the Contractor during the term of this Agreement. Upon termination of this Agreement, City may, at its option, require removal by Contractor, at Contractor's sole cost, of any or all Contractor-made improvements, including, but not limited to, trade fixtures, furniture, furnishings and equipment installed by Contractor. Contractor may have thirty (30) days to remove such furniture, furnishing, and equipment. Contractor shall not encumber, mortgage or transfer any property of City, and shall not permit any condition to exist which would presently, or upon the passage of time, create any lien or encumbrance on any City property, by or through Contractor. Contractor shall be permitted to remove, upon expiration or earlier termination of this Agreement, all personal property owned by Contractor. All injury or damage to City property caused by such removal shall be repaired at Contractor's sole cost and expense. Contractor shall remove all such personal property within three (3) calendar weeks from such date. Should Contractor fail to remove or dispose of such property, City may, at its election, consider such property abandoned and may dispose of same at Contractor's expense or after sixty (60) days declare the personal property of Contractor's to be City property.

(h) (1) During the term of this Agreement, the City shall pay the Contractor an ongoing management fee of Nine Hundred Twenty Five Dollars and 00/100 (\$925.00) per month in consideration of the Contractor's management of the Golf Course.

(2) During the first two (2) years of this Agreement, the Parties shall account for green fees and management fees in the following manner:

i. Contractor shall have the right to zero percent (0%) of green fees and pass sales revenues for the first Five-hundred twenty-five thousand and 00/100 dollars (\$525,000.00) of gross revenue collected from gross green fees and pass sales revenue and the City's share of range, power cart rentals and food and beverage sales.

ii. City shall pay the Contractor a temporary management fee of Five Thousand Seven Hundred and 00/100 Dollars (\$5,700.00) per month until Five-hundred twenty-five thousand and 00/100 dollars (\$525,000.00) of gross revenue collected from gross green fees and pass sales revenue and the City's share of range, power cart rentals and food and beverage sales, or through September 30, whichever occurs first. This temporary management fee shall be in addition to the ongoing management fee provided for in section 4.01(h)(1) above.

iii. Contractor shall have the right to ten percent (10%) of green fees and pass sales revenues collected from the first of October to the end of December of each of the first two years of this Agreement if Five-hundred twenty-five thousand and 00/100 dollars (\$525,000.00) of gross revenue is not collected from gross green fees and pass sales revenue and the City's share of range, power cart rentals and food and beverage sales through September 30.

iv. Contractor shall have the right to twelve and one-half percent (12.5%) of collected green fees and pass sales revenues between Five-hundred twenty-five thousand and one and 00/100 and Six Hundred Thousand and 00/100 Dollars (\$525,001.00 and \$600,000.00).

v. Contractor shall have the right to fifteen percent (15%) of collected green fees and pass sales revenues over Six Hundred Thousand and 00/100 Dollars (\$600,000.00).

vi. All green fees and pass sales revenues shall be paid to the City, which shall remit to Contractor the percentages provided for above.

(3) During the remaining three (3) years of this Agreement following the initial two (2) year period, and during any renewals, the Parties shall account for green fees and management fees in the following manner:

- i. Only the ongoing management fee of Nine Hundred Twenty Five Dollars and 00/100 (\$925.00) per month shall be paid to Contractor.
- ii. Contractor shall have the right to ten percent (10%) of the first Five-hundred twenty-five thousand and 00/100 dollars (\$525,000.00) of gross revenue collected from gross green fees and pass sales revenue and the City's share of range fees, power cart rentals, and food and beverage sales.
- iii. Contractor shall have the right to twelve and one-half percent (12.5%) of gross revenue collected from gross green fees and pass sales revenue and the City's share of range fees, power cart rentals, and food and beverage sales between Five-hundred twenty-five thousand and one and 00/100 and Six Hundred Thousand and 00/100 Dollars (\$525,001.00 and \$600,000.00).
- iv. Contractor shall have the right to fifteen percent (15%) of gross revenue collected from gross green fees and pass sales revenue and the City's share of range fees, power cart rentals, and food and beverage sales over Six Hundred Thousand and 00/100 Dollars (\$600,000.00).
- v. All green fees and pass sales revenues shall be paid to the City, which shall remit to Contractor the percentages provided for above.

(4) The City shall arrange for credit card processing services for purchases and rentals made at the Golf Course. Contractor shall reimburse the City Six Thousand and 00/100 Dollars (\$6,000.00) per year for Contractor's share of credit card processing fees.

(5) The City shall be entitled to one hundred percent (100%) of all private cart storage rental and trail use fees which Contractor shall collect and remit to the City on a monthly basis. All revenue from private cart storage rental and trail use fees shall be included in gross revenues for the purposes of Section 4.01 (h)(2) and (h)(3) calculations.

4.02 Sale or provision of any service or item unrelated to golf services shall be subject to the approval of the Director.

LEASE OF PRO SHOP

5.01. In consideration of the lease to use the Pro Shop, the Contractor shall pay to the City the sum of \$816.73 per month plus leasehold excise tax thereon (calculated at 12.84%) in the monthly sum of \$104.87 for a total payment of \$921.60.

PROVISIONS FOR EXTENSION, AMENDMENT, TERMINATION

6.01 It is mutually agreed that this Agreement for the services of the Contractor may be renewed and extended for one successive additional five (5) year term unless the either City or the Contractor shall give written notice of termination at least ninety (90) days in advance of the expiration date of this Agreement.

6.02 If Contractor defaults in the performance of any promise, term, condition, or covenant required of him herein, and fails to cure or commence the cure of such default within thirty (30) calendar days following notice thereof from the Director, and to thereafter diligently proceed with such cure, this Agreement may be terminated by City. The Director shall be authorized to terminate this Agreement, without serving such notice of default to Contractor, upon the occurrence of any of the following events:

- (1) The failure of Contractor to maintain in full force and effect all forms of insurance required hereunder.
- (2) The failure of Contractor to maintain in full force and effect any permit or business license required hereunder.
- (3) A major breach of service committed by Contractor or Contractor's personnel after notice of continued violation.
- (4) Significant health or safety violations committed by Contractor or contractor's personnel which cause or may cause facility closure.
- (5) Contractor's conviction of a felony criminal offense, or a misdemeanor offense involving theft, sex, or illegal drugs.
- (6) Disability which incapacitates the Contractor for an aggregate of six months.

6.03 If, in the event Contractor breaches this Agreement, and the Director terminates this Agreement pursuant to this Section, the Director may take immediate possession of the facility and operate the Pro Shop in any manner

deemed appropriate by the Director for City's benefit and the public's best interest, without any liability therefor to Contractor.

6.04 Upon the death of the Contractor, or upon the non-payment of the whole or any part of the amounts agreed upon to the City at the time such payments become due; upon the filing of a voluntary or involuntary petition in bankruptcy, and thereafter the Contractor's adjudication of bankruptcy, or if the Court shall take jurisdiction of the Contractor and his assets pursuant to proceedings under any Federal Reorganization Act, or any receiver of the Contractor's assets shall be appointed or if the Contractor shall be divested of his interest in the Agreement by other operation of law, or the making of any general assignment for the benefit of creditors, or upon the occurrence of any act which operates to deprive the Contractor permanently of the rights, powers and privileges necessary for the proper conduct and operation of the concession granted herein, or upon the abandonment and discontinuance of the operation of the business described herein, the City may, at its election, terminate this Agreement and remove the Contractor and all of his employees from the premises and the Contractor hereby waives any notice of such election, or demand for payment of the amounts agreed upon as the same become due, or the performance of any covenants herein; provided, however, that the failure of the City to declare this Agreement and concession terminated upon the default of the Contractor or any of the reasons set out above shall not bar the right of the City to declare this Agreement null and void and at an end upon any subsequent violation of the terms of this Agreement by the Contractor.

6.05 Upon expiration of the term hereof, whether at the end of the original term of this Agreement or an extension hereof, or termination prior thereto by reason of default on the part of the Contractor, the Contractor may remove all of his personal property and furniture and equipment installed by him, except for items affixed to the premises, and shall deliver the premises to the City in as good condition as at the beginning of the term except for reasonable wear and tear. Upon termination hereof, however, the Contractor shall be allowed a period of up to three (3) calendar weeks following termination hereof to remove all of his merchandise and equipment from the Pro Shop and facilities, and to conduct sales thereof during said period of

time. The Contractor during said period, however, shall cooperate with the City and with any new Contractor employed by the City to effect a smooth transition in connection with operation of the concession of the Golf Course.

6.06 In the event of termination of this Agreement prior to the expiration date hereof, the City may purchase, and the Contractor may agree to sell to the City some or all of the Pro Shop inventory of stock-in-trade and merchandise, and equipment of the Contractor's at prices to be determined as follows:

- (1) General Pro Shop inventory: The lesser of Contractor's cost or fair market value computed on the basis of wholesale prices. Any disagreements shall be settled by a third party, whose service is mutually agreeable to both parties.
- (2) Golf carts owned by Contractor: The fair market value to be determined by independent appraisal.
- (3) Range balls, range equipment and Pro Shop equipment: The fair market value to be determined by independent appraisal.

Payment of the purchase price established hereunder shall be made within forty-five (45) days following the effective date of termination.

6.07 Amendment. This Agreement may be modified only by written agreement signed by both the Parties.

FORCE MAJEURE

7.01 Neither City nor Contractor shall be deemed in violation of this Agreement if they are prevented from performing any of their obligations hereunder by reason of strike, boycott, labor dispute, embargo, or shortage of energy or materials. Neither City nor Contractor shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not reasonably within its control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

THE CITY OF LONGVIEW

Robert J. Gregory
City Manager

CONTRACTOR

Nicholas Van
NV Golf & Property Management

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney