

City of Rapid City

Department of Parks and Recreation

Meadowbrook and Executive Golf Courses

PROFESSIONAL SERVICE AGREEMENT

1. **Parties.** This agreement is made and entered into between B. F. Variety Store, Inc. dba Matt Kimball's Golf Shop, hereinafter referred to as the "Concessionaire", and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the "City".
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of the Pro Shop Concessionaire and Adult Golf Instructor which will be provided for the Meadowbrook Golf Course, hereinafter referred to as "Meadowbrook", and the Executive Golf Course, hereinafter referred to as "Executive".
3. **General Concession.** The City hereby engages the Concessionaire to provide service for the City's golf courses, commonly known as Meadowbrook, located at 3625 Jackson Boulevard, Rapid City, Pennington County, South Dakota, and the Executive, located at 200 12th Street, Rapid City, Pennington County, South Dakota.

The Concessionaire shall have the exclusive right and duty to provide concession services customarily associated with the operation of a golf course at both Meadowbrook and Executive. The concession services to be provided by Concessionaire will include, but are not limited to, sales of golfing supplies and equipment, building and repairing golf clubs, and providing instructional golf.

4. **Term.** The term of this Agreement shall be two (2) years, beginning March 20, 2008 and ending on March 20, 2010. After the first year, a three (3) year extension that would end on March 20, 2013 can be negotiated.
5. **Engagement.** The Concessionaire shall be an independent contractor under this Agreement and shall not be an employee of the City.
 - a. The city will collect all revenues for merchandise and lessons and the city will retain: Seven Percent (**7%**) of gross sales generated by merchandise sales, Seven Percent (**7%**) of gross sales generated by golf lessons, except those that are sponsored by the City Recreation Division.
 - b. City will collect all sales tax based on the States percentages and will remit those taxes to the State Department of Revenue.

- c. The city will submit a payment request (minus the 7% gross on the concession, instruction, and sales tax withholding) each Friday for Concessionaire.
 - d. Bad credit card and bad checks for merchandise sold or lessons, will be considered bad debt and will be deducted from the following weeks gross sale receipts. The City will process bad checks through the City's collection services. Those Items collected will be paid to the concessionaire on the next gross sale receipt.
 - e. The loss of inventoried merchandise from the Pro Shop floor will be split equally between the City and Concessionaire and paid out at cost.
 - f. All furniture and fixtures located at Meadowbrook and Executive, and owned by the City, will remain the property of the City.
6. **Termination.** This Agreement may be terminated for cause at any time by either party. This Agreement is not assignable and the death or disability of the Concessionaire shall result in termination of the Agreement.
7. **Duties of the Concessionaire.** The Concessionaire shall undertake to the best of its abilities the customary duties but not limited to, the following:
- a. The Concessionaire shall coordinate the golf merchandise sales and adult lessons at both golf courses, at the Concessionaire's own cost, risk, profit, and expense. The Concessionaire shall maintain a level of merchandise in stock that is customarily associated with a Green Grass Pro Shop. The Concessionaire will also provide training in customer service and merchandising to City staff working in the Pro Shops.
 - b. Matt Kimball will provide golf instruction to golf course patrons requesting his services. The rate charged for such instruction will be competitive and will not exceed the rates customarily charged by instructors at other golf courses in the Rapid City and Black Hills area. The Concessionaire can hire at its own expense golf instructors to help fulfill customer demand.
 - c. The Concessionaire shall provide five free clinics each year for golf course association members. These clinics can be of the Concessionaire's choosing and can include any part of the game of golf.
 - d. The Concessionaire shall devote its time and best efforts to its functions under this Agreement. The Concessionaire shall timely notify the Recreation Golf Coordinator of its employee's weekly schedule.
8. **Pro Shop Operations.** The concessionaire will diligently strive to improve Meadowbrook and Executive operations, streamline processes, and work cooperatively to provide quality products and services to golf course patrons.

- a. The Concessionaire shall be an independent contractor under this Agreement and shall not be an employee of the City.
- b. Pro Shop personnel at Meadowbrook and Executive will be employees of the City. These City employees will provide customer service, sales, cashier, stocking, and merchandising functions for the Pro Shop.
- c. The Concessionaire will work with the City's Pro Shop employees to train them in merchandising and customer service.
- d. Matt Kimball will also actively and personally provide customer service, sales, cashier, stocking and merchandising functions for the Pro Shops.
- e. Since achieving maximum sales through quality products and service is to the benefit of both the City and the Concessionaire, the Concessionaire will promptly report any issues of performance by City employees to the Recreation Golf Coordinator or his supervisors for appropriate resolution.

9. **Miscellaneous.**

- a. The Concessionaire shall work with Pro Shop employees to train them in merchandise and product line.
- b. The Concessionaire at all times will demonstrate a continuous effort to improve operations, streamline processes, and work cooperatively to provide quality, seamless customer service.
- c. Concessionaire will have access to both courses and driving ranges for instruction purposes.

10. **Liability and Indemnity.** The Concessionaire agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct or management of the business conducted by the Concessionaire. City shall not be liable and the Concessionaire waives all claims for damages to person(s) or property sustained by the Concessionaire, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from any accident in or about said building or said leased premises. Nothing in this agreement shall limit Concessionaire's rights against third parties for damages caused by said third parties to Concessionaire's property.

11. **Insurance.** City maintains insurance coverage for the Building, City's fixtures and premises liability. Concessionaire shall purchase and maintain at a minimum the following insurance during the term of this agreement:

A. Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee

Bodily Injury by Disease \$500,000.00 Policy Limit

- B. Commercial General Liability Insurance with a Combined Single Limits of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	
\$1,000,000.00	
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

- C. Commercial Automobile Liability Insurance for all owned vehicles, autos, hired and non-owned vehicles, automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00).
- D. Commercial Umbrella Insurance providing excess liability over primary coverage of Employer's Liability Commercial General Liability, and Commercial Automobile Liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.
- E. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:
- (i) Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to City by certified mail to: City Finance Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the City may designate in writing. The Concessionaire shall also notify City in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Concessionaire.
 - (ii) Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Concessionaire.
 - (iii) The Term "City" shall include all elected officials, boards, commissions, divisions, departments, and officers of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.

(iv) The City shall be endorsed to the required policy or policies as an additional insured to the Concessionaire's Commercial General Liability Policy.

(v) Concessionaire and City each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any property insurance policy in force at the time of such loss or damage. Concessionaire and City shall give notice to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the agreement.

12. **Maintenance.** At both Meadowbrook and Executive golf courses, the City shall be responsible for the maintenance of clubhouse buildings, janitorial service and the grounds immediately surrounding the clubhouse, to include mowing the grass around the clubhouses and the right-of-way at Meadowbrook between the clubhouse and Jackson Boulevard.

13. **Monthly sales statement.** Golf course clerk will provide a monthly sales statement.

Dated this ____ day of _____, 2008

CITY OF RAPID CITY:
Shop:

B. F. Variety Store, Inc. dba Matt Kimball's Golf

by _____
Alan Hanks, Mayor

by _____
Matt Kimball, Vice President

ATTEST:

James Preston, Finance Officer

(SEAL)

State of South Dakota)
) SS.
County of Pennington)

ACKNOWLEDGMENT

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, known to me to be Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

(SEAL)

State of South Dakota)
) SS.
County of Pennington)

ACKNOWLEDGMENT

On this ____ day of _____, _____, before me, the undersigned officer, personally appeared Matt Kimball, who acknowledged themselves to be the Vice President of B. F. Variety Store, Inc. dba Matt Kimball's Golf Shop , and that as such , being duly authorized to do so, executed the foregoing instrument by signing and acknowledged that they executed the same for the purposes therein contained and that they had the authority to do so in the name of the B.R. Variety Store, Inc. dba Matt Kimball's Golf Shop, its Vice President .

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)