



CITY OF RAPID CITY

DEPARTMENT OF PARKS AND RECREATION

300 SIXTH STREET

RAPID CITY, SOUTH DAKOTA 57701

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Date: January 22, 2013

To: Public Works Committee

From: Doug Lowe, Recreation Division Manager

Subject: Authorize Mayor and Finance Officer to sign
Professional Service Contract with B.F. Variety Store,
Inc. (Matt Kimball)

The Recreation Division requested proposals for operation of the Meadowbrook Golf Course Pro Shop and Adult Golf Instruction. One proposal was received from Matt Kimball dba B.F. Variety Store, Inc.

The Parks and Recreation Advisory Board has recommended approval of the contract and it has been reviewed by the City Attorney's Office.

Staff recommends that the City Council authorize the Mayor and Finance Officer to sign the five year contract with B.F. Variety Store, Inc. dba Matt Kimball, for Pro Shop Management and Adult Golf Instruction at Meadowbrook Golf Course.

**CONTRACT FOR SERVICES AGREEMENT
MANAGER OF MEADOWBROOK GOLF COURSE CLUBHOUSE AND PRO-SHOP**

This agreement entered into this _____ day of _____, 2013 by and between the City of Rapid City, a municipal corporation of South Dakota, hereinafter referred to as the "City", and B.F. Variety Store Inc./Matt Kimball, hereinafter referred to as the "Manager" of Meadowbrook Golf Course Clubhouse and Pro-Shop.

SCOPE OF THE CONTRACT

The purpose of this agreement is to set forth the terms, considerations, and duties wherein the Clubhouse and Pro-Shop Manager is an independent contractor and not an employee of the City. Both parties agree that Manager will perform proper management and operation of Meadowbrook Golf Course Clubhouse and Pro-Shop located in Rapid City, Pennington County, South Dakota and the considerations therefore.

LENGTH OF THE CONTRACT

This agreement shall be in effect from **March 20, 2013 to December 31, 2017**. The City agrees to meet annually with the Manager in September to review the agreement. The City and Manager may mutually agree to alter or modify any terms or conditions contained herein, including but not limited to, compensation, expenses, and duties. If both parties agree, there may be a 2 year extension of the agreements for calendar year 2018 & 2019.

GENERAL TERMS AND CONDITIONS

Relationship between the Parties

Manager is an independent contractor of the City. This agreement does not create an employment relationship between the City and Manager or manager's agents. Nothing contained in this agreement is intended to create a partnership or joint venture between Manager and the City.

Waivers

The failure by one party to require performance of any provision herein shall not affect the party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this agreement constitute a waiver of any subsequent breach or default or a waiver of the provisions itself.

Amendments

This Agreement may only be amended by a written document duly executed by all parties.

Entire Agreement

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

Terms & Conditions

The following terms and conditions constitute a binding agreement between the above named parties, relative to the operation of Meadowbrook Clubhouse, Pro-Shop and supervision of play at Meadowbrook Golf Course, for the term of the contract.

A. The City agrees to:

1. Permit the Manager to use the clubhouse, including all furnishings, related equipment and facilities at Meadowbrook Golf Course.
2. Furnish 75% of utilities necessary for the proper operation of the clubhouse and pro-shop (gas & electric).
3. Permit the Manager or qualified designee to exclusively give private golf instruction on practice facilities and to retain all income from such activity. The Manager shall not allow said lessons to interfere with the performance of the Manager's duties under this contract for services.
4. Permit the Manager to exclusively perform club repairs and service and retain all income from such activity.
5. Permit Manager to exclusively sell merchandise. The parties agree that the City will retain 5% of gross revenues of the sale of merchandise. A payment request will be submitted every Friday by the Manager.
6. Furnish all necessary equipment and sanitary supplies such as vacuum cleaner, toilet tissue, paper towels, soap, etc. used for the maintenance of the clubhouse. The City, once per calendar year, will pay for the cost of professionally cleaning the clubhouse carpet.
7. Provide all turf maintenance on the driving range and practice greens including a mechanical range ball picker, tractor and fuel for ball picking as needed.
8. Maintain all tee stand information and advertising signs.

9. Provide the Manager and/or his designee technical training and software maintenance agreement on the Fore-Reservation software system.
 10. Provide the Manager with one (1) free individual non-assignable and non-transferable annual golf membership with cart privileges. This includes use of driving range.
 11. Sell all annual memberships, seasonal golf cart plans, golf cart storage and golf cart usage plans, locker rentals, annual driving range plans and other services as deemed necessary.
 12. Pay the Manager:
 - a. An annual base commission of forty-two thousand dollars (\$42,000.00).
12 Payments of \$3,500 to Manager will be made at the end of the month.
 - b. A lump sum of \$1,000 to manage the Recreation Division's Summer Youth Golf Lesson program
- B. The Manager (in consideration of the above and foregoing agreement on the part of the City) agrees to:**
1. Establish and maintain effective working relationships with employees, City officials, golf patrons and the general public. The Manager shall answer and handle complaints from golf patrons and the public.
 2. Hire adequate employees necessary to staff the golf pro shop. These employees will be city employees but will operate under the direction of the Manager.
 3. Ensure that no person shall be accorded adverse, unlawful, or unequal treatment with respect to the availability of services or facilities by reason of race, color, sex, creed, religion, ancestry, national origin, or handicap.
 4. Provide, at his/her own expense, an attractive and ample supply of golf merchandise in the pro shop which he/she will sell to patrons of the course.
 5. Manage and operate the clubhouse and supervise play at Meadowbrook golf course when the course is open for play. The Manager is expected to meet with the Golf Course Superintendent on a regular basis to review operations.
 6. Be responsible for routine maintenance and cleaning of the clubhouse, keeping the surrounding entrance areas, locker area, refuse area and patio clean, excluding bar & grill and bathrooms. Report all damaged non-functioning

equipment or other components of the building to the Golf Course Superintendent or Division Manager.

7. Open and close the clubhouse according to the hours established by the Rapid City Recreation Division. The Manager is required to work during every golfing day during the season or to have a capable qualified person on duty in the clubhouse during those times he/she is absent.
8. Maintain and enforce all rules and regulations, as established by the City, for operation of the golf course, including on-the-course monitoring and marshaling as needed to facilitate play.
9. Organize and promote golf tournaments and special events, reporting such events on a weekly basis to the Recreation Division Manager. Schedule all golf related activities including instruction and golf promotion. Coordinate the use of Meadowbrook golf course by area high schools working directly with the High School Athletic Directors. The Manager shall supervise play of Ladies Day and Men's Day and conduct tournaments for ladies and men by working with the Meadowbrook Ladies Golf Association and Men's Golf Association.
10. Recommend a marketing strategy for the course to the Director of Parks and Recreation that utilizes the advertising budget set by the City for such purposes.
11. Maintain records of accountability and clubhouse maintenance work.
12. Promote the game of golf during the golf season to members of Meadowbrook Golf Course by utilizing the direct marketing capabilities of the software system. Provide updates to the Meadowbrook golf course web site regarding golf activity. Examples are scheduled tournament play and results of tournament play.
13. Work with the Golf Focus Groups in analyzing operation of the course and formulating recommendations to the Park & Recreation Advisory Board.
14. Permit access to any and all records pertaining to data and records for the purpose of enabling the City, its agencies or representatives to ascertain compliance with the provisions of this agreement.
15. Supervise collection of all fees, as established by the City, from persons using the golf course, driving range, clubhouse and related facilities and supervise deposit

of such collections with the City Finance Division on a daily basis. Compliance audits may be conducted at the pleasure of the Finance Director.

16. At the end of each golf season, meet with the Golf Course Superintendent to take an inventory of the clubhouse equipment and materials to keep a current record of property of the City and property of the Manager. Such inventory records shall be provided to the Director of Parks and Recreation two weeks after the closure of the course for the season.
17. Supervise the day to day operations of the locker room.
18. Administer the usage of City owned/leased golf carts. The Manager shall supervise the preparation the carts for use and ensure they are kept clean. The City golf course maintenance staff will provide necessary cart maintenance and fuel.
19. Ensure that professional instruction with qualified instructors in the art of playing the game of golf is available for both youth and adults. The Manager shall make arrangements to provide the professional services of him/her self or a qualified instructor(s) to maintain an instructional program for golf with such program activities and plan of work to be coordinated with the City Recreation Division Manager.
20. Maintain the status of certified golf instructor or apprentice through the term of this agreement.
21. Devote his/her full time and attention to his duties under this agreement and use his/her best endeavors to promote the interest and welfare of the golf course and promote the game of golf. In the event the Manager must be absent from his/her duties for more than three consecutive days during the time the golf course is open, the Manager is required to notify the Director of Parks and Recreation of such absence and provide the name of the person who will fulfill the Manager's duties in his/her absence.
22. In cooperation with the Golf Course Superintendent determine when the course will be open and when it will be closed. If mutual agreement cannot be reached the Director of Parks and Recreation will make the final decision.

23. Carry all necessary liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence to protect the City from liability arising out of the operations performed by the Manager or his/her employees, and naming the city as an additional insured.
24. Keep accurate records of tournament credits issued to the patrons of the clubhouse upon final termination of the Manager's operation of the clubhouse, the Manager shall deposit with the City the cash equivalent of all valid unredeemed tournament credits and an accounting of outstanding certificates. In such event, the City shall be responsible for the redemption or re-purchase of the remaining valid and outstanding tournament credits at their face value.
25. Submit monthly reports to the City of the number of rounds of golf played and the revenue from all approved fees of the Pro Shop.
26. Before final settlement, but in no event later than July 15, of the following year, the Manager must provide an end of season standardized income statement encompassing the total services provided by the Manager. The method of accounting shall be to the satisfaction of the City Finance Director and shall be substantiated by appropriate records. The financial statement and records may be examined by an independent Certified Public Accountant at the request and expense of the City if so requested.
27. Be responsible for all taxes including payroll and self-employment that may be assessed for the services provided under this agreement.
28. Hold the City harmless from any and all claims or liability including attorney's fees arising out of services furnished under this contract provided that such claim or liability is the result of an act, error, omission, or negligence of the Manager and/or his employees/agents, arising out of the services described in this contract.
29. Pay the cost of 25% of utilities necessary for the proper operation of the clubhouse and pro-shop (gas & electric).

For purposes of fulfilling the terms of this agreement, the Manager shall report to the Director of the Parks and Recreation Department or designee. The Manager shall consult with the Director of Parks and Recreation or designee on questions concerning interpretation of policies or regulations, this agreement, or other problems that might arise. The Director may, on a monthly basis during the golf season, consult with members of the Golf Focus Group to discuss if performance standards are being met in this agreement.

NOTICE OF DEFAULT, UNSATISFACTORY PERFORMANCE AND TERMINATION

Should either party fall into default of any provisions of this contract, this agreement may be terminated upon failure to cure the default. City may terminate the agreement if default is not cured by Manager. The Manager must give 60 day notice if canceling contract but if notice is given after January 1 and before August 31 then notice requirement is 90 days.

It is specifically understood and agreed that in the event the performance of the Manager becomes substantially unsatisfactory to the City in terms of his on-the-job performance, public relations or compliance with the terms of this agreement in general, both written and implied, the City reserves the right to terminate this agreement without further liability and repossess itself of the clubhouse premises and all rights and privileges granted hereunder. Notice of unsatisfactory performance shall be communicated to the Manager in writing by the Director of Parks and Recreation. Failure of the Manager to correct any unsatisfactory condition within 30 days after notice from the City shall be deemed a substantial breach of this agreement.

The Manager shall discuss any concern(s) with the Director of Parks and Recreation and try to resolve the matter. If unable to do so, the Manager shall submit the concern(s) in writing to the Director of Parks and Recreation for discussion at the next Park and Recreation Advisory Board meeting. This written notice shall be filed by the Manager within five (5) days after his initial discussion with the Director of Parks and Recreation. The Park and Recreation Advisory Board shall discuss the concern and, if appropriate, state its decision on the concern. Within five (5) days after the Board meeting, the Director of Parks and Recreation shall report the results of the meeting in writing to the Manager. If the Manager disagrees with this decision he may, in writing, give notice of his disagreement to the City Attorney, which must be done within five (5) days after receipt of notification by the Director of Parks and Recreation. The City Attorney will arrange a meeting within ten (10) days following the receipt of the notice of disagreement with the Golf Manager and Director of Parks and Recreation to discuss the concern. Within five (5) days after the meeting the City Attorney, will, in writing, furnish his decision to the Manager and the Director of Parks and Recreation.

Dated this ____ day of _____, 2013.

CITY OF RAPID CITY, SOUTH DAKOTA

ATTEST:

Mayor

Finance Officer
(SEAL)

B.F. Variety Store, Inc.

Matt Kimball, President

State of South Dakota)

ss.

County of Pennington)

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Matt Kimball, who acknowledged himself to be the President of B.F. Variety Store, Inc., and that he executed the foregoing instrument for the purposes therein contained by signing his name as President.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)