

File No.: 04-1000-20-2021-498

January 24, 2022

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of September 23, 2021 under the ***Freedom of Information and Protection of Privacy Act, (the Act)***, for:

Records regarding the Golf Professional Services contract at McCleery Golf Course, specifically:

- 1) Golf Professional Services contract (most recent)**
 - 2) Records related to the RFP process including award of the contract**
- Date Range: January 1, 2013 to September 23, 2021.**

All responsive records are attached. Some information in the records has been severed, (blacked out), under s.21(1) of the Act. You can read or download this section here:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2021-498); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signed by Cobi Falconer]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy
cobi.falconer@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4

If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. Or you can call the Acting FOI Case Manager at 604-873-7407.

Encl. (Response package)

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**GOLF PROFESSIONAL SERVICES CONTRACT
MCCLEERY GOLF COURSE**

AMONG:

**CITY OF VANCOUVER, as represented by its
BOARD OF PARKS AND RECREATION**

and

MUNCIE'S GOLF SHOP LTD.

and

MAGNUS KENNEDY BOOTH

TABLE OF CONTENTS

	Page		Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	2	ARTICLE 10 ASSIGNMENT	23
1.1 Definitions	2	10.1 Restrictions on Assignment by Professional and Booth	23
1.2 Interpretation	6	ARTICLE 11 DEFAULT AND TERMINATION	23
1.3 Schedules	7	11.1 Default by Professional or Booth	23
ARTICLE 2 TERM AND OPTIONS TO RENEW	7	11.2 Limited Extension for Non-Monetary Breaches	23
2.1 Term	7	11.3 Default Remedies	24
2.2 First Option to Renew	7	11.4 Termination by Board for Cause	24
2.3 Second Option to Renew	8	11.5 Termination Without Cause by Board or Professional With 1 Year Notice	25
ARTICLE 3 SERVICES TO BE PROVIDED BY PROFESSIONAL	8	11.6 Termination Without Cause by Board With Fees in Lieu of Notice	25
3.1 Professional to Perform Services	8	11.7 Consequences of Termination or Expiry	25
3.2 General Duties	8	ARTICLE 12 ARBITRATION	27
3.3 Golf Course	11	12.1 Certain Remedies Independent of Arbitration Proceedings	27
3.4 Driving Range, Short Game Practice Area and Chipping and Putting Greens	13	12.2 Arbitration Proceedings	27
3.5 Pro Shops and Driving Range Entrance Building	14	ARTICLE 13 UNAVOIDABLE DELAY	28
ARTICLE 4 FINANCIAL ARRANGEMENT	16	13.1 Unavoidable Delay	28
4.1 Compensation for Services	16	ARTICLE 14 OVERHOLDING	28
4.2 Gross Revenue	16	14.1 Automatic Renewal	28
4.3 Licence Fee and Other Charges	16	ARTICLE 15 MISCELLANEOUS	28
4.4 Payment to Professional	16	15.1 Parties' Intention	28
ARTICLE 5 BOARD'S ROLE, RIGHTS AND RESPONSIBILITIES	17	15.2 Surviving Obligations	29
5.1 Golf Course Fees	17	15.3 Delegation of Authority	29
5.2 Right to Use Golf Course for Board Objectives	17	15.4 Costs	29
5.3 Driving Range, Cart Storage Area, Short Game Practice Area and Chipping and Putting Greens	18	15.5 Interest on Arrears	29
5.4 Pro Shops and Driving Range Entrance Building	18	15.6 Notice	29
ARTICLE 6 FINANCIAL REPORTING BY PROFESSIONAL	19	15.7 Continuing Effect	30
6.1 Records and Financial Statements	19	15.8 Governing Laws	30
ARTICLE 7 INSURANCE, BONDING, WCB, NATURE OF RELATIONSHIP	20	15.9 Joint and Several	30
7.1 Insurance/Bonding/WCB	20	15.10 Severability	30
7.2 Relationship	21	15.11 Time of the Essence	30
ARTICLE 8 INDEMNITY	21	15.12 Waiver	30
8.1 Indemnity	21	15.13 Amendments	30
ARTICLE 9 ADVERTISING	22	15.14 Entire Agreement	30
9.1 Advertising	22	15.15 No Derogation	30
		Schedule A - Plans of Driving Range, Short Game Practice Area, Chipping and Putting Greens, Pro Shops and Ball & Cart Storage Areas	
		Schedule B - Customer Service Duties	
		Schedule C - Insurance/Bonding/WCB Requirements	

GOLF PROFESSIONAL SERVICES CONTRACT - McCleery

Schedule D - Option to Purchase Golf Course Personal
Property

Schedule E - Grant of Licence

Contract Date: January 1, 2019

Parties:

CITY OF VANCOUVER, as represented
by its **BOARD OF PARKS AND RECREATION**
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4

(the "Board")

and:

MUNCIE'S GOLF SHOP LTD.
7188 MacDonald Street
Vancouver, British Columbia
V6N 1G2

(the "Professional")

and:

MAGNUS KENNEDY BOOTH
3737 Clearbrook Road
Abbotsford, British Columbia
V2T 5A7

("Booth")

Background:

- A. Pursuant to a Request for Proposals P2003-03, the Board entered into an agreement with the Professional dated January 1, 2004 for the provision of golf professional services at the Golf Course (the "2004 Contract");
- B. The 2004 Contract was for an initial term of five (5) years and contained an option to renew for an additional seven (7) years ending on December 31, 2015, which option was exercised;
- C. The 2004 Contract was further extended until December 31, 2017 and thereafter was automatically renewed pursuant to Section 21A thereof until December 31, 2018;
- D. The Professional wishes to continue to provide, and the Board wishes to continue to receive, golf professional services at the Golf Course; and
- E. The Bid Committee has approved the procurement strategy of sole sourcing to the Professional and Booth for the provision of golf professional services for the short term.

NOW THEREFORE, in consideration of the matters referred to in the foregoing Recitals, the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed), the Board, the Professional and Booth now agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Contract, the following terms have the following meanings:

- (a) **"Ball Storage Area"** means the area used to store golf balls for the Driving Range, generally as shown on Schedule A;
- (b) **"Bank Recovery Fee"** is defined in Section 4.3;
- (c) **"Bid Committee"** has the meaning given in the Procurement Policy;
- (d) **"Board and City"** is defined in Section 8.1;
- (e) **"Board's Designated Representative"** means the person appointed as the General Manager of the Board or his designate, deputy or anyone else authorized from time to time to carry out his authority under this Contract;
- (f) **"Cart Storage Area"** means the cart storage area for the Golf Course, as generally shown on Schedule A;
- (g) **"Chief Purchasing Official"** means the person designated from time to time by the City Manager to supervise and carry out the procurement function on behalf of the Board in accordance with the Procurement Policy;
- (h) **"Chipping and Putting Greens"** means the practice chipping green and putting green for the Golf Course, as generally shown on Schedule A as "Chipping Green" and "Putting Green";
- (i) **"City"** means the City of Vancouver, a municipal corporation continued pursuant to the *Vancouver Charter*;
- (j) **"City Manager"** means the person appointed by Council pursuant to Section 162A of the *Vancouver Charter* as the City Manager;
- (k) **"Classroom"** means the classroom situate within the Driving Range Entrance Building;
- (l) **"Contract"** means this Golf Professional Services Contract for the Golf Course among the Board, the Professional and Booth, including all schedules, as amended or supplemented from time to time;
- (m) **"Council"** means the elected council of the City;

- (n) **"CPGA"** means the Canadian Professional Golf Association;
- (o) **"CPGA Certified Employee"** means any individual employed by the Professional or retained as an independent or dependent contractor of the Professional who is a member or an apprentice member in good standing of the CPGA or any replacement or successor organization (including Booth and the Professional's Pro Shop Manager, if applicable);
- (p) **"Default"** is defined in Section 11.1;
- (q) **"determined by arbitration"** is defined in Section 12.2(d);
- (r) **"Driving Range"** means the driving range for the Golf Course as shown on Schedule A;
- (s) **"Driving Range Commission"** is defined in Section 4.1(b);
- (t) **"Driving Range Entrance Building"** means the building at the entrance to the Driving Range which contains an enclosed reception area, the Driving Range Pro Shop, the Classroom and a public washroom;
- (u) **"Driving Range Equipment"** means all equipment owned by the Professional or Booth used in connection with the operation of the Driving Range;
- (v) **"Driving Range Pro Shop"** means the Pro Shop situate within the Driving Range Entrance Building;
- (w) **"Effective Date"** means the effective date of this Contract, being January 1, 2019;
- (x) **"Exclusions"** means the exclusions from Gross Revenue listed at subparagraphs 1.1(aa)(iii)-(ix);
- (y) **"Golf Course"** means the McCleery Golf Course, located at 7188 MacDonald Street, Vancouver, British Columbia, and except where the context otherwise requires, expressly includes the Driving Range, Pro Shops, Short Game Practice Area, Driving Range Entrance Building, Chipping and Putting Greens and Cart Storage Area;
- (z) **"Green Fee"** means the set fee users of the Golf Course must pay in order to gain access to the Golf Course for golf play;
- (aa) **"Gross Revenue"** means the gross amount received by the Professional and/or Booth from all activity, or where applicable, from one or more specified activities, pursuant to this Contract, arising directly or indirectly from the Golf Course, including, without duplication:
 - (i) gross revenue from all sources related to such activity(ies), and for greater certainty, including revenues from Green Fees,

advance booking fees, the Driving Range, Merchandise, Rental Equipment and Lessons, net of applicable discounts, promotions or other 'free portion' of bona fide sales, public relations or promotional programs and refunds to patrons; and

- (ii) the fair market value of all goods and services received by the Professional or Booth from any third party in exchange for or by way of barter from the provision of goods and services by the Professional or Booth related to such activity(ies);

but excluding:

- (iii) grants, gratuities and/or donations;
 - (iv) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including GST and PST;
 - (v) tournament credits;
 - (vi) Merchandise coupons and/or Pro Shop gift cards;
 - (vii) payments received from patrons for damage to Rental Equipment;
 - (viii) all sums received in connection with the sale or disposal of Personal Property; and
 - (ix) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Professional, except for reimbursement for loss of revenue;
- (bb) "Lessons" means golf instruction, consultation, coaching and/or lessons for all ages and levels for both boys and girls and men and women from beginner to advanced and for both private individuals and groups, including by way of example, a full junior golf program;
 - (cc) "Licence" means the licence granted by the Board to the Professional pursuant to Schedule E for the purpose of using and operating the Pro Shops, Driving Range, Cart Storage Area, Short Game Practice Area, the Driving Range Entrance Building and the Chipping and Putting Greens;
 - (dd) "Licence Fee" is defined in Section 4.34.3;
 - (ee) "Main Pro Shop" means the Pro Shop situate within the Golf Course clubhouse;
 - (ff) "Merchandise" means all of the goods, wares and/or stock of the Professional and/or Booth located from time to time or at any time on the Golf Course, which are intended for retail sale to the public at the Pro Shops, the Driving Range, Driving Range Entrance Building or elsewhere on the Golf Course;

- (gg) **"Option to Purchase"** means the option to purchase the Personal Property contemplated by Schedule D - *Option to Purchase Golf Course Personal Property*;
- (hh) **"Permitted Creditor"** means a financial institution or other legitimate creditor of the Professional or Booth who deals at arm's length from the Professional or Booth, respectively, and has either delivered Personal Property to the Golf Course or has extended credit to the Professional and/or Booth specifically for the purposes of financing the Professional's operations and activities at the Golf Course, but specifically excludes creditors who are affiliated with or related to the Professional or Booth in any way or have extended credit for personal, non-business purchases or liabilities of the Professional or Booth;
- (ii) **"Permitted Encumbrance"** means a security interest (as that term is defined in the *Personal Property Security Act* (British Columbia)) in favour of a Permitted Creditor;
- (jj) **"Personal Property"** means the Merchandise, Rental Equipment, Driving Range Equipment and retail display fixtures;
- (kk) **"POS System"** means the point of sale/automated advance reservation system and other related systems (eg. Moneris and ANET);
- (ll) **"Prime Rate"** means, at any time, the per annum rate of interest published by the main branch in the City of Vancouver of The Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its "prime rate", provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate shall be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective then the Prime Rate shall be three (3%) percent greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I Canadian Chartered Banks;
- (mm) **"Procurement Policy"** means the Board's Procurement Policy approved by the Board on April 19, 2010;
- (nn) **"Professional's Share of Gross Revenue"** means the aggregate Gross Revenue generated from the Rental Equipment, Merchandise and Lessons;
- (oo) **"Pro Shops"** means the pro shops for the Golf Course, in which the Professional sells Merchandise, collects Green Fees and performs other Services pursuant to this Contract, as generally shown in Schedule A as "Pro Shop", and for greater certainty, includes the Driving Range Pro Shop and the Main Pro Shop;

- (pp) **"Purchased Personal Property"** means the Personal Property which the Board has notified the Professional that it intends to purchase pursuant to the Option to Purchase;
- (qq) **"Rental Equipment"** means any and all equipment of the Professional and/or Booth which may be located at any time at the Golf Course, which is in the nature of power golf carts, pull carts, golf clubs and the like, which members of the public may rent from the Professional to use on the Golf Course;
- (rr) **"Service Fee"** is defined in Section 4.1;
- (ss) **"Services"** means the services to be supplied and performed by the Professional and/or Booth pursuant to Article 3;
- (tt) **"Short Game Practice Area"** means the short game practice area for the Golf Course, as generally shown on Schedule A as "Practice Area";
- (uu) **"Staff"** means any officer, director, employee, agent, contractor, sub-contractor, licensee, guest, invitee or visitor of the Professional in or about the Golf Course in connection with any matter governed by this Contract;
- (vv) **"Term"** means the term of this Contract, as set out in Section 2.1;
- (ww) **"Unavoidable Delay"** means any circumstances beyond the reasonable control of the party trying to perform, and includes without limitation and by way of example only:
 - (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
 - (ii) abnormal weather, being weather that is outside of the statistical norm for that time of year as measured over the last 10 years by Environment Canada; and
 - (iii) any event or situation in which the Board, in its sole discretion, decides that the Golf Course must be closed,but expressly excludes any and all delays caused by the Professional's or Booth's lack of financial resources or insolvency, strikes, lockouts or labour affiliations of the Professional's employees, or governmental action taken in the enforcement of law specifically against the Professional or Booth;
- (xx) **"WCB OH&S Regulation"** means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9).

1.2 Interpretation.

- (a) Sections and headings are for convenient reference, and are not to affect the meanings of any provisions.
- (b) Use of the singular or masculine includes the plural, feminine or body corporate, and vice versa.
- (c) The words "include" and "including" are to be construed as meaning "including without limitation".
- (d) Any reference to a statute or policy is to the statute or policy and its respective regulations or guidelines in force on the Contract Date and to subsequent amendments to or replacements of the statute, policy, regulations or guidelines.

1.3 Schedules. The following schedules are now deemed to form an integral part of this Contract, whether or not actually attached to this Contract at the time of signing:

Schedule A - Plans of Driving Range, Short Game Practice Area, Chipping and Putting Greens, Pro Shops, Driving Range Entrance Building and Ball & Cart Storage Areas

Schedule B - Customer Service Duties

Schedule C - Insurance/Bonding/WCB Requirements

Schedule D - Option to Purchase Golf Course Personal Property

Schedule E - Grant of Licence

ARTICLE 2 TERM AND OPTIONS TO RENEW

2.1 Term. The Term of this Contract will be three (3) years, commencing on the Effective Date and expiring on December 31, 2021.

2.2 First Option to Renew. If:

- (a) the Professional and Booth are not in default of this Contract;
- (b) the Board determines, in its sole discretion, that the Professional and Booth have both satisfactorily discharged their respective obligations hereunder; and
- (c) the Professional and Booth have given the Board written notice of their desire to renew this Contract no later than September 1, 2021 and no sooner than June 1, 2021,

then the Board will grant a renewal of this Contract upon the expiration of the Term for a period of one year starting January 1, 2022 and expiring on December 31, 2022 (the "First Renewal Term"), on the same terms and conditions as set out in this

Contract, except that the Licence Fee for the First Renewal Term will be a percentage of the Professional's Share of Gross Revenue to be mutually agreed upon based on prevailing market factors and rates, provided that such percentage will not be less than the percentage payable in the immediately preceding year. If an agreement is not reached by the commencement of the First Renewal Term, the percentage will be determined by arbitration.

2.3 Second Option to Renew. If:

- (a) the Professional and Booth are not in default of this Contract;
- (b) the Board determines, in its sole discretion, that the Professional and Booth have both satisfactorily discharged their respective obligations hereunder; and
- (c) the Professional and Booth have given the Board written notice of their desire to renew this Contract no later than September 1, 2022 and no sooner than June 1, 2022,

then the Board will grant a renewal of this Contract upon the expiration of the First Renewal Term for a period of one year starting January 1, 2023 and expiring on December 31, 2023 (the "Second Renewal Term"), on the same terms and conditions as set out in this Contract, except that the Licence Fee for the Second Renewal Term will be a percentage of the Professional's Share of Gross Revenue to be mutually agreed upon based on prevailing market factors and rates, provided that such percentage will not be less than the percentage payable in the immediately preceding year. If an agreement is not reached by the commencement of the Second Renewal Term, the percentage will be determined by arbitration.

**ARTICLE 3
SERVICES TO BE PROVIDED BY PROFESSIONAL**

3.1 Professional to Perform Services. The Professional now agrees to provide the Services for the Golf Course according to the terms of this Contract, and Booth agrees to cause it to do so.

3.2 General Duties. The Professional will, at the Professional's sole risk and expense, and will cause its Staff, as applicable, to (except where otherwise expressly stated in this Contract):

- (a) ensure that:
 - (i) all transactions are diligently, completely and correctly processed in the POS System (and any related systems);
 - (ii) all monies processed through the POS System (other than payments made online through the Board's internet based payment collection system) are collected on behalf of the Board;
 - (iii) all cash and other valuables are secured at all times;

- (iv) bank deposits for all amounts collected, including overages, are prepared to the account of the Board, at such frequency as required by the Board for negotiation by it; and
 - (v) daily reports are provided, in a form acceptable to the Board, on all aspects of revenue and attendance;
- (b) manage and supervise the Golf Course and carry out the Professional's duties according to the terms of this Contract, to the standards of comparable golf courses, on a full-time basis, and faithfully, competently, and diligently;
- (c) comply with the standards accepted by the CPGA in respect of golf professionals;
- (d) ensure that its principal, Booth, maintains his status as a Class A or equivalent member in good standing of the CPGA or replacement or successor organization;
- (e) not engage in any other businesses or activities that will conflict with the Professional's duties under this Contract, and disclose to the Board any activities of the Professional or Booth that may have the potential to be construed as conflicting with the Professional's or Booth's duties under this Contract, and will otherwise comply with the Professional's legal obligations of good faith as a fiduciary agent of the Board;
- (f) comply promptly with all policies regarding the Golf Course that the Board or the City may issue from time to time, with all rules, procedures or directives the Board may issue from time to time, and with all orders the Board may give the Professional from time to time including, without limitation, and by way of example only:
 - (i) the City's Corporate Cash Handling Procedures Manual;
 - (ii) all business rules pertaining to the administration of transactions through a POS System;
 - (iii) all rules governing the use of the Golf Course by Board employees (which, for greater certainty, means that Staff must abide by the same rules as the Board's employees with respect to play on the Golf Course for their own enjoyment);
 - (iv) orders regarding the provision of Services during the operational hours of the Golf Course; and
 - (v) orders regarding the maintenance of the Board's safety standards and practices;
- (g) comply promptly with all bylaws of the City that, from time to time, apply to the rights or duties of the Professional under this Contract, or to any businesses or activities the Professional conducts under this

Contract including, without limitation, obtaining and renewing all permits and licences necessary to operate the Driving Range, Pro Shops, Cart Storage Area, Short Game Practice Area, Chipping and Putting Greens and Driving Range Entrance Building;

- (h) report to the Board, at the Board's Designated Representative's request from time to time, on the management and supervision of the Golf Course, Driving Range and the Professional's other duties under this Contract;
- (i) maintain good public relations between the Professional and the public and the Staff and the public;
- (j) hire, train, supervise and maintain a full staff of employees including, without limitation, a CPGA professional, assistant professionals and starters to assist the Professional in performing the Professional's duties under this Contract to the extent that the Board considers necessary or desirable;
- (k) ensure that a full time starter is:
 - (i) physically standing at the first tee at all times when the Board makes the Golf Course open to the public during the period of May 1st to October 15th; and
 - (ii) available in the Main Pro Shop at all times when the Board makes the Golf Course open to the public during the period of October 16th to April 30th,

in order to supervise and ensure that each group of golfers is prompted to go to the first tee at the appropriate time and that each group tees off at the designated time;

- (l) be solely responsible for the Professional's Staff, including remitting Canada Pension Plan premiums, Worker's Compensation Board assessments, employment insurance premiums, medical and dental coverage payments, income tax, goods and services tax, provincial sales tax, and other remittances required by any government body;
- (m) be solely responsible for remitting all applicable taxes on any amounts payable to the Professional hereunder, including the Professional's Share of Gross Revenue, the Driving Range Commission and the Service Fee;
- (n) maintain a good credit rating with suppliers, manufacturers and other persons, firms and corporations with whom the Professional deals, so as to protect the good reputation of the Professional and of the Golf Course, the Board and City;

- (o) continuously provide good customer service to all members of the public who use or attempt to arrange for the use of the Golf Course, all as may be further set out in Schedule B - *Customer Service Duties*;
- (p) at all times, ensure that those parts of the Golf Course of which it has the care, use or control are kept in a neat, tidy and safe condition, subject to reasonable wear and tear, and will, subject to Schedule E - *Grant of Licence*, promptly repair, at its cost, any damage done to any part of the Golf Course as a result of, and to the extent that the same results from, the act or omission of the Professional, its Staff or anyone else for whom it is responsible in law, to at least the same standard and condition as existed prior to such damage; and
- (q) provide all of the Services to the satisfaction of the Board's Designated Representative, and comply with all instructions of the Board's Designated Representative regarding those Services.

3.3 Golf Course. Subject always to Schedule E - *Grant of Licence*, the Professional will, and will cause its Staff, as applicable, to:

- (a) supervise all golf tournaments authorized by the Board's Designated Representative and meet with the Board's Designated Representative to discuss tournaments and make recommendations on future tournament bookings;
- (b) subject to Section 3.4(b), provide Lessons within the Short Game Practice Area, Chipping and Putting Greens and Driving Range. The Professional will not, however, be entitled to provide Lessons elsewhere on the Golf Course without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld. All Lessons provided by the Professional will be provided to the same standards, or higher, as those provided by other golf professionals in British Columbia who are members of the CPGA, and at rates acceptable to the Board's Designated Representative and the CPGA in British Columbia;
- (c) ensure full, proper and co-ordinated use of the Golf Course, including by way of example only, the following:
 - (i) work in consultation with the Board's Designated Representative to establish and maintain an adequate system of starting times;
 - (ii) ensure that the Green Fees charged are those fees determined by the Board from time to time;
 - (iii) use reasonable efforts to organize, supervise and control play on the Golf Course to ensure the most orderly, progressive, safe and effective use of the Golf Course;
 - (iv) use reasonable efforts to supervise the conduct of all persons on the Golf Course;

- (v) use reasonable efforts to ensure that no person is permitted to play the Golf Course without being in possession of a valid green fee ticket (or equivalent), except for Board authorized play required to ascertain playing conditions and course maintenance, repair and improvement requirements;
- (vi) ensure that Booth, another CPGA Certified Employee of the Professional, or the Professional's Pro Shop manager or Asst. Manager is on location at the Golf Course at all times during which the Board makes the Golf Course open to the public;
- (vii) ensure that the Pro Shops and the Driving Range are open to the public from dawn until dusk on each and every day that the Board makes the Golf Course open to the public;
- (d) train its Staff sufficiently for them to operate the designated POS System(s);
- (e) appropriately monitor the POS System, and immediately report any malfunction of that system to the Board's Designated Representative and train its Staff sufficiently to take appropriate remedial measures by contacting and following the appropriate Board supplied resource if the system fails, which will include immediately implementing alternate (manual or other) measures to minimize any interruption to the normal operations of the Golf Course caused by any such malfunction;
- (f) be responsible for and supervise the rental and use of power carts and pull carts, except that the greenskeeper or Board's Designated Representative may direct the removal from the Golf Course of any or all such carts or limit the number of such carts that may be in use on the Golf Course at any particular time or from time to time if the greenskeeper or Board's Designated Representative, acting reasonably, and in consultation with the Professional, anticipates that the unrestricted use of such carts may damage the Golf Course;
- (g) co-operate and work closely with all Golf Course managers, greenskeepers and Board or City employees involved in the administration of Golf Course operations;
- (h) supply free of charge to each player using the Golf Course, a score card and pencil (it being understood that the Board will supply the score cards and pencils to the Professional, at the Board's expense);
- (i) not post any signs without the Board's prior written approval and not interfere with any signs that may be posted by the Board, which signs may, at the Board's discretion, set out the hours of operation of the Pro Shops and the Driving Range, as well as such other information as the Board may reasonably require to be posted;

- (j) not place, replace, install or bring onto the Golf Course any type of golf equipment, facility or apparatus of any type without the prior written consent of the Board's Designated Representative except for:
 - (i) Rental Equipment;
 - (ii) Driving Range Equipment; and
 - (iii) Merchandise.

3.4 Driving Range, Short Game Practice Area and Chipping and Putting Greens.
Subject always to Schedule E - *Grant of Licence*, the Professional:

- (a) will supervise and operate the Driving Range including ball picking, ball washing, operation of ball dispensers and general cleaning;
- (b) may give Lessons:
 - (i) on the Driving Range, but at no time may the Professional use more than 8 covered stalls simultaneously for that purpose;
 - (ii) on the Short Game Practice Area, and may exclude persons other than paying golf students from the Short Game Practice Area during such Lessons, if exclusive use of the Short Game Practice Area is reasonably necessary for any such Lesson, and if the Professional has received the prior written consent of the Board, which consent will not be unreasonably withheld; and/or
 - (iii) on the Chipping and Putting Greens, but only in common with the other patrons of the Golf Course,but for further certainty, may not give Lessons anywhere else on the Golf Course without the prior written consent of the Board, which consent may be arbitrarily withheld;
- (c) may appoint assistants to help the Professional give such Lessons and to operate the Driving Range;
- (d) will provide the equipment necessary for giving such Lessons and other equipment designated for the Professional's business;
- (e) will provide all equipment necessary for the operation of the Driving Range including all golf balls, tokens, mats, range yardage markers, ball baskets, ball storage containers, tees, ball picker, vehicle to tow the ball picker, gasoline for the ball picker, and other equipment necessary for ball picking, ball washing, ball and token dispensing and general cleaning, and will repair, maintain and replace that equipment, as a prudent owner of such equipment would do and as the Board's Designated Representative may reasonably require from time to time having regard to comparable standards of repair, maintenance and replacement at comparable golf courses and driving ranges;

- (f) will not install any equipment, machinery or signs on the Driving Range, Short Game Practice Area or Chipping and Putting Greens, except if the Board's Designated Representative gives prior written consent;
- (g) will sell golf ball rentals according to the following conditions:
 - (i) except where expressly authorized by the Board, enter all transactions regarding golf ball rentals concurrently in the POS System and in the applicable token/ticket delivery system (eg. 'Range Servant'), such that no tokens, tickets (or equivalent) are issued without the transaction having been entered in the POS System;
 - (ii) maintain meaningful, auditable records/reports of both aforementioned systems;
- (h) will maintain the ball dispensing machines and equipment and permit the same to be monitored at any time and from time to time, at the Board's sole discretion, by the Board's Designated Representative; and
- (i) will comply with the Board's requirements regarding the sale of, record keeping for, reporting on, control of and remittance of proceedings from, golf ball rentals, as such requirements may be revised by the Board from time to time.

3.5 Pro Shops and Driving Range Entrance Building. Subject always to Schedule E - *Grant of Licence*, the Professional will:

- (a) continuously staff the Main Pro Shop with at least two qualified employees of the Professional, all of whom must be bonded in accordance with the requirements set out in Schedule C, Section C3.0, and at least one of whom must have management experience, and in such a manner as to provide good quality customer service to the public, including the management of the Pro Shop Staff so as to guarantee that at least two of the Professional's employees are physically and continuously present in the Main Pro Shop at all times during the months of March through October, inclusive, except during the first hour after opening and the last hour before closing, during which excepted months and times at least one such employee must be present;
- (b) continuously staff the Driving Range Pro Shop with at least one qualified employee of the Professional, who must be bonded in accordance with the requirements set out in Schedule C, Section C3.0, and have management experience, and in such a manner as to provide good quality customer service to the public, including the management of the Pro Shop Staff so as to guarantee that at least one of the Professional's employees are physically and continuously present in the Driving Range Pro Shop at all times that the Driving Range Pro Shop is open to the public;

- (c) manage, operate and maintain the Pro Shops, keeping them well stocked and equipped at all times with Merchandise to a standard in keeping with current industry standards and the reputation of the Golf Course, and the Professional will pay all expenses arising out of or in connection with the management, operation and maintenance of the Pro Shops except to the extent that this Contract otherwise expressly stipulates;
- (d) determine, from time to time, the fees and other charges for use of the Rental Equipment including the rental rates for golf clubs, golf carts and push carts, at reasonably competitive commercial rates and subject to the Board's Designated Representative's prior written approval;
- (e) maintain the Pro Shops and the Driving Range Entrance Building in a clean and attractive condition, and according to such directives as the Board's Designated Representative may issue from time to time, including without limitation and by way of example only:
 - (i) keeping all windows, carpets, counters and other surfaces clean; and
 - (ii) supplying and replacing all light bulbs, it being understood that the Board's staff will assist in changing light bulbs that require the use of a ladder by supplying the use of a ladder and staff to stabilize the ladder for the Professional's Staff;
- (f) be responsible for any fines for false alarms, and alarm response call charges respecting the Pro Shops, the Driving Range Entrance Building and the Cart Storage Area;
- (g) acquire and provide to the Pro Shops such additional stock, including golf equipment and accessories for sale and rent as the prudent operator of a similar shop would do, or as the Board's Designated Representative may reasonably consider necessary or desirable from time to time;
- (h) make available for rental a minimum of 40 pull carts, each of which will be in good working order and presentable condition at all times;
- (i) make available for rental an appropriate supply of rental golf clubs to meet the needs of the public, all of which will be in good working order and presentable condition at all times;
- (j) make available for rental a minimum of 20 power carts, each of which will at all times be in good working order and presentable condition, and no older than 7 years;
- (k) not renovate or alter the Pro Shops, Driving Range Entrance Building or any other improvements on the Golf Course and Driving Range, except if the Board has given prior written consent; and

- (l) provide its own cash float and maintain a minimum float balance.

ARTICLE 4 FINANCIAL ARRANGEMENT

4.1 Compensation for Services. In consideration for the Services to be provided by the Professional, the Board will pay the Professional:

- (a) s.21(1)

- (b) s.21(1)

4.2 Gross Revenue. The Gross Revenue will be apportioned as follows:

- (a) s.21(1)

- (b) s.21(1)

4.3 Licence Fee and Other Charges. s.21(1)
s.21(1)

Where the Professional has rented power golf cart(s) additional to the Professional's normal inventory of power carts specifically for a particular tournament, the direct out-of-pocket cost to the Professional (as evidenced by the original third party invoices submitted to the Board) will be deducted from the Licence Fee.

The Professional will also pay to the Board, plus any applicable taxes, a percentage (currently 2% but subject to review and adjustment by the Board on an annual basis to coincide with fees set by the City's Treasury Services Department) of the Professional's Share of Gross Revenue and the Exclusions tendered using payment cards, on account of bank charges levied by card issuers such as, for example, Moneris (the "Bank Recovery Fee").

The Licence Fee and the Bank Recovery Fee will be paid by way of deduction from the Professional's Share of Gross Revenue, as set out in Section 4.4.

4.4 Payment to Professional. The Board will review the Professional's revenue reporting and cash reconciliations provided pursuant to Section 3.2(a) at regular

intervals and will determine the Professional's Share of Gross Revenue, the Licence Fee, the Bank Recovery Fee and the Driving Range Commission for the related period.

The Board will pay the Professional, subject to applicable taxes:

- (a) the Professional's Share of Gross Revenue and the related amount of taxes collected by the Professional;
- (b) the Driving Range Commission;
- (c) an amount equivalent to 100% of the Exclusions plus any related taxes; and
- (d) any overage in monies collected at the Pro Shop;

less:

- (e) the Licence Fee (adjusted for any deductions as contemplated by Section 4.3);
- (f) the Bank Recovery Fee; and
- (g) any shortage in monies that should have been collected at the Pro Shop,

within a reasonable period of time, and will make reasonable efforts to pay such amount to the Professional at a minimum once every 2 weeks, except during City holiday closure periods.

The amount of the Professional's Share of Gross Revenue paid is subject to the amount of funds deposited and received in the Board's bank account, meaning that over deposits will be paid out and shortages, including deposits of counterfeit money, will be recovered in the payment following discovery of the discrepancy.

For overages and shortages in monies collected at the Pro Shop, any net overages above shortages that have been paid/deducted over the course of the calendar year will be recovered by the Board in the last payment related to the calendar year's revenues.

ARTICLE 5 BOARD'S ROLE, RIGHTS AND RESPONSIBILITIES

5.1 Golf Course Fees. The Board will determine, and will consult with the Professional from time to time regarding the amount of the Green Fees and other charges for golf play on the Golf Course for all categories of golf, and for golf ball rentals at the Driving Range. The Board reserves the right to decide on the final fee structure for the Golf Course and Driving Range.

5.2 Right to Use Golf Course for Board Objectives. The Board reserves the right to utilize portions of the Golf Course from time to time for Board or Board-affiliated programs or promotions that support the objectives of the Board (eg. diversity, inclusivity, accessibility and growing the game), and the Professional will provide all

equipment reasonably required to facilitate such initiatives, PROVIDED that the Board will provide the Professional 30 days' notice of any such program or promotion and will take reasonable steps to lessen any adverse impacts to the Professional. For greater certainty, the Gross Revenue will be net of the 'free' portion of such programs or promotions, and the Professional will not be compensated for "lost revenue" as a result of any such programs or promotions.

5.3 Driving Range, Cart Storage Area, Short Game Practice Area and Chipping and Putting Greens. Subject always to Schedule E - *Grant of Licence*, the Board will:

- (a) at its sole cost and expense, repair and maintain, reasonable wear and tear excepted, the Driving Range structure, including fences, poles and nets, and maintain the grassed area, in a condition suitable for its use as a driving range, and make the Driving Range available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (b) repair and maintain the Cart Storage Area, including the building and pavement, in a condition suitable for its use as a power cart storage area, except for reasonable wear and tear, and make the Cart Storage Area available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (c) repair and maintain, reasonable wear and tear excepted, the soil and grass of the Short Game Practice Area and the Chipping and Putting Greens, and make such areas available during the Term to the Professional to the extent reasonably necessary for the provision of the Services;
- (d) supply heat, light, water and power to the Driving Range;
- (e) supply day to day electrical power for the Cart Storage Area (provided that any electrical upgrades will be the Professional's responsibility);
- (f) provide the POS System and related supplies for the operation of the Driving Range, such as, for example only, POS System hardware, computer hard drive and monitor, printer, stationery, receipt rolls and other related devices for the operation of the POS System, and will pay all system repair, maintenance and replacement costs; and
- (g) provide telephone or other data transmission lines to link up the POS System and the card reader as the Board's Designated Representative considers reasonably necessary, and be responsible for line rental, line repairs and the cost of card reader equipment.

5.4 Pro Shops and Driving Range Entrance Building. Subject always to Schedule E - *Grant of Licence*, the Board will:

- (a) provide, in the Golf Course clubhouse and Driving Range Entrance Building or elsewhere on the Golf Course, such space for the Pro Shops (including office space within the Main Pro Shop) as the Board's



Designated Representative considers necessary or desirable from time to time, and provide capital repair and maintenance to such spaces, subject to the Professional's obligations under Section 3.5;

- (b) provide capital repair and maintenance to the Driving Range Entrance Building, subject to the Professional's obligations under Section 3.5, as the Board's Designated Representative, acting reasonably, considers necessary or desirable from time to time;
- (c) supply, at its cost, such heat, light, electricity and telephone services (maximum 2 lines, local calls only) to the Pro Shops and the Driving Range Entrance Building as the Board's Designated Representative considers necessary or desirable from time to time, and will be responsible for the repair and maintenance of those services;
- (d) provide such an alarm system and anti-theft window/door hardware and other anti-theft related equipment for the Pro Shops and the Driving Range Entrance Building as the Board's Designated Representative considers necessary, and will be responsible for the repair and maintenance of that alarm system;
- (e) provide all equipment and supplies, such as, for example only, POS System hardware, computer hard drive and monitor, printer, stationery, receipt rolls, and other related devices for the operation of the POS System, and will pay all system repair, maintenance and replacement costs; and
- (f) provide the Professional with adequate training to enable it to train its Staff sufficiently for them to operate the POS System. It is understood that only agents authorized by the Board's Designated Representative will have the higher level cash register keys that will enable the reading of special sales reports and price changing.

ARTICLE 6 FINANCIAL REPORTING BY PROFESSIONAL

6.1 Records and Financial Statements. The Professional will:

- (a) maintain reasonable and proper records (including manual records if and whenever the Board's POS System malfunctions) concerning the use and operation of the Golf Course, including statistical data concerning the numbers and types of users and customer behaviour and needs, as well as revenue data including a full inventory of Personal Property, books of account and documents and receipts, all of which records will be in form and substance satisfactory to the Board's Designated Representative, and the Professional will make such records available for inspection by the Board's Designated Representative at such times as the Board's Designated Representative may require, and will promptly provide copies of same upon request;

- (b) reconcile all shortages and overages on a daily, weekly, monthly and annual basis, and upon request, provide copies of reconciliation reports to the Board's Designated Representative, which reports must be in form and substance satisfactory to the Board's Designated Representative;
- (c) allow the Board, at its cost, subject to paragraph (d), to audit or cause to be audited, the books, records, reports and accounts of the Professional with respect to all aspects of use and operation of the Golf Course;
- (d) promptly pay the amount determined by the Board's audit to be owing, with interest at the Prime Rate plus 10% per annum, as calculated by the Board or its auditor for the period between the date such payment should have been made to the date of payment to the Board, where the Board's audit has determined that the Professional has reported less Gross Revenue than actually received or has remitted less money than the Professional is obligated to remit or has received a greater Professional's Share of Gross Revenue or Driving Range Commission than the Professional is entitled to receive under this Contract; PROVIDED that if, in carrying out its audit, the Board concludes that there are insufficient records to determine the actual amount owing, the Board or its auditor will provide its best, reasonable estimate of the amount owing and that will be conclusively deemed to be the actual amount owing, and PROVIDED further that the Professional will pay the Board all of the costs of such audit whenever the audit discloses such an under-reporting, under-remittance or over-payment;
- (e) provide audited financial statements, with supporting schedules as requested by the Board, within a reasonable period of time if so requested by the Board's Designated Representative; and
- (f) retain all such records, information and statements during the Term and for 7 years after the expiry or earlier termination of the Term, and, after the expiry or earlier termination of the Term, will deliver such records, information and statements to the Board's Designated Representative within 7 calendar days of any request for the same by the Board's Designated Representative.

ARTICLE 7 INSURANCE, BONDING, WCB, NATURE OF RELATIONSHIP

7.1 Insurance/Bonding/WCB. The Professional will comply at all times with the insurance, bonding and Workers Compensation Board provisions set out in Schedule C - *Insurance/Bonding/WCB Requirements*. The insurance/bonding/WCB requirements set out in this Contract do not limit any insurance/ bonding/WCB requirements otherwise imposed on the Professional or the Staff by any applicable laws. It will be the sole responsibility of the Professional to determine what additional insurance/bonding/WCB coverage, if any, is necessary or advisable for the Professional's or its Staffs' own protection and/or to fulfill the Professional's

obligations under this Contract. All insurance/bonding/ WCB will be provided and maintained by the Professional at the Professional's own expense.

7.2 Relationship. The Professional acknowledges and agrees that none of its Staff is an employee of the Board. Accordingly, the Staff are not entitled to any employment benefits of any kind from the Board, and the Board is under no obligation to make remittances on behalf of, or on account of, the Professional (or any of the Professional's employees) to Canada Revenue Agency under the *Income Tax Act* (Canada) in respect of Canadian Pension Plan or Employment Insurance. The Professional further acknowledges that benefits such as, by way of example only and without limitation, Medical Services Plan, extended health care plan, dental services plan, life insurance, retirement pension benefits, long term disability coverage, sick leave, Workers Compensation benefits, vacation pay, employee savings plan benefits or gratuity benefits, are expressly excluded from this Agreement and will not be provided by the Board to the Staff. The Professional further agrees that the Board is not responsible to make and will not make during the Term any Workers' Compensation Board remittances, *Excise Tax Act* (GST) remittances or any other statutory remittances required to be made by the Professional in respect of the payments received by the Professional under this Contract. The Professional now indemnifies the Board for any and all penalties, interest and arrears imposed on the Board in the event that the Professional breaches its obligations under this Contract to make all such remittances whether or not any court of law subsequently determines that the legal relationship between the Board and Professional is other than independent contractor. Upon request, the Professional will provide the Board with satisfactory evidence of compliance with all statutory remittance requirements.

ARTICLE 8 INDEMNITY

8.1 Indemnity. The Professional will indemnify and save harmless each of the Board and City, and their respective officials, officers, employees, contractors and agents (collectively, the "Board and City"), from and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgements, injunctions, arbitrations, investigations, demands, claims, losses, damages, consequential damages, penalties, costs, and expenses, including legal expenses on a full indemnity basis, (collectively, "Losses") arising out of or in connection with any breach of the Professional in observing or performing the Professional's obligations under this Contract, any activities under the control or supervision of the Professional or its Staff for which the Professional is responsible under this Contract, any damage to property or injury or death to person on or about the Golf Course arising out of or in connection with the rights or duties of the Professional under this Contract, or any other matter or condition that would not have arisen or happened except for the existence of this Contract (including, for greater certainty, loss or theft by Staff), except to the extent any such Losses arise from any breach of the Board in observing or performing any of its obligations under this Contract. This indemnity will survive the expiry or earlier termination of the Term and this Contract.

For further certainty, but without in any way limiting the intentionally general scope of this indemnity and by way of example only, this indemnity will be interpreted and

applied so as to obligate the Professional to indemnify the Board and City with respect to any lawsuits arising from any person injured by any errant golf balls hit by:

- (a) any golfer using the Driving Range; or
- (b) anyone using the Short Game Practice Area or Chipping and Putting Greens who is a customer, Staff or other contractor of the Professional while the Professional or the Staff are providing Lessons and present for supervision,

and will be further applied and interpreted so as to exempt and exclude from such indemnity any lawsuits arising from errant golf balls hit by any other persons or golfers using any other part of the Golf Course.

ARTICLE 9 ADVERTISING

9.1 Advertising. Under no circumstances may the Professional or its Staff:

- (a) communicate in any manner with the media with regard to the operation of the Golf Course, without the prior consent of the Board's Designated Representative;
- (b) advertise any of their goods or services with respect to the Golf Course, without the written prior consent of the Board's Designated Representative;
- (c) advertise on the Golf Course, on social media, or in print, in any manner whatsoever, any goods or services of the Professional or of any other person or entity, without the prior consent of the Board's Designated Representative; or
- (d) use any official marks, emblems, logos, badges, trade names, trademarks and/or domain names of the City, the Board and/or their respective affiliates, including, without limitation, the name "McCleery Golf Course" or any variation thereof (collectively, the "City Marks"), without the prior written consent of the Board's Designated Representative, and shall not apply for or register any domain name or other proprietary or statutory rights for the City Marks or for any similar marks. The City Marks shall remain the exclusive property of the Board, and any use thereof by the Professional (subject always, as set forth above, to the prior consent and approval of the Board), shall enure exclusively to the benefit of the Board, and the Professional shall not contest the Board's ownership of the City Marks, or oppose its actions to acquire, register or maintain its rights in the City Marks.

The Board will not involve the Professional, nor use the Professional's name or business in any advertising or promotions, without the prior written consent of the Professional.

ARTICLE 10 ASSIGNMENT

10.1 Restrictions on Assignment by Professional and Booth. Despite any other term of this Contract, the Professional and Booth may not:

- (a) assign, transfer or otherwise dispose of any of their respective rights or obligations under this Contract or any interest in this Contract (except for the delegation of those duties which this Contract expressly contemplates will be delegated to the Professional's Staff);
- (b) further to Section E.13 of Schedule E, sub-license or otherwise permit access to or use of the Driving Range, Driving Range Entrance Building, Pro Shops, Short Game Practice Area, Chipping and Putting Greens, Cart Storage Area, Classroom or any part of any of them, or any other part of the Golf Course, for any purpose (except to provide access to the public for the purposes expressly contemplated by this Contract); or
- (c) conduct any commercial or other activities on the Golf Course except as this Contract specifically requires or permits;

without the prior written consent of the Board's Designated Representative, which consent the Board's Designated Representative may arbitrarily withhold.

ARTICLE 11 DEFAULT AND TERMINATION

11.1 Default by Professional or Booth. Subject to Section 11.2, default (a "Default") will occur under this Contract if the Professional or Booth breaches any of its obligations under this Contract and the breach is not cured within 15 days after written notice from the Board specifying the nature of the breach.

11.2 Limited Extension for Non-Monetary Breaches. Despite Section 11.1, if the breach is not a breach of an obligation to pay money and is of a nature that:

- (a) with reasonable resources and diligence, would require more than 15 days to remedy, then the Professional or Booth, as applicable, will not be in Default if the Professional or Booth, as applicable, immediately after receiving notice of the breach, embarks on a diligent and continuous remedy of the breach; or
- (b) is not capable of being remedied (such as, by way of example only, a breach of an obligation not to disclose proprietary information) and the breach will not have a materially adverse effect on the Board, then the Professional will be in Default but the Board's remedies for such a Default will expressly exclude the right to cancel this Contract pursuant to Section 11.3(e).

For further certainty, paragraph (b) will not apply to any breach by the Professional of an obligation to provide financial information and under no circumstances (except an Unavoidable Delay) will a failure to provide such financial information be treated as a

breach not capable of being remedied, even where the Professional has through its own acts or omissions put itself in a position where it cannot provide such information.

11.3 Default Remedies. If a Default occurs, the Board may, in any order or combination that it chooses, and without prejudice to all of its other rights and remedies both at law and in equity, do any one or more of the following:

- (a) demand payment of any amounts due and unpaid;
- (b) sue the Professional or Booth, as applicable, for the amount of money due;
- (c) take proceedings or any other legal steps to compel the Professional or Booth, as applicable, to comply with this Contract;
- (d) where the Professional or Booth, as applicable, is in breach of an obligation to properly perform work or carry out any other obligation in respect of this Contract, the Board may remedy the breach and the Professional will then promptly reimburse the Board's commercially reasonable costs of doing so plus 20% on account of the Board's associated administrative costs; and
- (e) subject to Section 11.2(b), cancel this Contract as further set out in Section 11.4.

11.4 Termination by Board for Cause. If:

- (a) the Professional or Booth is in Default (but expressly excluding the type of Default described in Section 11.2(b));
- (b) Booth becomes ill or incapacitated to the extent that, in the Board's Designated Representative's opinion, the Professional is or will be unable to observe or perform the Professional's obligations under this Contract for a continuous period of 30 days or any period which exceeds, in the aggregate, 60 days in any given 365 day period;
- (c) the Professional or Booth becomes bankrupt or insolvent;
- (d) in the Board's Designated Representative's opinion, Booth exhibits dishonesty or conduct unbecoming a golf professional who is a member of the CPGA;
- (e) in the Board's Designated Representative's opinion, the Professional exhibits continuing inattention to, or neglect of, the Professional's obligations under this Contract; or
- (f) Booth is suspended by the CPGA,

the Board's Designated Representative may deliver notice to the Professional terminating this Contract, and such termination will take effect on the date the Professional is deemed to have received that notice. If Booth dies, this Contract will

terminate as of the date of death. However, the Board's Designated Representative may discuss with Booth's executor/executrix and the Staff the possibility of a temporary arrangement with the Board to continue providing services similar to the Services until such time as the Board completes a new Request for Proposal process and retains a new golf professional to manage the Golf Course.

11.5 Termination Without Cause by Board or Professional With 1 Year Notice. Either the Board or the Professional may deliver 1 year notice to the other terminating this Contract without cause, and such termination will take effect on the 365th day after the Professional or the Board, as the case may be, is deemed to have received that notice. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

11.6 Termination Without Cause by Board With Fees in Lieu of Notice. Despite Section 11.4 or 11.5, the Board may terminate this Contract without cause or prior notice on giving a written notice to such effect which notice will be effective immediately upon personal delivery of the notice to the Professional or the date such notice is deemed to be delivered, whichever is earlier, but in such a case, the Board will pay the Professional a sum equivalent to the out of pocket costs incurred by the Professional as a result of such early termination, up to a maximum of \$100,000, on or before the 30th day following the date upon which the Professional has provided to the Board sufficient supporting documentation. However, in no event will the Board's Designated Representative's breach of this Section 11.6 in paying the required amount when due, void or nullify the legal effect of the notice of immediate termination unless it is established by the arbitrator that the Board's Designated Representative was not acting in good faith. Any notice given by the Board's Designated Representative will take effect as a notice given by the Board.

11.7 Consequences of Termination or Expiry.

- (a) The Board may exercise its Option to Purchase by giving the Professional a written notice stating that it is exercising the Option to Purchase and specifying the Personal Property that the Board intends to purchase, as follows:
 - (i) along with the notice required to be delivered pursuant to Section 11.4 or 11.6; or
 - (ii) six (6) months before the expiry of the notice period under Section 11.5; or
 - (iii) six (6) months before the expiry of the Term.
- (b) As of the effective date of termination under Section 11.4, 11.5 or 11.6, or expiry of the Term:
 - (i) the Board will have no further obligation to pay any compensation under Section 4.1 to the Professional, nor will the Professional have any further obligation to pay any compensation under Section 4.3 to the Board, such amounts will be pro-rated to the termination or expiry date, the Board and Professional

- will settle their accounts promptly (and in any event within 30 calendar days), and, in doing so, the Board may deduct from any compensation it then owes to the Professional any money the Professional owes to the Board;
- (ii) each party will pay any money it owes to the other party promptly, and in any event within 30 calendar days;
 - (iii) the Board will have a lien and charge on all Personal Property that is not Purchased Personal Property until the Professional has paid any money it owes to the Board (including without limitation any storage and administrative fee amounts payable pursuant to paragraph (v)), and if the Professional fails to pay that money to the Board, the Board may seize and sell the Personal Property that is not Purchased Personal Property to satisfy the debt;
 - (iv) the Professional will have no further right to provide the Services to the Board;
 - (v) subject to paragraph (iii), the Professional will promptly remove all of the Personal Property that is not Purchased Personal Property from the Golf Course as of the date of termination or expiry of the Term, along with all of its other personal property including equipment, supplies, furnishing and materials (but excluding any of the foregoing supplied by the Board and excluding any trade fixtures unless the Board's prior consent has first been obtained) and leave the Pro Shops, Driving Range Entrance Building and Cart Storage Area in a sanitary, neat, safe and empty condition. If the Professional fails to remove any of such personal property in accordance with the foregoing requirements, a storage and administrative fee will be payable by the Professional to the Board equal to 2% of the fair market value of such items for each calendar day that the Professional is in breach of the Professional's obligation to remove such items from the Golf Course. The Board will have no obligation to release such items to the Professional until the applicable storage fee is paid in full, and if the Professional fails to remove the requisite items within 45 days after the termination or expiry date of the Contract, all of such remaining items then remaining on the Golf Course will become the absolute property of the Board without payment of compensation to the Professional, and the Professional will execute such documents and do such things as the Board may reasonably require to effect the transfer of title, risk and possession of such remaining items to the Board.

**ARTICLE 12
ARBITRATION**

12.1 Certain Remedies Independent of Arbitration Proceedings. Except for those disputes specifically referenced in Section 12.2(a) or elsewhere in this Contract, all disputes arising under this Contract will be determined by the courts of British Columbia in accordance with British Columbia law.

12.2 Arbitration Proceedings

- (a) Any dispute as to the correctness of an audit conducted pursuant to Section 6.1(d)6.1(c) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.212.1.
- (b) Any dispute as to the correctness of a chartered professional accountant's or other asset valuator's determination made pursuant to paragraph (f) of Section D.3 of Schedule D - Option to Purchase Golf Course Personal Property - will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.2.
- (c) Any dispute as to the calculation of the Board's costs pursuant to Section 11.3(d) will be determined by arbitration in accordance with the terms of reference set out in that Section and this Section 12.2.
- (d) In this Contract, "determined by arbitration" means arbitration conducted in accordance with the *Arbitration Act* (British Columbia), and the following procedures:
 - (i) only one arbitrator will be utilized, and the arbitrator must be a chartered professional accountant who is a member in good standing with the Organization of Chartered Professional Accountants of British Columbia or an accountant with a recognized accounting designation acceptable to the Board who is at arm's length to the Professional and the Board. The Board will select the arbitrator within 5 days of the notice to arbitrate and then provide the Professional with the selected arbitrator's name, place of business or employment, and reasonably detailed resume or outline of recent professional experience. The Professional will then have 10 calendar days to review the information supplied by the Board and to confirm or dispute the Board's choice for arbitrator. Within 5 days of a request to do so, the arbitrator must disclose to the Professional all material information about his/her credentials, possible conflicts of interest and biases. If the Professional elects to contest the appointment, the Professional must make application to court seeking to remove the arbitrator on the basis of conflict of interest, bias or incompetence and each party will pay their own legal costs subject to any order as to costs made by the court;

- (ii) the arbitration will be conducted in the City of Vancouver;
- (iii) the cost of the arbitration and responsibility therefor will be as determined by the arbitrator, subject always to the specific terms of this Contract.

ARTICLE 13 UNAVOIDABLE DELAY

13.1 Unavoidable Delay. Subject as hereinafter provided, except for the performance of obligations to pay money, time periods for the Board's, the Professional's and Booth's performance under this Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Notwithstanding the foregoing, in the event of an Unavoidable Delay:

- (a) caused by a strike, lockout or other labour dispute involving the Board's employees and which results in the Golf Course being closed; or
- (b) other than the type referred to in paragraph (a) which results in the Golf Course being closed for more than 30 consecutive days, then from the 31st day of the closure until the re-opening of the Golf Course,

the Professional will be relieved of its obligations to provide the Services or the payments pursuant to Section 4.3 and the Board will be relieved of its obligations to pay the Service Fee and provide the Licence for the period of such closure.

ARTICLE 14 OVERHOLDING

14.1 Automatic Renewal. Where the Professional continues to provide and perform and the Board continues to accept Services pursuant to this Contract following the expiry of the Term (and the Professional has not exercised a right of renewal), then this Contract will be deemed to have been renewed on the same terms and conditions as before except that the Term will be deemed to be year to year, and may be cancelled by either party on 9 months' prior written notice.

ARTICLE 15 MISCELLANEOUS

15.1 Parties' Intention. The Professional, Booth and the Board acknowledge and agree that they will act in good faith in carrying out the spirit and intent of this Contract and will do all things and take all steps as may be reasonably required to give effect to their obligations under this Contract. For further certainty, where in this Contract the Board, Booth or the Professional is given a right to make a determination or to grant or withhold the consent or permission to anything, the Board, Booth or the Professional will act reasonably in doing so except that where the Board is expressly granted the right to make a determination in its "sole discretion" or "arbitrarily", the Board now reserves the right to act unreasonably and arbitrarily provided always that it acts in good faith.

15.2 Surviving Obligations. Neither the termination of the engagement nor the expiry of the Term will void or terminate any obligations of the Professional, Booth or the Board, which by their nature are intended to survive such termination or expiry. **Delegation of Authority.** In addition to all rights and obligations expressly delegated by the Board under this Contract, the Board may further delegate all or any of its rights or obligations under this Contract to the General Manager of the Board or the Board's Designated Representative, provided that such delegation shall not relieve the Board of its obligations herein unless otherwise expressly stated.

15.4 Costs. The Professional will bear all the costs of observing or performing the Professional's and Booth's obligations and exercising their respective rights under this Contract, and the Board will bear all the costs of observing or performing its obligations and exercising its rights under this Contract, unless this Contract otherwise specifies.

15.5 Interest on Arrears. Whenever any amount payable under this Contract by either party is in arrears, such amount will bear interest at the Prime Rate plus 3% per annum calculated monthly, not in advance, from the date due until paid, except where expressly otherwise stipulated (such as in Section 6.1(d)).

15.6 Notice. Any notice, approval, request, or demand required or permitted under this Contract must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia or by personal service:

- (a) In the case of a notice for the Board, addressed to:

City of Vancouver
c/o Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6J 1Z4

Attention: General Manager

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: Chief Purchasing Official

- (b) In the case of a notice for the Professional or Booth, addressed to:

Muncie's Golf Shop Ltd.
7188 MacDonald Street
Vancouver, British Columbia
V6N 1G2

Attention: Magnus Kennedy Booth

or to:

Magnus Kennedy Booth
3737 Clearbrook Road
Abbotsford, British Columbia
V2T 5A7

15.7 Continuing Effect. This Contract will enure to the benefit of and bind the Board and its successors and assigns and the Professional and Booth and their respective successors and permitted assigns.

15.8 Governing Laws. The laws of British Columbia will govern the interpretation and enforcement of this Contract, and each party hereto accepts the jurisdiction of the courts of British Columbia.

15.9 Joint and Several. The Professional and Booth shall be jointly and severally liable for all obligations of the Professional and Booth under this Contract.

15.10 Severability. If a court or arbitrator finds any provision of this Contract invalid, illegal or unenforceable, it will be severed from this Contract and the remainder of the Contract will be enforceable.

15.11 Time of the Essence. Time will be of the essence of this Contract, and if any party hereto expressly or impliedly waives that requirement, that party may re-instate it by delivering notice to the other.

15.12 Waiver. The fact that any party hereto waives a default is not to be construed to mean that that party waives any other default.

15.13 Amendments. No amendment to this Contract will have any effect unless it is in writing, and each party hereto has signed it.

15.14 Entire Agreement. This Contract represents the entire agreement between the parties hereto concerning the subject matter of this Contract, and there are no representations, warranties or agreements other than those expressed in this Contract.

15.15 No Derogation. Nothing expressly set out in or implied by this Contract will prejudice, abrogate or affect the rights and powers of the Board or the City in the exercise of its functions under any public or private statute, bylaw, order or regulation, all of which may be fully and effectively exercised as if the Board had not signed and delivered this Contract to the Professional and Booth.

To witness this Contract, each of the Board, the Professional and Booth have signed it as of the Contract Date.

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A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be the initials 'MB'.

GOLF PROFESSIONAL SERVICES CONTRACT - McCleery

CITY OF VANCOUVER as represented by its
BOARD OF PARKS AND RECREATION

Per: 
General Manager

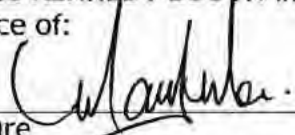
CITY OF VANCOUVER

Per: 
Chief Purchasing Official

MUNCIE'S GOLF SHOP LTD.

Per: 
Authorized Signatory

SIGNED, SEALED AND DELIVERED by
MAGNUS KENNEDY BOOTH in the
presence of:


Signature

Mary Cordero-Ma
Name

2099 Beach Ave Van. Bc
Address

Clerk II
Occupation

MAGNUS KENNEDY BOOTH

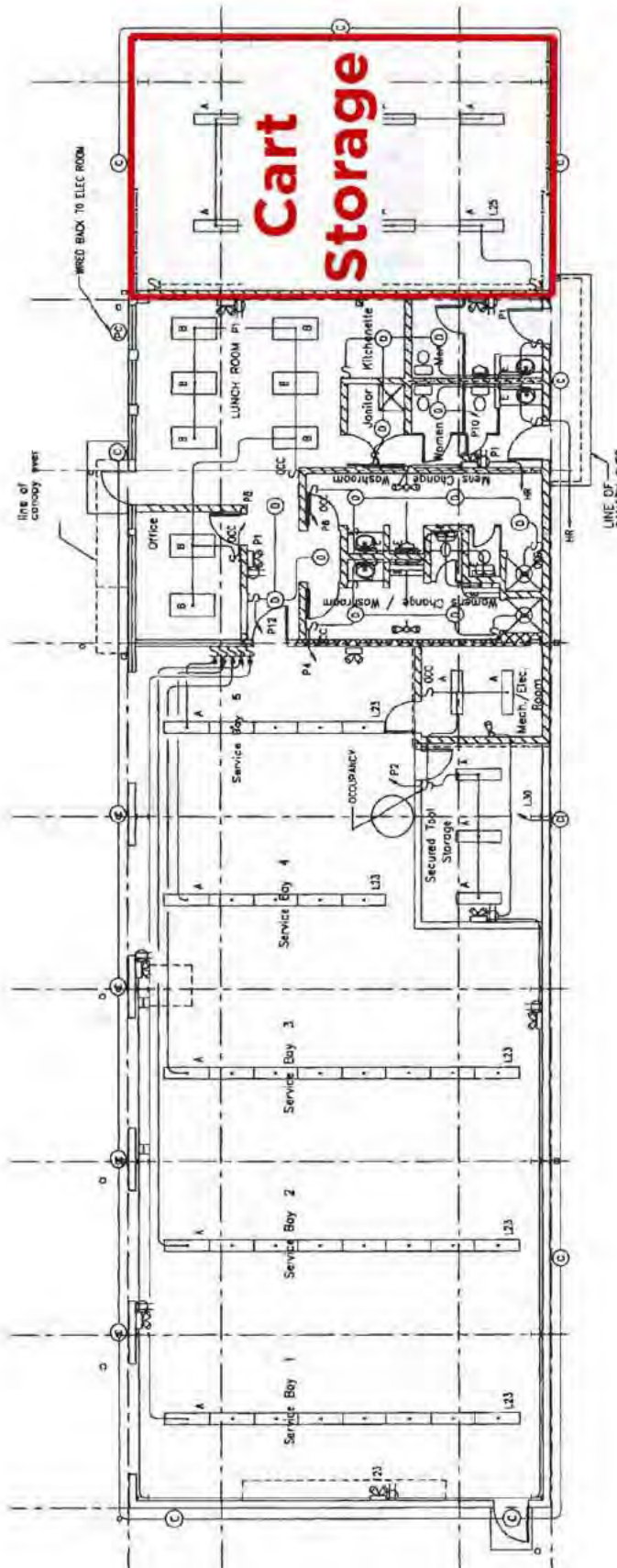
This is the signature page of the Golf Professional Services Contract for McCleery Golf Course among the City of Vancouver as represented by its Board of Parks and Recreation, Muncie's Golf Shop Ltd. and Magnus Kennedy Booth dated January 1, 2019.

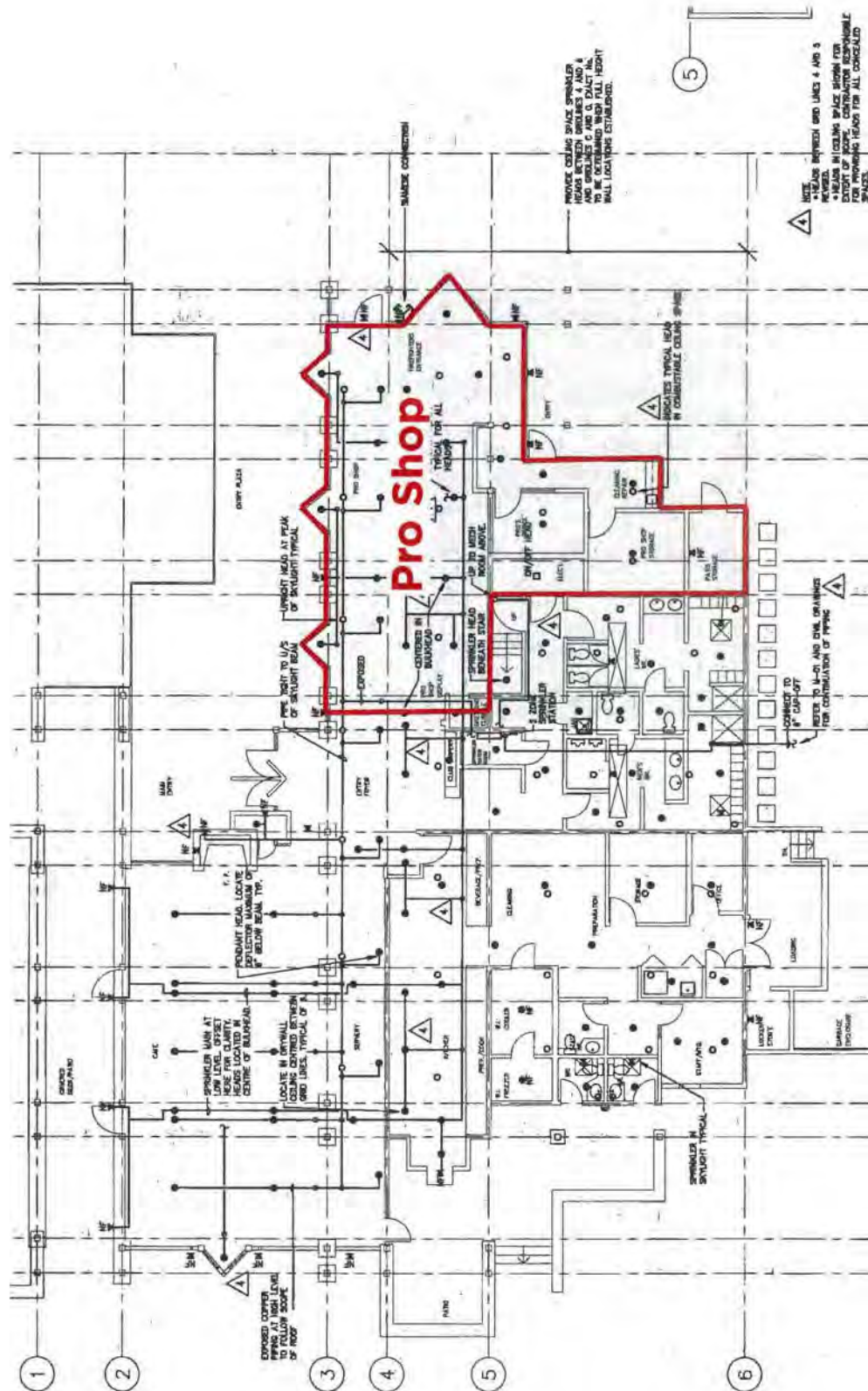
SCHEDULE A

PLANS OF DRIVING RANGE, SHORT GAME PRACTICE AREA, CHIPPING AND PUTTING GREENS, PRO SHOPS, DRIVING RANGE ENTRANCE BUILDING AND BALL & CART STORAGE AREAS

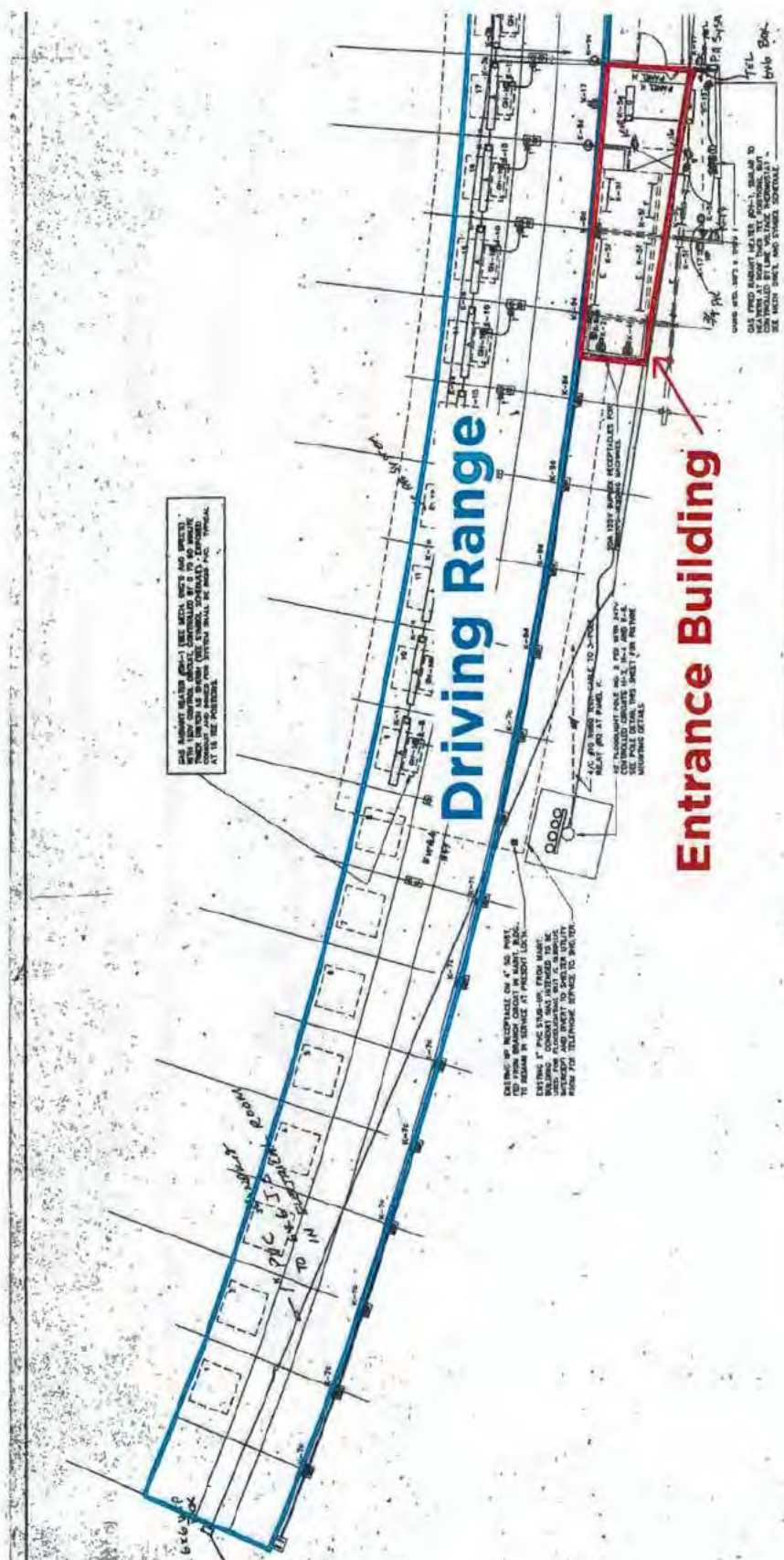
Schedule A - Usage Areas - McCleery Golf Course











SCHEDULE B

CUSTOMER SERVICE DUTIES

B.1 Customer Service & Feedback Programs. The Board's Designated Representative may during the Term conduct customer feedback evaluations through monthly and year end surveys, secret shopping programs and surveying through social media, newsletters, POS Systems and the Golf Course App. The criteria used in the surveying may be modified by the Board's Designated Representative from time to time, acting reasonably, and having regard to any increased standards of customer service within the industry for golf courses similar in caliber to the Golf Course. The Board's Designated Representative may during the Term provide customer service standards and expectations, and if so provided, the Professional will be expected to implement and deliver them as part of the Golf Course management team.

B.2 Professional Participation & Customer Service Commitment. The Board expects the Professional to actively participate in all customer service & feedback programs. The Professional will provide recommendations and feedback to enhance the service offering. The Professional will participate in bi-monthly team meetings as a part of the Golf Course management team. As required, the Professional will meet with the Board's Designated Representative to review results of surveying programs and discuss the areas, if any, of improvement which can be made to services offered by the Professional. The Professional will make all commercially reasonable efforts to implement the recommendations and improvements agreed upon with the Board's Designated Representative in a timely manner.

B.3 Annual Performance Review. The Board may at its option perform its own annual review of the Professional's Services, and within 10 calendar days of any request to do so, the Professional will meet with the Board's Designated Representative to review and discuss same, following which the parties will carry out the same procedure with respect to such review and meeting as is set out in Section B.2.

SCHEDULE C

INSURANCE/BONDING/WCB REQUIREMENTS

C1.0 General:

- C1.1 General Scope/Policy Limit Requirement - Without limiting any of its obligations or liabilities under this Contract, the Professional and Professional's Staff will obtain and continuously carry during the Term, the following insurance/bonding/WCB coverages with minimum limits of not less than those shown in the respective items set out below.
- C1.2 The Professional Solely Liable for Premiums/Deductibles - The Professional will pay all premiums and deductible costs for all insurance/bonding/WCB required to be effected under this Contract, provided always that under no circumstances does the payment of such premiums give the Professional any interest in the proceeds of such insurance/bonds or any control over such policies as they relate to the Board's interests.
- C1.3 Insurer Requirements - All policies/bonds must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *A.M. Best Rating Guide on Property and Casualty Insurance Companies*, or otherwise acceptable to the Board's Director of Risk Management.
- C1.4 Director of Risk Management Approval Required - All bonds and insurance policies must be in a form acceptable to the Board's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- C1.5 Insurer Notice Requirements - All insurance policies must provide the Board with 30 days' prior written notice of either an insurance policy cancellation or that the insurance be endorsed to reduce the limit of liability. Notice must identify the Contract title, number, policy holder, and be delivered in accordance with Section 15.6.
- C1.6 Waiver of Subrogation - All insurance policies where the insurer could under any circumstances have any claim by subrogation against the Board, City or their officers, officials, employees and agents, must contain a clause that waives the insurer's right of subrogation against the Board, the City and their respective officers, officials, employees and agents.
- C1.7 Board Requirements Not Exhaustive - The Professional and each of the Professional's Staff will provide at its own cost any additional insurance/bonding which it is required by any applicable laws to provide or which it considers necessary.
- C1.8 Insurance Requirements Independent of Other Covenants - Neither the providing of insurance or bonding by the Professional in accordance with these requirements nor the insolvency, bankruptcy or the failure of any insurance company to pay any subsequent claim will be held to relieve the Professional

from any other provisions of this Contract with respect to the liability of the Professional or otherwise.

- C1.9 All Coverage Primary - The insurance and bonding coverage will be primary insurance as respects the Board and the City. Any insurance or self-insurance maintained by or on behalf of the Board, the City or their respective officers, officials, employees or agents will be excess of this insurance and will not contribute with it.
- C1.10 The Professional Duty of Good Faith - The Professional will properly disclose all risks in each insurance/bond application, ensure that the Professional does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers, underwriters and sureties.
- C1.11 Board Remedy on Default If at any time the Professional fails to provide a bond, certificate of insurance or certified copies of all insurance policies as required in Section C2.1, the Board may (but is not obligated to or liable for the manner in which it does so), effect such insurance or bond on behalf of the Professional and the cost of doing so will be paid by the Professional to the Board upon request and, in any event, within 5 calendar days of such a request.
- C1.12 Overall Limit on Deductibles - Except where a specified limit of deductibility is expressly permitted in this Contract, the insurance policy must provide coverage to the Professional without payment of any deductible in excess of \$5,000, as adjusted over the Term to reflect any increase in the Consumer Price Index (Vancouver - All Items) as published by Statistics Canada between the commencement date of the Term and the date on which the Professional obtains the applicable insurance policy. Where the Professional is unable (in its sole discretion) to obtain insurance having a deductible no greater than \$5,000 (as adjusted pursuant to the prior sentence), the Professional may obtain insurance with a higher deductible but only if the Professional first delivers to the Board a Letter of Credit having a limit of the difference between \$5,000 and the higher deductible. In the event of any loss under that policy and the Professional being unable to pay the deductible, the Board will be entitled to draw down on the Letter of Credit to pay all or any portion of the deductible that the Board, in its sole discretion, considers advisable.

C2.0 Evidence of Insurance/Bonds:

- C2.1 The Professional to Provide Policy/Certificates - Prior to the Board signing this Contract, the Professional will provide the Board with evidence of all required bonding and insurance to be taken out in the form of a detailed Certificate of Insurance, in form and contents acceptable to the Board, supported by a certified copy of each policy and bond. The Certificate of Insurance must identify this Contract's title, Contract date, policy holder and contract subject-matter and must not contain any disclaimer whatsoever. At all times, and from time to time during the Term, the Professional agrees to comply with all of its obligations under such bonds and policies. Proof of bonds and insurance, in the form of a Certificate of Insurance, in form and contents acceptable to the

Board, or certified copies of all insurance policies and bonds will be made available to the Board's Director of Risk Management at any time upon request.

- C2.2 Obligations Extend to Staff - The Professional will provide in all agreements with the Professional's Staff clauses in the same form as those set out in this Schedule C. Upon request, the Professional will deposit with the Board's Director of Risk Management detailed certificates of insurance for the policies the Professional has obtained from the Professional's Staff and a copy of the insurance requirements from each Staff's contract with the Professional, unless the Board agrees otherwise in writing.

C3.0 Crime Insurance/Fidelity Bond

- C3.1 Crime Insurance/Fidelity Bond - The Professional will maintain crime insurance or a fidelity bond protecting the Board, the City and the Professional against all claims for loss of money, securities and property arising out of any fraudulent or dishonest acts committed by the Professional, its employees, any third party, or an unknown third party.

- C3.2 Coverage Limits - The limit of the Professional's crime insurance or fidelity bond must be not less than \$50,000 per occurrence.

- C3.3 Required Term of Bonds - The insurance/bond must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term and for 2 years following the expiry or sooner termination of the Term.

- C3.4 Required Form of Bonds - The insurance/bonds must be issued in a form and on terms and conditions approved by the Board's Director of Risk Management.

C.4 Commercial General Liability Insurance:

- C4.1 Commercial General Liability Insurance - The Professional will maintain commercial general liability insurance to protect the Professional, the Professional's Staff, the Board, the City, and their respective officers, officials, employees and agents against claims for bodily injury including death, personal injury, advertising liability, products liability and completed operations, and property damage which may arise under this Contract.

- C4.2 Commercial General Liability Policy Limit - The limit of commercial general liability insurance must be not less than \$5,000,000 per occurrence inclusive for bodily injury including death, personal injury, advertising liability, property damage losses and loss of use of property and in the aggregate with respect to products liability and completed operations.

- C4.3 Required Period of Commercial General Liability Coverage - The commercial general liability insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.

- C4.4 Required Extensions of Commercial General Liability Coverage - The commercial general liability policy of insurance will:

- (a) be on an occurrence form,
- (b) add the Board, the City, and their officials, officers, employees and agents as additional insureds,
- (c) contain a cross-liability or severability of interests clause, and
- (d) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

C5.0 Motor Vehicle Liability Insurance

- C5.1 Scope, Limit and Duration Requirements - Motor vehicle liability insurance for owned and leased licensed vehicles with limits of not less than \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Where the policy has been issued pursuant to a government operated automobile insurance system, the Professional will provide the Board's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Professional and the Professional's Staff.

C6.0 [intentionally deleted]

C7.0 All Risk Property Insurance

- C7.1 All Risk Property Insurance - The Professional will maintain an all risks property insurance policy covering the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.
- C7.2 All Risk Property Policy Limit - The all risks property insurance must have a policy limit of not less than the full replacement cost value of the Professional's Personal Property and property of every description owned by the Professional and others for whom the Professional may have assumed responsibility and located on the Golf Course from time to time.
- C7.3 Required Period of All Risks Property Insurance Coverage The all risks property insurance must be in effect for the period of time commencing with the start of the Term and continuing for the entire duration of the Term.
- C7.4 Required Scope of All Risks Property Coverage The all risks property insurance must cover loss or damage caused by fire, earthquake, flood and other perils customarily provided on an "All Risk (Broad Form) Property Insurance" form and must contain the following extensions of coverage:
- (a) blanket building by-laws coverage (ie. where the insurer indemnifies the insured in respect of loss caused by an insured peril but arising indirectly from the enforcement of a by-law (or any other law) requiring, for example

- (i) the undamaged portion of a building or property to be torn down or removed, or
 - (ii) requiring the repair or replacement work to be performed to different standards than previously existed (eg. installing sprinklers), and
 - (b) accidental breakdown of boilers and pressure vessels including heating, cooling, electrical and mechanical equipment.
- C7.5 Prior Approval Required For Co-Insurance - Any "stated amounts co-insurance clause" or "percentage type co-insurance clause" must be in a form specifically approved in writing by the Board's Director of Risk Management.
- C7.6 Loss Payee Clause - The loss payable clause must state that the proceeds of any claim against insurers be payable to the Board (with respect to the Board's Option to Purchase) and the Professional as their interests may appear.
- C7.7 Waiver of Subrogation Clause - The insurer must waive all rights which it may acquire by payment of a claim to recover the paid amount from the Professional's affiliates or any of the Board's, the City's, the Professional's or their respective directors, officers, officials, employees or agents (ie. a "waiver of subrogation"). In addition to this waiver of subrogation, all other property insurance policies of any kind carried by the Professional must contain such a waiver of subrogation by the insurer in favour of the Board, the City and their respective directors, officers, officials, employees or agents (whether or not such property insurance is carried as a requirement of this Contract).
- C7.8 Primary Coverage Clause - The insurer must agree that the policy is primary coverage and any other insurance carried by the Board, the City or the Professional is secondary so that any secondary policies will only be drawn upon after exhausting the coverage under the primary coverage.
- C8.0 **Business Interruption Insurance:**
- C8.1 Required Limit, Scope, Duration - The Professional will, commencing with the start of the Term and for the entire duration of the Term, continuously maintain business interruption insurance on a "Gross Profits" form for an indemnity period of not less than 12 months protecting the Professional against loss of profits including payroll expense, debt servicing expenses, payment of fees under this Contract and any standing charges and extra expenses resulting from any interruption or interference of its business operations arising out of any loss or damage to property of every description used in connection with the Golf Course.
- C9.0 [intentionally deleted]
- C10.0 **Workers' Compensation Board Compliance**
- C10.1 Payment of WCB Assessments. The Professional agrees that the Professional will at the Professional's own expense procure and carry or cause to be

procured and carried and paid for, full Workers' Compensation Board coverage for all of the Professional's Staff who are engaged in or upon any work or service which is the subject of this Contract. The Professional agrees that the Board has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the Board to the Professional. The Board may withhold payment under this Contract until the Worker's Compensation Board premiums, assessments or penalties in respect of work done or service performed in fulfilling this Contract had been paid in full.

- C10.2 Designation of Professional as Prime Contractor. [intentionally deleted]
- C10.3 Prime Contractor's Obligations. [intentionally deleted]
- C10.4 General WCB Obligations. The Professional will have a safety program acceptable to the Workers' Compensation Board and will ensure that all Board and Workers' Compensation Board safety policies, rules and regulations are observed during performance of this Contract, not only by the Professional and its Staff, but by all material suppliers and others engaged in the performance of this Contract.
- C10.5 Notice of Project. [intentionally deleted]
- C10.5 Initial Proof of WCB Registration/Good Standing. Prior to signing this Contract, the Professional will provide the Board with the Professional's and all Staffs' (as applicable) Workers' Compensation Board registration numbers.
- C10.6 Subsequent Proof of WCB Registration/Good Standing. Within 5 days of any request by the Board's Designated Representative to do so, the Professional will provide the Board with written confirmation that the Professional and all Staff (as applicable) are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.
- C10.7 Pre-Contract Hazard Assessment. [intentionally deleted]
- C10.8 Special Indemnity Against WCB Non-Compliance. The Professional will indemnify the Board and hold harmless the Board from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to
- (a) unpaid Workers' Compensation Board assessments of the Professional or any other employer for whom the Professional is responsible under this Contract,
 - (b) the acts or omissions of any person engaged directly or indirectly by the Professional in the performance of this Contract, or for whom the Professional is liable pursuant to the Professional's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board, or

- (c) any breach of the Professional's obligations under this Section C10.0.

SCHEDULE D

OPTION TO PURCHASE GOLF COURSE PERSONAL PROPERTY

D.1 Grant of Option

The Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, each now grants the Board the exclusive and irrevocable option to purchase (the "**Option to Purchase**") the Personal Property free and clear of all liens, charges and encumbrances.

D.2 Terms and Conditions of Exercise

This Option to Purchase may be exercised in accordance with Section 11.7(a) of the Contract.

D.3 Effect of Exercise

Exercise of this Option to Purchase will constitute a binding contract of purchase and sale for such of the Personal Property which the Board has given notice of its intent to purchase (in this Schedule "D", the "**Purchased Personal Property**"). The contract arising from the exercise of this Option to Purchase will be completed, if exercised in accordance with Section 11.7(a)(i), on the tenth (10th) day following the effective date of termination, and if exercised in accordance with Section 11.7(a)(ii), on the effective date of termination, and if exercised in accordance with Section 11.7(a)(iii), on the last day of the Term (as applicable, the "**Closing Date**").

- (a) The Professional will, at the Professional's sole cost and expense, have the Professional's lawyer prepare, or caused to be prepared, all necessary conveyance documents in respect of the Purchased Personal Property including, without limitation, a bill of sale absolute (the "**Bill of Sale Absolute**"), discharges of liens, charges and encumbrances and any other necessary or appropriate documentation. Each of the Professional and Board will pay its own legal fees. The Professional, however, will pay all fees and disbursements associated with registering any documents at the Personal Property Registry.
- (c) The Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, will execute and deliver to the Board as of the Closing Date, the Bill of Sale Absolute containing the usual covenants conveying the Purchased Personal Property to the Board free and clear of all liens, charges and encumbrances. The Professional and Booth, as applicable, will also execute and deliver as of the Closing Date any other documents or instruments as may reasonably be required by the Board for the purpose of completing the purchase and sale of the Purchased Personal Property, including if requested by the Board, such documents or instruments as may be required for the registration of discharges and financing change statements at the Personal Property Registry.
- (d) Title, risk of loss or damage, and possession of the Purchased Personal

Property will transfer to the Board on the Closing Date.

- (e) At all times and from time to time prior to the Closing Date, the Board will have full right of access to the Personal Property in order to conduct surveys, assessments, inventories, studies and tests including valuations and audits.
- (f) The purchase price for the Purchased Personal Property will be payable by the Board to the Professional on the Closing Date, provided always that the Board and Professional will settle or determine the purchase price on the following terms and conditions:
 - (i) The Board's Designated Representative and Professional will negotiate in good faith, as early as reasonably possible, to settle a purchase price for the Purchased Personal Property, which will be the lesser of fair market value as of the Closing Date and cost, except that, if the Board's Designated Representative and Professional are unable to agree on that purchase price prior to the Closing Date, the Board will appoint a chartered professional accountant, who is a member in good standing of the Organization of Chartered Professional Accountants of British Columbia, or such other qualified asset valuator as the parties may agree in writing, and who is at arm's length from the Board and the Professional, to determine that purchase price, and each of the Board and the Professional will be responsible for 50% of the chartered professional accountant's or asset valuator's, as the case may be, fees and disbursements, and will pay the amount it owes to the chartered professional accountant or asset valuator, as the case may be, on demand.
 - (ii) Any price determined in advance of the Closing Date will be adjusted as of that date to reflect any variations in value in the meantime.
 - (iii) The Board will pay the Professional the purchase price for the Purchased Personal Property as settled or determined under Section D.3(f)(i), on the Closing Date, or if the price has not by then been determined, then promptly upon determination of the purchase price, subject to deduction by the Board of any amount the Professional then owes to the Board.

D.4 Priority of Option to Purchase Over All Other Charges

The Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, will ensure that this Option to Purchase is registered in priority to all liens, charges and encumbrances except the Permitted Encumbrances.

D.5 No Further Encumbrances Permitted

The Professional and Booth, to the extent Booth has any ownership interest in

any of the Personal Property, will not permit any liens, charges or encumbrances to be registered against the Personal Property save and except for:

- (a) Permitted Encumbrances; and
- (b) other encumbrances which the Board first agrees to in writing.

D.6 Professional's Representations

Regardless of any independent investigations that the Board may cause to be made, the Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, will each represent and warrant to the Board, as of the Closing Date, that:

- (a) the Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, has good, safeholding and marketable title to the Purchased Personal Property, free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities or claims; and
- (b) the Professional and Booth, to the extent Booth has any ownership interest in any of the Personal Property, has no indebtedness to any person or governmental authority which might by operation of law or otherwise constitute a lien, charge or encumbrance on the Purchased Personal Property or which could affect the Board's right from and after the exercise of this Option to Purchase to own and use the Purchased Personal Property.

D.7 Interpretation

- (a) All terms and conditions of this Option to Purchase which by their nature require performance or fulfillment following the exercise of the Option to Purchase or the Closing Date will survive and not merge with any transfer or agreement delivered in connection with the completion of the transfer of the Purchased Personal Property.
- (b) This Option to Purchase and the contract constituted by the exercise of it will enure to the benefit of and be binding upon the parties and their successors and assigns and for further certainty will charge and bind the Personal Property and the Professional's and Booth's, to the extent Booth has any ownership interest in any of the Personal Property, successors in title.
- (c) Capitalized terms not otherwise defined herein will have the respective meanings ascribed to them in the Golf Professional Services Contract for McCleery Golf Course dated January 1, 2019, to which this Option to Purchase is attached as Schedule D.

SCHEDULE E

GRANT OF LICENCE

E.1 Grant of Licence

In recognition of the Professional's need for access to the Golf Course in order to provide the Services, the Board now grants the Professional a licence for access and use of the Driving Range, Pro Shops, Driving Range Entrance Building, Short Game Practice Area, Chipping and Putting Greens and the Cart Storage Area (collectively, the "Service Access Areas") provided that this licence will automatically be terminated with the expiry or sooner termination of the Term and will be automatically extended or renewed with any extension or renewal of the Term.

E.2 Licence Fee

The Licence Fee payable by the Professional is as set out in Section 4.3 of this Contract and will be payable as a deduction from and set-off against the portion of the Gross Revenue payable to the Professional pursuant to Section 4.2(a).

E.3 Utilities

All charges, rates and levies on account of utilities including electricity, water, garbage collection, telephone and all other expenses and outgoings incurred by the Professional in the provision of the Services and use of the Service Access Areas will be to the sole account of the Professional except where expressly stated otherwise in this Contract.

E.4 Use of the Service Access Areas

The Professional will only use the Service Access Areas for the provision of the Services and will not use or allow the Service Access Areas to be used for any other purpose without the prior written consent of the Board's Designated Representative, which consent may be arbitrarily withheld.

E.5 Non-Exclusive Licence

E5.1 No Interest in Land. The Board will have full, free and uninterrupted access to the Service Access Areas for the purposes of inspection and carrying out its obligations under this Contract and to the public at all times during the Term and in common with the Professional's rights of access under this licence. Despite any other term of this Schedule E or any other part of this Contract, the rights and privileges of use and access granted by this Schedule E and this Contract to the Professional are purely contractual and are not grants of a lease, easement, right of way, right of exclusive possession, or any other interest in land and the Professional now acknowledges and agrees to same and further agrees not to register any instrument, claim or notice respecting this Contract in any Land Title Office, nor to make any claim in any arbitration or court of law that the Professional has any rights in respect to access to and use of the Golf Course other than purely contractual rights of a bare licensee.

E5.2 Board Reserves All Rights. Accordingly, the Board retains full ownership and exclusive possession of the Golf Course and reserves all rights to use the Golf Course in any manner it sees fit even where such uses interfere with the Professional's contractual rights and obligations under this Contract. The Professional now acknowledges and agrees that the Golf Course is owned and operated by a public sector entity which may at any time elect to modify the manner or mode of use of the Golf Course in any manner considered to be in the public interest, as determined by its publicly elected park board commissioners, including without limitation and by way of example only, modifications to increase revenue or modifications to address public interest desires (such as re-configuring the Golf Course or reducing its size, converting to green space, etc.).

E5.3 Limitation on Liability. Despite any other term of this Contract, where any use by the Board of the Golf Course interferes or might interfere with the Professional's rights or obligations under this Contract, the Board's liability for damages is now expressly limited to \$1,000 whether or not such use constitutes a breach of this Contract, and the Professional now releases the Board from all liability for all losses, expenses and damages arising from the type of breach or use described in this Section E.5.3, subject always to the Board's obligations to reimburse the Professional's reasonable direct moving costs in the event of a re-location pursuant to Section E.17.

E.6 Board's Right of Control over Access and Use

The Board will have the unfettered right to stipulate the extent of use and access over the Golf Course to the Service Access Areas permitted by the Professional and the Professional's Staff and will have the complete and unfettered right to prohibit the Professional from access to any and all areas of the Golf Course other than the Service Access Areas and those which are necessarily required to provide access to the Professional and the Professional's Staff for the provision of the Services.

E.7 No Representations or Warranties

The Professional acknowledges and agrees that the Board has made no representations or warranties as to the state of repair of the Service Access Areas or the suitability of the Service Access Areas for the provision of the Services. To the extent that the Service Access Areas are not at any time in a condition suitable for the provision of the Services, then to the extent that such is the case, the Board will not be liable for any losses or damages suffered by the Professional. However, the Professional will not be liable for the failure to provide Services to the extent to which same is caused by any breach by the Board of its obligations under this Contract or this Schedule E to maintain and repair any part of the Golf Course or Service Access Areas. Accordingly, the Professional now agrees to accept the Golf Course and Service Access Areas on an "as is, where is" basis.

E.8 No Damage

The Professional will at all times carry out the Services and operations with due care and attention and without negligence and will at no times create a nuisance or cause damage to the Service Access Areas or surrounding Golf Course.

E.9 Notify Board of Any Damage

If any of the Board's property is damaged by the Professional or the Professional's Staff, the Professional will notify the Board immediately and the Board will have the right to elect within 48 hours whether or not the Board will repair the damage. If the Board fails to give a notice of election within the time specified, the Board will be deemed to have elected to itself do the repairs. If the Board elects to have the Professional do the repairs, the Professional will carry out the repairs at the Professional's sole cost, which repairs will be performed, in the manner approved by the Board and within such time as is specified by the Board, acting reasonably, so as to bring the damaged property back to a standard and condition at least equal to the standard and condition it was in prior to the damage. If the Board elects or is deemed to have elected to itself do the repairs, or the Professional fails to complete repairs within the time specified by the Board, the Board may carry out the repairs at the Professional's sole cost and Section 11.1 of the Contract will apply.

E.10 Maintenance

The Professional will maintain the Service Access Areas and all improvements within the Service Access Areas in a sanitary, neat, tidy and safe condition and free from nuisance at all times subject only to those obligations of which are imposed on the Board pursuant to Sections 5.3 and 5.4 of the Contract.

E.11 Indemnification

The indemnity set out in Section 8.1 of this Contract will apply fully and completely to all costs, losses, damages, builders liens, expenses, actions, claims, demands, suits and judgments incurred by or against the Board, the City or their respective officers, officials, directors, agents, employees and contractors on account of the Professional's use of the Service Access Areas, access to and from and across the Golf Course and/or relating to or arising from the Professional's exercise of its rights under this licence granted by this Schedule E and is in addition to and not in lieu of all other indemnities, releases and limitations on liability set out elsewhere in this Contract.

E.12 Insurance

As a condition of this grant of licence, the Professional must comply at all times and in strict accordance with the Insurance Bonding WCB Requirements set out in Schedule C - *Insurance/Bonding/WCB Requirements* of this Contract.

E.13 Assignment

Further to Section 10.1 of this Contract, the Professional will not in whole or in part assign this licence without the prior written consent of the Board's Designated Representative, which consent of the Board's Designated Representative may arbitrarily withhold and which consent may only be granted concurrently with any consent with respect to any assignment of the balance of this Contract. Accordingly, the Professional may not sub-licence or otherwise permit any other third party access to or use of the Golf Course or Service Access Areas without the prior written consent of the Board's Designated Representative in accordance with Section 10.1 of this Contract.

E.14 Termination of the Licence

Despite any other term of this Schedule E or any other part of this Contract:

- (a) the Board's Designated Representative may terminate this licence immediately upon giving written notice to the Professional pursuant to Section 11.6 of this Contract, and
- (b) termination or expiry of this Contract will automatically and without further or separate written notice, terminate this licence.

E.15 Laws and By-laws

The Professional will, and will cause its Staff to, promptly and faithfully observe and comply with all laws, by-laws and lawful orders which relate to the Service Access Areas and the Professional's activities within the Service Access Areas, even if such laws, by their terms, apply to the Board. For further certainty and without limiting the generality of the foregoing, it will be the Professional's responsibility to obtain any and all development permits, business licences and building permits required to authorize or permit any of the uses required by the Professional of the Service Access Areas in order to provide the Services.

E.16 No Alteration/Improvement

The Professional will not, without the prior written consent of the Board's Designated Representative, which may be arbitrarily withheld, make any alterations, renovations, improvements or demolitions of any of the existing improvements located within the Service Access Areas.

E.17 Changes/Relocations

Despite any other term of this Contract, the Board may unilaterally change the structure, size, location or boundaries of any component of the Golf Course or any part of the Service Access Areas without any liability to the Professional for any resulting losses, costs, expenses or damages resulting from such changes. However, the Board will reimburse the Professional for any actual and direct out-of-pocket costs relating to the cost of physically moving or storing the Professional's Personal Property during any such change or relocation, provided that always such costs will expressly exclude all indirect inconsequential losses, costs, damages and expenses such as by way of example only and without limitation, loss of profits, loss of revenue, extra staffing costs or the like.

E.18 Termination or Expiry

Upon the expiry or sooner termination of this Term, the Professional will no longer be entitled to access or use the Service Access Areas nor to enter and exit along the permitted portions of the Golf Course and will leave the Service Access Areas in a sanitary, neat, tidy, safe and empty condition and in compliance with the standards of maintenance and repair imposed on the Professional pursuant to this Contract.

NOTICE OF INTENT TO CONTRACT

PS20190307

Issue Date: November 7, 2019

Closing Date: November 21, 2019

Re: Provision of Golf Professional Services for Golf Course Operations

Notice is hereby given by the City of Vancouver ("City") of its intent to contract with Monaghan Golf Inc. and Muncie's Golf Shop Ltd. for golf professional services at Fraserview, Langara and McCleery golf courses.

Description:

The Vancouver Park Board has a requirement for the provision of golf professional services for golf course operations at Fraserview, Langara and McCleery golf courses. The Vancouver Park Board will be contracting with the existing professional golf contractors, Monaghan Golf Inc. and Muncie's Golf Shop Ltd., for a 3 year term with the possibility to extend 2 additional one-year terms, to ensure business continuity until future direction on the larger golf portfolio is determined.

The combined value of the contracts is approximately \$1.3M for the initial 3 year term.

Anyone wishing to request more information and/or has questions or concerns to this regard is asked to contact Jessica Li, Buyer, Supply Management at 604-257-8411 or by email to Jessica.li@vancouver.ca.