

**FOOD AND BEVERAGE SERVICES AGREEMENT  
HARBOUR VIEW GOLF COURSE AND RECREATION COMPLEX**

THIS AGREEMENT made effective this      day of      2010

BETWEEN: **The City of Winnipeg  
carrying on business as Winnipeg Golf Services  
(hereinafter called the "Licensee")**  
OF THE FIRST PART

-AND-

**(hereinafter called the "Manager")**  
OF THE SECOND PART

WHEREAS the Licensee operates a golf course known as Harbour View Golf Course and Recreation Complex, located in Winnipeg, in the Province of Manitoba and has a Manitoba Liquor Control Commission license for the sale of alcoholic beverages at Harbour View Golf Course and Recreation Complex (the "**Golf Course**");

AND WHEREAS the Golf Course and Recreation Complex is located at 1867 Springfield Road in Winnipeg and consists of a banquet facility, restaurant, lounge, courtyard and patio with a licensed capacity total of 550 as follows:

Banquet facility	223
Restaurant and lounge	136
Fireplace area	49
Patio	55
Courtyard	87

AND WHEREAS the Licensee wishes to engage the Manager to operate the food and beverage services at the Golf Course and Recreation Complex;

AND WHEREAS the Licensee and the Manager wish to enter into an agreement setting out the terms and conditions of their arrangements with the Licensee;

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

**1. TERM**

1.1 The Licensee agrees to engage the services of      as Manager of the Golf Course and Recreation Complex food and beverage services commencing on the 1st day of April, 2010 and terminating on the 31st day of October, 2012 (the "**Work**").

- 1.2 The Licensee grants to the Manager an option to renew this Agreement on the same terms and conditions, excepting this option to renew and the rent, which shall be mutually agreed upon between the Licensee and the Manager.

## **2. MONTHLY FEE**

- 2.1 Manager agrees to pay to the Licensee a monthly fee in the amount of at least \_\_\_\_\_ per month plus GST as applicable, payable within 15 days at the end of each and every month.
- 2.2 The monthly fee shall be the greater of:
  - (a) 90% of the gross profit from the sales of liquor; or
  - (b) minimum rent of \$.....
- 2.3 Gross profit means the revenues from the sales of liquor minus the cost to purchase the liquor.
- 2.4 It is understood and agreed by the parties that if this calculation includes a percentage of gross profits on any sales of spirits, wine and beer, that percentage to be retained by the Manager will not exceed 10%.

## **3. PAYMENT**

- 3.1 The Contractor shall submit monthly payments in Canadian funds to the Contract Administrator as indicated in Section 2 above.
- 3.2 The payment must be accompanied by a statement clearly indicating the following:
  - (a) Month of Service provided
  - (b) Name and address of facility;
  - (c) Gross sales excluding taxes for the period for each product group (1. Alcoholic Beverages; 2. Food and Non-Alcoholic Beverages) by facility;
  - (d) The amount payable to the City of Winnipeg calculated in accordance with Clause 2 above;
  - (e) The amount payable with GST shown as separate amounts by facility;
  - (f) The Manager's GST registration number.

## **4. PAYMENT SCHEDULE**

- 4.1 Payment shall be in accordance with the following payment schedule:

- (a) The monthly fee shall be paid no later than the fifteenth (15<sup>th</sup>) Calendar Day of the month following the month for which the fee is payable;
- (b) Payments received after the date specified in 17.1(a) shall be subject to the City's late payment policy, By-Law No. 5747/91 and any amendments thereto.

## **5. TAXES**

- 5.1 The Manager shall pay all taxes and assessment whatsoever and all license fees covered by this Agreement in respect of the food and beverage services carried on by them at the Golf course. Notwithstanding the foregoing, in the event that the Manager receives a Statement and Demand from the City of Winnipeg for Business Taxes, Property and/or School taxes related to its operation of the food and beverage services at the Golf Course, the Manager shall promptly provide a copy to the Contract Administrator for payment by the City.
- 6. The Manager shall keep proper books of account and all records of receipts, payments, transactions and dealings in the course of the business of the golf course and pay to the Licensee, all monies received in the business, except such monies as may be required for current expenses. These said books shall not be removed from the office of said business without authority of the Licensee, and shall be open to the inspection of the Licensee during normal business hours.
- 7. The Manager agrees to deliver to the Licensee, within seven working days of the end of the calendar month, a monthly report showing income and expenditures of the said food and liquor business in the golf course for the calendar month, with the sales of liquor shown separately.
- 8. This Agreement may be terminated immediately upon the happening of any one of the following events:
  - (a) The Manager is adjudged bankrupt.
  - (b) The Manager is in default of any clause of this agreement.
  - (c) The Manager is convicted of any offence under the Liquor Control Act or its Regulations.
  - (d) The Manager is found not to have complied with any order of the Liquor Control Commission or other government departments concerned.
  - (e) The Licensee receives from the Manitoba Liquor Control Commission any communication, in writing, stating dissatisfaction with regard to the

operation of the food and beverage services at the Golf Course by the Manager or the qualifications of the Manager.

(f) The Licensee providing one-hundred and eighty (180) days written notice of termination of this agreement to the Manager.

9. The General Conditions for Supply of Services (Revision 2007 04 12) as attached as Schedule "A" are applicable to the Work of the Contract. In this Agreement, "**Manager**" shall have the same meaning as "**Contractor**" in the General Conditions. A reference in this Agreement to a section, clause or sub clause with the prefix "C" designates a section, clause or sub clause in the General Conditions for Supply of Services.

## **10. SCOPE OF WORK**

10.1 Further to Section 1 above, the Work to be done under the Contract shall consist of the provision of food and beverage services for the Harbour View Golf Course and Recreation Complex for the period of date of April 1, 2010 to October 31, 2012 in accordance with this Agreement including Appendix 1: Additional Requirements.

10.2 The major component of the Work is to operate the clubhouse food and beverage concession at the Golf Course and Recreation Complex; and

10.3 The Work shall be done on an "as required" basis during the term of the Contract.

## **11. CONTRACT ADMINISTRATOR**

11.1 The Contract Administrator is:  
Operations Assistant  
Winnipeg Golf Services  
2nd floor, 65 Garry Street  
Winnipeg, MB, R3C 4K4  
Telephone: (204) 986-2032

At the pre-commencement meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

## **12. CONTRACTOR'S SUPERVISOR**

12.1 The Manager shall employ and keep on the Work, at all times during the performance of the Work, a competent supervisor and assistants, if necessary, acceptable to the Contract Administrator. The supervisor shall represent the Manager on the Site. The supervisor shall not be replaced without the prior consent of the Contract Administrator unless the

supervisor proves to be unsatisfactory to the Manager and ceases to be in his employ.

- 12.2 Before commencement of Work, the Manager shall identify his designated supervisor and any additional personnel representing the Manager and their respective roles and responsibilities for the Work.
- 12.3 The Contract Administrator may give instructions or orders to the Manager's supervisor and such instructions or orders shall be deemed to have been given to the Contractor.

### **13. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION**

- 13.1 Information provided to the Manager by the City or acquired by the Manager during the course of the Work is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Contract Administrator.
- 13.2 The Contractor shall not make any statement of fact or opinion regarding any aspect of the Contract to the media or any member of the public without the prior written authorization of the Contract Administrator.

### **14. INSURANCE**

- 14.1 The Manager shall provide and maintain the following insurance coverage at all times during the duration of the contract:
- a) Commercial general liability insurance, in the amount of at least five million dollars (\$5,000,000.00) inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, tenant's legal liability, blanket contractual liability, liquor liability cover and products and completed operations cover;
  - b) An All Risk property insurance policy, for the full replacement cost insuring contents, equipment and Tenant's Improvements;
  - c) Automobile liability insurance for owned and non-owned automobiles used for or in connection with the Contract in the amount of at least two million dollars (\$2,000,000.00); said insurance to remain in place at all times during the full term of the Food and Beverage Services Agreement; such insurance may be met through the commercial general liability cover where applicable;
- 14.2 All property policies written on behalf of the Manager shall contain a waiver of any subrogation right which the Tenant's insurers may have against the City and against those for whom the City is, in law, responsible, whether any such damage is caused by the act, omission or fault of the City or by those for whom the City, is, in law, responsible;

- 14.3 All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;
- 14.4 Loss, if any, shall be payable to The City of Winnipeg, as their interests may appear;
- 14.5 Deductibles shall be borne by the Manager;
- 14.6 The Manager shall not cancel, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the City;
- 14.7 The Manager shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;
- 14.8 The Manager shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Solicitor;
- 14.9 The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance to this Food and Beverage Services Agreement and for any subsequent renewals thereof, provided that the City shall give the Contractor reasonable notice and shall request reasonable change.

## **15. SECURITY CLEARANCE**

- 15.1 Each individual proposed to perform Work under the Contract as a supervisor for the Manager shall be required to obtain a Criminal Record Search Certificate from the police service having jurisdiction at his place of residence.
- 15.2 The Criminal Record Search shall include a Vulnerable Sector Search. This can be obtained by completing and providing the following in person to the Winnipeg Police Service Division 30 Clerk at Main Floor, 151 Princess Street:
  - (a) Form P-612 Check the following boxes: Employment – Sensitive Position of Trust; and Other by inputting the Request for Proposal Number in the space provided. This form can be found on the website at: [www.winnipeg.ca/police/BPR/forms/Criminal\\_Record\\_Check\\_P612.doc](http://www.winnipeg.ca/police/BPR/forms/Criminal_Record_Check_P612.doc)
  - (b) Form P-249 (Form 1 – Consent) can be found on the website at: [http://www.winnipeg.ca/police/BPR/forms/P-249\\_ConsentCrimRecordCheck.pdf](http://www.winnipeg.ca/police/BPR/forms/P-249_ConsentCrimRecordCheck.pdf)
  - (c) Two (2) pieces of identification as stated in Bureau of Police Records on the website at: [www.winnipeg.ca/police/BPR/id.stm](http://www.winnipeg.ca/police/BPR/id.stm)

(d) Fee for each individual applying for a Criminal Record Search. Fee schedule can be found on the website at:

[www.winnipeg.ca/police/BPR/fees.stm](http://www.winnipeg.ca/police/BPR/fees.stm)

- 15.3 The original Criminal Record Search Certificate (Form P-253) will be provided by the Winnipeg Police Service to the individual applicant. The original has a validation sticker from the Winnipeg Police Service in the top right hand corner. The applicant shall:
- (a) Provide the original Criminal Record Search Certificate (Form P-253) to the Contract Administrator.
- 15.4 Prior to the commencement of any Work, and during the term of the Contract if additional or replacement individuals are proposed to perform Work, the Manager shall supply the Contract Administrator with a Criminal Record Search Certificate obtained not earlier than one (1) year prior to the Submission Deadline, or a certified true copy thereof, for each individual proposed to perform the Work.
- (a) Replacement supervisors shall submit their security clearances in a timely manner.
- 15.5 Any individual for whom a Criminal Record Search Certificate is not provided, or for whom a Criminal Record Search Certificate indicates any convictions or pending charges related to property offences or crimes against another person, will not be permitted to perform any Work.
- 15.6 Any Criminal Record Search Certificate obtained thereby will be deemed valid for the duration of the Contract subject to a repeated records search as hereinafter specified.
- 15.7 Notwithstanding the foregoing, at any time during the term of the Contract, the City may, at its sole discretion and acting reasonably, require an updated criminal records search. Any individual who fails to provide a satisfactory Criminal Record Search Certificate as a result of a repeated criminal records search will not be permitted to continue to perform any Work.
- 16. RECORDS**
- 16.1 The Contractor shall keep or cause to be kept at its principal office in Manitoba true and accurate books of accounts prepared in accordance with generally accepted accounting principles and satisfactory to the Contract Administrator or his/her designate showing all income derived from the concession operations.
- 16.2 The Contractor shall permit the Contract Administrator free access at any and all times to inspect, examine, copy or audit the said books of account or shall furnish such supporting data and other data and other information

relating thereto as the Contract Administrator or his/her designate may require.

IN WITNESS WHEREOF the parties hereto have executed this agreement, in the manner appropriate to each, as of the day and year first above written.

**The City of Winnipeg  
Operating as Winnipeg Golf Services**

\_\_\_\_\_  
**Chief Financial Officer**  
**I have the authority to bind the City  
of Winnipeg**

Signed and Delivered  
in the presence of:

\_\_\_\_\_  
*Witness (if no corporate seal)*

\_\_\_\_\_  
*Witness (if no corporate seal)*

Approved & Certified as to  
Contract Details:

\_\_\_\_\_  
Acting Chief Operating Officer  
Winnipeg Golf Services

)

)

)

\_\_\_\_\_  
*(signature of authorized officer)*

\_\_\_\_\_  
*(Print name and Title)*

)

)

\_\_\_\_\_  
*(signature of authorized officer)*

\_\_\_\_\_  
*(Print name and Title)*

)

Approved as to Form:

\_\_\_\_\_  
for City Solicitor/  
Manager of Legal Services



## **APPENDIX 1: ADDITIONAL REQUIREMENTS**

### **LOCATION AND SCHEDULE OF WORK**

#### **1. Hours of Operation:**

The operating season is year round. During the golf season, the minimum hours of operation for the food and beverage services are daily ½ hour before sunrise to ½ hour after sunset.

### **SERVICES SUPPLIED BY MANAGER**

The Manager:

- Is responsible for all costs whatever associated with, related to, or required to be incurred in providing, operating or maintaining a food concession or vending machine(s), including all equipment necessary for the dispensing and safe storage of food and beverage products.
- Allows other food and/or beverage service providers to dispense and/or serve for special events that are mutually agreed to, both parties acting reasonably.
- Posts and keeps posted in a conspicuous place at times, a complete list of all foods, beverages and other merchandise offered for sale together with the prices of same;

### **Facilities**

- Provides at all times at each concession operation a sufficient number of personnel to provide proper and efficient service to the general public including counter, table and patio service. The Manager agrees to increase or decrease the number of employees upon a written request to do so from the City;
- Ensures that all concession operations operate on a daily basis throughout the term.
- Provides and pay all costs associated with a telephone at the concession facility;
- Assumes full responsibility for the actions of such personnel employed by the Manager while performing services pursuant to this contract and be solely responsible for the supervision, daily direction and control, payment of salaries (including withholding and paying income tax, unemployment insurance and Canada Pension) as same may be required by law;
- Ensures that all concessions staff are dressed in matching uniforms and are at all times clean and neat in appearance.
- Does not carry on any business in, from or about the concessions other than of food services provided for and approved by the terms of this contract; and
- Takes precautions to prevent fire occurring in or about the concessions and observe and comply with all laws and regulations in force respecting fires by Federal, Provincial or Municipal authorities and comply with all instructions

given to the City or other competent Federal, Provincial and Municipal authorities with regard to their safety and fire regulations.

### **Food Preparation**

The Manager:

- Ensures that all its employees engaged in the preparation, handling, servicing and storage of food and beverages meet Federal, Provincial and Municipal Health Department regulations;
- Ensures that all food and beverages offered for sale shall be stored in proper and sanitary containers satisfactory to the City;
- Complies with the terms of The Workplace, Safety and Health Act of the Province of Manitoba and any regulations there under insofar as they are applicable to the food and beverage service operation;
- Is responsible to maintain all concession areas in the provision of food services including floors, counters, patios and tables at a high level of neatness and cleanliness.
- Maintains at all times the kitchen and food preparation areas and all equipment, furniture, fixtures, small wares, merchandise and materials and all other items therein, whether owned by the City or the Manager, in clean and sanitary manner. During the term of the Agreement, replacement, maintenance and repair of concession equipment and furnishings owned by the Manager shall be at the expense of the Manager. The Manager shall be responsible for the repair or replacement of City owned equipment resulting from misuse, abuse, or neglect;
- Leaves the Concessions, equipment, fixtures and small wares in a neat and tidy condition and in a good state of repair at the expiration of the Agreement except for normal wear and tear;
- Purchases and pays for, at the Manager's sole cost and expense, such foods and beverages listed on the menu

### **Alcoholic Beverages**

The Manager:

- Serves and dispenses at the concessions licensed by the Manitoba Liquor Control Commission (MLCC);
- Ensures that all employees engaged in the dispensing of any alcoholic beverages take the necessary courses as prescribed by Manitoba Liquor Control Commission. All fees and charges associated with any MLCC course work is the responsibility on Manager;
- Return to the City not less than 90% of profits derived from alcohol sales as directed by the MLCC in accordance with Section 3of this Agreement.

### **Equipment**

The Manager:

- Is responsible for providing all small wares (i.e. cutlery, plates, cooking utensils, etc.).

- Brings to the City's attention items from the City Inventory List that require repairing;
- At the expiration or earlier termination of this Agreement removes all of the Manager's equipment and leave on-site all City equipment shown on the Inventory List.
- Shall not alter any fixtures or equipment supplied by the City of Winnipeg or make an installation without the express written consent of the City;
- Shall not remove or permit to be removed any furniture, fixtures, equipment or other property belonging to the City of Winnipeg; and
- Permits and facilitates the inspection of the concessions by the City or his/her designate so authorized at any time without notice.

### **SERVICES SUPPLIED BY THE CITY**

The City:

- Provides heat, light, hot and cold water, power services and garbage removal from all clubhouse concession operations;
- Furnishes, paints, equips, all concessions to standards as advised by the prevailing health authority;
- Provides the fixed chattels (food preparation table, etc. that are attached to the structure of the facility, also including tables and chairs) found at the concession upon commencement of the Lease;
- Maintains all lines for water, sewer and electrical service from the stub-in point at the facility;
- Supplies portable equipment (i.e. toaster, coffee pot, meat cutter, etc.) as are on site at the time of the Site Investigation. An inventory list of portable equipment will be supplied at the Site Investigation or by request after the date of the Site Investigation.