



City of Grand Island

Tuesday, February 26, 2008

Council Session

Item G12

#2008-65 - Approving Modification to Golf Pro Contract

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Parks & Recreation Director

Meeting: February 26, 2008

Subject: Approving Modification to Golf Pro Contract

Item #'s: G-12

Presenter(s): Steve Paustian, Parks & Recreation Director

Background

After 30 plus years operating under a Golf Professional Contract that was based on both a base payment plus a commission, it was determined last year that a new Golf Professional Contract would be developed that was totally performance (commission) based. The former Golf Professional elected not to accept the new contract and thus a new Golf Professional was hired. The new contract involved many changes from the former contract including a modification to tournament green fees. The new contract allowed for a one year tournament pricing schedule that would automatically be changed for the 2008 golf season to charge full green fees for all tournaments.

Discussion

During negotiations last year a concern was raised by the Golf Professional regarding the effect of the radical fee change proposed for the tournaments currently offered by the City. The original change involved an increase from \$2.00 to \$10.00 for the green fees for the three designated tournaments identified on page 4 of the contract. This green fee change was to be followed with a full green fee charge for all tournaments beginning with the start of the 2008 golf season. This change would include all Men's Association Tournaments and would require full green fee payments as well. Previously, season pass holders were only required to pay the \$2.00 Capital Maintenance Fee to play in the Association Tournaments. Association members that were not season pass holders were required to pay full green fees.

In observing the situation this past golf season it has been determined that moving to the full green fee charge for all tournaments effective this year would be detrimental to the success of the tournaments and could potentially result in a further erosion of golf rounds played at Jack Rabbit Run. We are in a position, as are all golf courses in the area, of competing for a limited number of golfers with many courses available for those golfers

to play their golf. The Park and Recreation Department feels it is vitally important to provide a cost competitive product if we are going to be successful in our attempt to increase play at Jack Rabbit Run. Changing the green fee structure to full green fees for all participants in all tournaments would result in decreased play in tournaments and probably impact those golfers in such a way that they may decide to play all there golf at other courses.

NOTE FROM JEFF:

Despite the fact that Jack Rabbit Run has begun to experience a modest loss in annual profit, there are currently in place many positive and progressive revenue-producing components that many municipal golf courses do not enjoy. These would include in particular the \$2.00 per round Capital Maintenance Fee and the disallowance of private golf cars. Additionally, the new incentive-based contract with the Golf Pro creates a meaningful partnership between the City and the Pro that clearly ramps up the marketing effort at the course. We need to maintain a balance in pricing that supports the role of the Golf Pro in marketing the golf course in a very competitive environment.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council modify the original Golf Professional contract to reflect a 60% of standard green fee costs for the three named tournaments as well as for any other named tournaments developed in the future. Staff further recommends that the Golf Professional Contract be modified to add a statement that allows for Association Tournament green fees to be the existing green fee or for a season pass holder, the payment of only the Capital Maintenance Fee. The final recommended change would eliminate the last sentence of page four paragraph one that currently states "In 2008 and beyond full fees will apply to all tournaments".

Sample Motion

Move to modify current Golf Professional Contact to reflect discussed changes.

**GOLF LICENSE AGREEMENT
BETWEEN
THE CITY OF GRAND ISLAND, NEBRASKA
AND
DON E. KRUSE**

THIS LICENSE AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, hereinafter referred to as "City" and Don E. Kruse, a golf professional and Director of Golf for Jackrabbit Run Golf Course, hereinafter referred to as "Manager".

WHEREAS, the City is the owner of Jackrabbit Run Golf Course and operates a municipal golf course and clubhouse therein; and

WHEREAS, Manager is a Class "A" PGA Golf Professional and Director of Golf for Jackrabbit Run Golf Course; and

WHEREAS, the City desires the services of someone to operate the snack bar concessions and serve as golf professional and Director of Golf for the Jackrabbit Run Golf Course and Manager is qualified to perform these services.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein, the parties agree as follows:

1. **License.** The City grants to Manager the exclusive privilege of operating business concessions and rendering professional golf services at Jackrabbit Run Golf Course and clubhouse for the period of time commencing March 13, 2007 through December 31, 2011, in accordance with the terms and conditions hereinafter set forth. This license may be renewed for one additional four year term provided that the Manager has complied with all conditions set forth in this agreement to the satisfaction of the City and subject to the further approval of the City Council for such renewal period.

2. **Services.** Manager is to be recognized as the pro-manager of the Jackrabbit Run Golf Course and shall make professional golf services and concession services available to the patrons of said golf course at all reasonable times as determined by the Director of Parks & Recreation. Said services shall include, but not be limited to, the following: sale of alcohol, public relations, teaching, coaching, promotion of golf play, leagues and tournaments, pull carts, sales and rental of equipment from the pro shop, and operation of the driving range and facilities. The City will be responsible for motorized golf cart rentals as outlined in paragraph 14.

3. **Supervision by Manager.** In addition to the services to be rendered by Manager as set forth in paragraph 2, Manager agrees to supervise all activities within that part of the clubhouse and surrounding area designated by the City for use by the public, to supervise all personnel in the employ of Manager and to supervise the performance of such duties and services in the clubhouse, golf course, or adjacent thereto as may be included in this agreement,

including recreational programs in the areas needed for this purpose. Employees of the Manager shall remain on duty during the entire event for concession sales, and to lock the buildings at the close of all events and secure the premises.

4. **Maintenance.** Manager agrees to keep the clubhouse in a clean and sanitary condition at all times. This shall include the snack bar, public restrooms, public lounge, pro shop, and general interior and immediate exterior maintenance. All papers, rubbish, broken and empty bottles, garbage and other trash accumulating in the operation of the clubhouse shall be picked up by Manager or his designee and placed in suitable containers. Goods, bottles or empty containers shall not be sold, piled or stored outside of the clubhouse except upon written permission of the City. Manager shall keep concession premises in a neat, clean, orderly and sanitary condition at all times in conformance with the standards required by the Central District Health Department and the State Department of Health. The City will provide refuse containers and be responsible for refuse service. Manager agrees to keep all city golf carts in a clean and safe working condition at all times. This shall include washing and removal of trash after each round, examining each cart for damage after each round, staging golf carts in the morning and securing in the evenings. Assist maintenance staff in fueling/charging and taking care of damaged carts. Manager shall be responsible for charging electric carts and report all maintenance deficiencies to the City.

5. **Money Collection.** Manager agrees to collect greens fees and to issue greens fees tickets/tapes/cash register receipts; motorized golf cart rental fees, memberships, capital improvement fees, surcharges, and sales tax; to keep records of all such transactions; and to properly account for and remit to the City such documentation. Manager will be required to complete a daily sales report, which shall be balanced to match all rounds played and all motorized golf cart rentals. All transactions shall be remitted twice weekly or daily as determined by the City, during the season and as needed during the off season.

6. **Starting and Managing Play.** Manager agrees to provide supervisory services for the first and tenth tee of the golf course to control starting play. Manager further agrees to provide rangers or marshals when play is heavy or playtime starts to slow to an unacceptable pace.

7. **Inspection, Audit.** It is understood and agreed between the parties that the operation and services performed by Manager under this agreement shall be subject at all times to inspection and control by designated representatives of the City. Manager will confer only with said representatives on all problems of general policy in connection with this agreement. Manager shall permit the examination and audit of all books and records of Manager relating to this agreement by officers or representatives of the City and shall make said books and records available at all reasonable hours.

8. **Attendants.** Manager shall have adequate and efficient attendants on duty in readiness to serve the public at such times as necessary to provide concession and professional golf services. The City shall determine minimum operation time.

9. **Improvements.** Manager shall not remodel clubhouse or install any permanent fixtures or additions to the clubhouse without first obtaining the written approval of the City. All improvements shall become the property of the City upon termination of this agreement unless the parties hereto agree otherwise.

10. **Advertising.** Manager shall not display paid advertising outside the clubhouse, and advertising inside the clubhouse shall be confined to that portion of the clubhouse designated for the exclusive use of Manager. No display signs or advertising shall be placed on the grounds, building or affixed in any manner, except upon written approval of the Parks and Recreation Director in advance.

11. **City Supervision.** The City reserves the right to exercise general supervision and control over the clubhouse with respect to the management of advertising displays; staff employed; concessions; kind, character, and quality of goods dispensed; and the cleanliness and sanitation of the buildings and adjacent grounds. Manager shall operate under the provisions of this agreement in such a manner as to conform with all the ordinances of the City of Grand Island and the laws of the State of Nebraska, and shall give assistance to the City in seeking conformity with the ordinances of the City and laws of the State by public users. Further, Manager agrees to enforce all rules and regulations adopted by the City's Director of Parks & Recreation covering the conduct of the public and services offered in the use of the park property.

12. **City Equipment.** Manager shall exercise general supervision over and shall be responsible for the proper use and care of all equipment and furniture owned by the City now located in the clubhouse. Such property shall be maintained specifically for the use and convenience of all public users of the clubhouse. An inventory of this property, as taken by a representative of each of the parties, is marked Exhibit "A" and attached hereto and made a part hereof.

13. **Risk of Loss.** The City shall not be responsible for the property of Manager kept, stored, or maintained on the leased premises and assumes no responsibility for loss of Manager's property through fire, theft, pilferage, malicious mischief or any other happening whatsoever.

14. **Manager Compensation.** Manager shall be entitled to a percentage of the gross proceeds (described below) generated by operation of the snack bar, pro shop, alcohol sales and the provision of golf lessons. Manager will operate driving range and share with the City a percentage of gross revenues as detailed below. Any additional revenue generated as a result of the operation of Jackrabbit Run, other than outlined below shall belong and be paid to the City.

The City shall own and maintain the motorized golf cart rental fleet. In return for promoting and renting out motorized golf carts and keeping the fleet clean and presentable the City shall pay to the Manager a percent of the monthly gross revenue generated by motorized golf cart usage as detailed below. The following is the schedule of the remuneration for the Manager and the City.

	<u>Manager</u>	<u>City</u>
Annual Passes	8%	92%
(between the dates of 1/1/07 and 3/13/07)		
Green Fees	10%	90%
(includes annual passes & maintenance fees)	10%	90%
Driving Range (including range passes)	80%	20%
Carts	25%	75%
Concessions	98%	2%
Alcohol	75%	25%
Lessons	98%	2%
Pro Shop	98%	2%
Sponsor Income	98%	2%

Green fees for the Mayor's Cup, the Grand Island City Tournament and the Islander Two Man Scramble in 2007 will be paid to the City in the amount of ten dollars (\$10) per round, plus tax. All junior tournament green fees will be \$5.50 per round, plus tax. In 2008 and beyond full fees will apply to all tournaments.

Manager agrees to pay the owner 2% of the gross proceeds from the Junior Golf Program. Manager also agrees to pay one maintenance fee for the every nine holes of golf played by the juniors in said program.

All other league and tournament fees will go to the manager except for the green fees collected. Both the City and the Manager will be paid within twenty (20) days of receipt of the accounting report of revenue generated.

The City will reward for each year of this contract the Manager with a monetary amount based on the following schedule. Each year will commence October 1st and conclude September 30th for the term of this contract.

<u>Number of Rounds</u>	<u>Bonus</u>	<u>Carts</u>	<u>Bonus</u>
33,500 - 36,000	\$ 2,000.00	\$135,000-\$140,000	\$2,000.00
36,001 – 38,500	\$ 4,000.00	\$140,001-\$145,000	\$4,000.00
38,501 - 41,000	\$ 6,000.00	\$145,001-\$150,000	\$4,500.00
41,001 – 43,500	\$ 8,000.00	\$150,001-\$155,000	\$5,000.00
43,501 – 46,000	\$10,000.00	\$155,001-\$160,000	\$6,000.00

A collected capital maintenance fee will be counted as a round of golf. Cart bonus amount will be based on daily cart revenue not to include sales tax.

15. **High School Participation** The following rates shall apply to high school students, with a limit of 18 athletes per season:

	<u>Boys' Fee</u>	<u>Girls' Fee</u>	<u>Manager</u>	<u>City</u>
Season Pass	\$150.00	\$150.00	10%	90%
Range	\$250.00	\$250.00	80%	20%
Green Fees (Practice Rounds)	\$ 2.00 per round	\$ 2.00 per round	10%	90%
Green Fees (Meets):				
	\$7.45 per round		10%	90%
		\$5.25 per round	10%	90%

16. **Manager's Personnel.** It will be Manager's responsibility to employ the needed personnel to conduct the business and carry out the operations associated with the clubhouse which includes, but is not limited to, the concession operation, collection of fees, and custodial maintenance. Both parties recognize and agree that Manager is an independent contractor. Manager and his agents and employees shall not be considered to be employees of the City and shall not be eligible for any fringe benefits or premium pay from the City.

17. **Conflict of Interest.** During the term of this agreement, Manager shall not engage in the following activities within fifty (50) miles of the corporate limits of the City of Grand Island:

- a. Promoting in any way or manner golf activities, special events, tournaments or leagues at other than the city's golf course, except as approved by the City Parks and Recreation Director.
- b. Endorsing, either by name or other manner, the activities or special events at non-city golf courses.
- c. Participating in the operation of golf courses in activities such as the operation of the Pro Shop, the food and beverage operation, golf lessons, cart rental business, driving range or special events without the written permission of the City.
- d. Participating in the management of golf courses such as, but not limited to, establishing fees and charges or the selection, hiring and evaluation of staff.
- e. Displaying advertising or promotional materials for golf courses such as posters, wearing hats or other clothing items that display the name or logo of non-city of Grand Island golf courses.
- f. Being named or recognized as a Director of Golf, Head Golf Professional or other staff title at any non-city golf course.

This language shall not be construed to prohibit Manager or members of immediate family from having a financial interest in non-city golf courses or related developments; provided, however, that Manager must submit a written detailed description of such financial interest or the financial interest of any member of his immediate family to the City for approval.

Updated information must be submitted annually in a format determined by the City by January 31st of each year.

For purposes of this agreement, “immediate family” shall include any child residing in Manager’s household, Manager’s spouse, or an individual claimed by Manager as a dependent for federal income tax purposes.

18. **Concession Operation.** All materials, supplies and assistance required in the operation of the concession shall be furnished at Manager’s own expense. Manager agrees to conduct and operate the concession strictly in accordance with all the ordinances of the City of Grand Island and laws of the State of Nebraska now and hereafter in effect during the terms of this agreement and in a manner wholly acceptable to the City. Manager agrees to maintain a current liquor license and obey all laws and rules set forth by the State Liquor Control Commission. Manager agrees to keep all concession areas open seven (7) days of the week during such hours, meetings or special events as the City’s Director of Parks & Recreation shall determine.

19. **PGA License.** During the full term of this agreement, Manager must maintain a Class “A” PGA Golf Professional Classification. Should Manager cease to be a Class “A” Professional, this License Agreement shall immediately and automatically terminate and Manager shall no longer be entitled to the rights and privileges granted hereunder.

20. **Financial Statements.** Manager shall submit to the City annual financial statements of the operation not covered in paragraphs above by the terms of this License Agreement. Said financial statement shall include a detailed operating statement setting forth all operating revenues not covered in paragraph No. 5 and personnel service costs and other operating expenses in accordance with the requirements set by the Finance Director of the City. Annual financial statements shall be due by November 1st of each year this agreement is in force and effect. In the event that this agreement is terminated, either at its expiration or for any other reason during the course of a calendar year, a financial statement shall be required within thirty (30) days of such termination covering the period from the prior financial statement to date of termination. In addition, the City may conduct its own audits during the terms of this agreement and for a period of one year thereafter pursuant to paragraph 7 above.

21. **Free Play.** Manager, members of the PGA of America and any assistants registered in the PGA Assistant Program may play the course at no cost. Jackrabbit Run PGA staff shall be allowed to use golf carts at no cost. The names of the PGA members and assistants shall be given to the Director of Parks & Recreation. Except for the preceding, special privileges shall not be granted to anyone under any circumstances. Failure to comply will result in termination and cancellation of said contract as outlined in paragraph 25.

22. **Equal Employment.** Neither Manager nor anyone acting under or by virtue of the terms of this agreement shall discriminate against employees or applicants for employment with respect to such person’s hire, tenure, terms, conditions or privileges of employment because of such person’s race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Neb. Rev. Stat., §48-1122, as amended; nor shall Manager

nor anyone acting under or by virtue of the terms of this agreement discriminate against any such patron of said golf course or against anyone else because of race, color, religion, sex, disability, national origin, ancestry, age or marital status. Special privileges shall not be granted to anyone under any circumstance.

23. **Insurance.** Manager shall indemnify and save harmless the City of Grand Island, Nebraska, from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the License Agreement that results in bodily injury, sickness, disease, death or injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Manager to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City.

Manager shall take out and maintain during the life of this agreement the applicable statutory workers compensation insurance with an insurance company authorized to write such insurance in this state covering all of his employees.

Manager shall secure and maintain in full force and effect during the entire period of this agreement, public liability insurance, naming and protecting manager and the City, its officials, employees, and volunteers as insureds, against claims for damages resulting from (a) bodily injury, including wrongful death (b) personal injury liability and (c) property damage for all operations of Manager, his agents and employees under and by virtue of the terms of this agreement. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury and Property Damage	\$2,000,000 Each Occurrence
Personal Injury Damage	\$1,000,000 Each Occurrence
Contractual Liability	\$1,000,000 Each Occurrence
Products Liability	\$1,000,000 Each Occurrence

The public liability insurance required by the preceding paragraph shall include the following extension of coverage:

- a. The coverage shall be provided under a Commercial General Liability form or similar thereto.
- b. The property damage coverage shall include a Broad Form Property Damage Endorsement or similar thereto.
- c. Contractual liability shall be included.
- d. Products liability coverage shall be included.
- e. Personal injury liability shall be included.

The Manager shall take out and maintain during the life of this agreement such automobile liability insurance as shall protect him against claims for damages resulting from bodily injury, including wrongful death, and property damages which may arise from the operations of any owned, hired or non-owned automobiles used by or for Manager in any capacity in connection with the carrying out of this agreement. The minimum acceptable limits of liability to be provided by such automobile liability insurance shall be as follows:

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
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All liability insurance policies shall be written on an "occurrence" basis only. All insurance coverage is to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VII unless specific approval has been granted by the City.

All certificates of insurance shall be filed with the City on the standard Accord Certificate of Insurance form showing the specific limits of insurance coverage required by this section and showing the City as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance coverage.

24. **Assignment.** This agreement shall not be assigned or sold, nor the premises sublet in whole or in part by the Manager except with the prior written consent of the City.

25. **Terminations and Cancellation.** It is an express condition of this License Agreement that Manager shall do and perform the agreement as set out herein.

If Manager breaches any of the terms of this agreement or fails to make payments provided for herein, the City may, upon thirty (30) days written notice, cancel and terminate this License Agreement if such breach or failure is not cured within such 30 day notice period.

For good and substantial cause, including but not limited to, by Manager or any employee of the Manager, continued absenteeism, drunkenness, alcohol or drug abuse, illegal gambling or conduct which reflects discredit on the City or is a direct hindrance to the effective performance of this agreement or in the event City shall conclude that the operation of said concession in any respect is substantially detrimental to the best interest of the City, City may, upon written notice delivered to Manager personally or to the clubhouse, terminate said agreement and order Manager to vacate the premises immediately, all without further liability to the City.

The exercise of any remedy provided herein shall not preclude the City from exercising any other remedy, legal or equitable that it may have.

Either party may terminate this agreement with or without cause by giving ninety (90) days written notice to the other party, at any time during this license.

26. **Complete Agreement.** This License Agreement constitutes the entire agreement between the parties for the stated period and supersedes all previous agreements and resolutions. There are no oral agreements nor is this license based upon any oral representation covering the subject matter of this License.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first written above.

By: _____
Don E. Kruse, Manager
Jackrabbit Run Golf Course

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

On _____, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Don E. Kruse, known personally to me to be the identical person and such officer who signed the foregoing License Agreement and acknowledged the execution thereof to be his voluntary act and deed for the purpose therein expressed on behalf of the corporation.

WITNESS my hand and notarial seal the date above written.

Notary Public

CITY OF GRAND ISLAND, NEBRASKA
A Municipal Corporation

By: _____
Margaret Hornady, Mayor

Attest: _____
RaNae Edwards, City Clerk

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

Before me, a notary public, qualified in said County personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing License Agreement and acknowledged that the foregoing signature was her voluntary act and deed pursuant to Resolution 2007-59, and that the City's corporate seal was thereto affixed by proper authority.

WITNESS my hand and notarial seal on _____, 2007.

Notary Public

Exhibit “A”

Two Beer Coolers

One Ice Machine

One Range Picker and Cart

One Beverage Cart

* Range Balls

* Range Ball Washer

* Hot Dog Machine

* Coffee Pot

* Microwave

* Serving Cart

* Items marked are provided by the City but will be the Manager's responsibility to replace or repair as needed. If these are replaced, they shall then become the property of the manager.

RESOLUTION 2008-65

WHEREAS, on March 13, 2007, by Resolution 2007-59, the City Council of the City of Grand Island awarded Don E. Kruse of Grand Island, Nebraska, a contract for the operation and management services for Jackrabbit Run Golf Course; and

WHEREAS, in order to provide a cost competitive product, it has been determined that modifications to the contract are necessary relating to green fees for tournaments; and

WHEREAS it is recommended that the original contract for the operation and management of service for Jackrabbit Run Golf Course be amended to reflect a 60% of standard green fee costs for tournaments held at the course; and

WHEREAS, it is further recommended that the contract be modified to allow for Association Tournament green fees to be the existing green fee or for a season pass holder, the payment of only the Capital Maintenance Fee; and

WHEREAS, it is further recommended that the sentence "In 2008 and beyond full fees will apply to all tournaments" on page four of the contract be deleted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be, and hereby is, authorized and directed to execute a revised contract between the City of Grand Island and Don E. Kruse of Grand Island, Nebraska, for the operation and management services for Jackrabbit Run Golf Course.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 26, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk