

CONTRACT

THIS CONTRACT "CONTRACT", between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, by and through its PARKS DEPARTMENT, herein referred to as "METRO GOVERNMENT" or "PARKS", and **PATRICK VADDEN**, with offices located at 10207 Mary Dell Lane, Louisville, Kentucky 40299, herein referred to as "CONTRACTOR",

WITNESSETH:

WHEREAS, the Metro Government requires a contract for provision of golf services to patrons at its public golf courses (the "Services") as more specifically set forth below; and

WHEREAS, the Metro Government published Request for Proposal ("RFP") Number 200034 for procurement of the Services; and

WHEREAS, the Metro Government has concluded that Contractor is a responsible offeror who submitted the proposal most advantageous to the Metro Government for the Services needed at Charlie Vettiner Golf Course ("Golf Course"); and

WHEREAS, the Metro Government has made this determination based on analysis of Contractor's proposal vis a vis the evaluation criteria set forth in the RFP

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. RECITALS

The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

II. SCOPE OF SERVICES

A. The Metro Government hereby grants Contractor permission to perform the Services at the Golf Course. The Services shall include but not be limited to:

1. Assume responsibility for management of the Clubhouse, Pro Shop/merchandise sales, concession operation, and Cart Storage

Facilities and see that these services are available to the public as scheduled by the Metro Government and herein described in Section II, A, 17, i below.

2. Provide assistance and advice in coordinating and conducting golf activities at the course;

3. Assure that all policies, procedures, rules, admission requirements, and other standards for operation set by the Metro Government are enforced;

i Contractor shall obtain a license to sell beer, obtain and remain in good standing with the Louisville Metro Department of Public Health and Wellness' requirements for selling food and beverage and maintain all other required licenses, permits and certifications;

4. Confer and cooperate regularly with the Golf Course greenskeeper regarding course conditions and standards. Greenskeeper will make the final decision regarding play adjustments/start times and cart use due to weather;

5. Do and perform those duties normally performed by PGA professional in the management of a Pro Shop/Clubhouse, including providing golf carts for rental by patrons;

6. Employ, at his or her sole expense, cashiers, attendants, and other personnel necessary to conduct the operation;

7. Require all persons who rent motorized golf carts from the Contractor to sign a Rental Transportation Agreement, a copy of which is attached hereto and incorporated herein as Attachment A.

8. Secure, maintain and protect display cases, cabinets and all other movable fixtures required by the Contractor to conduct business;

9. Maintain the Clubhouse, area contiguous to the Clubhouse operation and cart staging area in a clean and safe condition, including providing janitorial services;

10. Complete and present to the Parks Assistant Director or designee an annual marketing plan (including specific measures to increase rounds), concessions plan (including menu), expanded play plan including youth and league play and community involvement

and merchandise plan by March 1 of each year for the duration of the contract;

11. Clubhouse rental for golf and non-golf related events must follow the Metro Government's rental agreement policy, see Attachment B attached hereto and fully incorporated herein;

12. Contractor shall not permit any person to use a privately-owned motorized golf cart on the course unless Contractor has verified that the owner has a Private Cart Ticket issued by the Metro Government;

13. Contractor shall collect all charges to be paid by patrons with the exception of the annual passes as set out in Section II, 15, a below.

14. Credit and Debit Card Patron Transactions

a. Contractor has caused to be installed (or will cause to be installed) credit and debit card processing machines. Contractor agrees that it shall be responsible for all matters concerning these machines, including but not limited to their use, functionality, maintenance, repair and all contractual obligations related to them and the transactions processed through them.

b. Contractor shall immediately begin to accept golf course patron payments via credit and debit cards, if patrons desire to pay for services they wish to purchase in that fashion.

c. Contractor shall collect all credit and debit card payments.

15. Golf Cart and Golf Green Fee Annual Passes

a. The Metro Government shall continue to offer an annual pass allowing a discounted rate for cart rental and greens fees which shall be honored by Contractor.

16. Reporting Requirements

i. Contractor shall meet monthly with the Metro Government to report monthly revenue and discuss projections for coming quarters. Contractor shall provide

a written report monthly. This information will be shared with the Metro Parks leadership team, Metro Government Leadership team and Metro Council. Reports shall, at a minimum, include:

- (1) Hours of operation;
 - (2) Rounds of golf played;
 - (3) Revenue from all sources;
 - (4) Number of reservations;
 - (5) Number of passes used;
 - (6) Number of scrambles benefiting non-profits played at each course: and
 - (7) An itemized breakdown of all Gross Revenue and expenses.
 - ii. Financial Reporting: Contractor shall provide a monthly profit & loss statement (aka income statement) including income by revenue source (green fees, cart rental, food & beverage, lessons, merchandise, driving range, events etc.).
17. Hours of Operation
- i. The Golf Course shall be open for use by patrons as follows:
 - a. April – October: 7:00 a.m. - Dusk
 - b. November-March: Sunrise - Dusk
 - c. Please note that these are the minimum hours. If sunrise is before 7 a.m., the Golf Course may be opened for play at dawn.
 - d. Exceptions: If Contractor elects to be open on snow days, Contractor shall open the Golf Course for business by noon.
 - e. Parks approval is required for any reduction in hours.
18. Fees and Discounts
- i All Green Fees charged must be as per Louisville Metro Codified Ordinance 42.41. Contractor shall provide Metro their plan and/or schedule for dynamic pricing in writing as allowed by LMCO Chapter 42.
19. Contractor agrees to provide all supplies and personal property necessary for the Clubhouse and its operations.

20. Contractor shall be solely responsible for payment and maintenance of landline telephone service, internet service and security alarm systems.

21. Pursuant to LMCO 42.43 (A), the Contractor shall be or employ a Class A PGA Member to manage the Golf Course.

B. Parks shall provide:

1. Space for use by the Golf Pro in the Clubhouse of the Golf Course, as agreed between the parties;

2. Utilities, with the cost for gas and electric to be shared by the parties as set forth in Section III, D, 1 and F below;

3. Maintenance services necessary to maintain the Clubhouse in a condition suitable for its intended purpose; The Metro Government shall provide heating and air conditioning (HVAC) equipment in working condition and of adequate capacity to heat and cool the Clubhouse. The Metro Government shall maintain the exterior of the Clubhouse, including the exterior walls, roof, flashing, gutters, downspouts, foundation, and exterior common area spaces including gravel driveways, patching of asphalt potholes as needed, drainage and sewerage system. Contractor is fully acquainted with the condition of the Clubhouse and accepts same "as is". The Metro Government shall not be required to make any repairs or alterations to the Clubhouse prior to commencement of this Contract. Contractor shall keep in good condition the interior of the Clubhouse, including but not limited to the interior walls, all windows, doors, plate glass, plumbing and light fixtures, floor coverings, ceilings and walls, but the Metro Government shall repair or replace any of the aforementioned which provided Contractor has not damaged same. Contractor

shall return the premises to The Metro Government at termination of the Contract in as good condition as at the commencement of the Contract, ordinary wear and tear excepted;

4. The Metro Government shall have the right, at any reasonable time, to inspect the Golf Course and all facilities and property located thereon.

III. FEES AND COMPENSATION

A. The parties have agreed to share the gross revenue generated at the Golf Course. "Gross Revenue" shall mean the then-current year's aggregate amount of all sales made and services performed for cash, or credit, or otherwise, of every kind, regardless of when or whether paid for or not, together with the aggregate amount of all exchanges of goods and services at the selling price, exclusive of State Sales Tax, and shall include but not be limited to greens fees, cart rental fees, fees for use of the driving range, food and beverage sales, golf lessons, proceeds from rental of the Clubhouse for events, outings or tournaments and any other income generated from golf-related and clubhouse operations but shall not include merchandise sales revenues.

B. Revenue Sharing. Before Gross Revenue exceeds the Annual Projection, **FIFTY FIVE PERCENT (55%)** of Gross Revenue shall be paid by Contractor to the Metro Government. If and once Gross Revenue exceeds Annual Projection, **FIFTY PERCENT (50%)** shall be paid by the Contractor to the Metro Government.

C. Annual Projections: The parties shall agree on annual projections of Gross Revenue ("Annual Projections"). The Annual Projections for the following year will be agreed upon in advance – no less than sixty (60) days prior to the start of the next contract year. The parties have agreed that the Annual Projection for the first year of the Contract is

**NINE HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED
EIGHTY EIGHT DOLLARS (\$988,388.00).**

1. Contractor will be provided a three-month grace period for meeting the first calendar quarter projections ending March 31, 2020.
2. For the first year of this Contract, Contractor will provide to the Metro Government, before Contract execution, a quarterly payment projection as follows:

Quarter	Period	% of projection	\$ of annual projection
2020 Q2	April 1- June 30	35	190,264.69
2020 Q3	July 1 – September 30	40	217,445.36
2020 Q4	October 1 – December 31	17	92,414.28
2021 Q1	January 1 – March 31	8	43,489.07

3. For the purpose of calculating the Annual Projections in future years, actual revenue from the immediately preceding year will be a factor. However, unless otherwise agreed upon by both parties, new projections will not increase more than ten (10) percent of the preceding year's Annual Projection.

D. Revenue Collection and Payment

1. Payment: Contractor will collect all Gross Revenue. Contractor shall remit payment for the Metro Government's share of the Gross Revenue to the Metro Government monthly, no later than five (5) days after the first of the month. This monthly payment shall be accompanied by a separate check which shall include a reimbursement by Contractor of fifty (50) percent of the utility payment for the clubhouse area and cart storage facility most recently made by the Metro Government.

The Metro Government shall provide a copy of the utility bill for which the Contractor shall make this fifty (50) percent reimbursement. "Utility" as used herein means gas and electric service.

2. Payment shall reconcile to the monthly financial report submitted by contractor to LMPR and Metro Council. The financial report shall reflect all types of Gross Revenue and expenses.

E. Quarterly Business Review

1. The Metro Government shall conduct a quarterly business review with Contractor with a primary focus of reviewing progress of actual revenue against projections as well as identifying actions for any issues that need addressed.

2. If Contractor does not meet the scheduled revenue projections for that quarter, the Contractor will be provided one additional quarter to make up the revenue deficiency.

3. If Contractor does not meet the scheduled revenue projections for two consecutive quarters, Contractor will be prescribed a performance improvement plan by Metro.

4. If Contractor does not adhere to the performance improvement plan, or fails to meet projections for the quarter to which that plan applies, the Contractor shall be in default and the Metro Government may terminate the Contract with thirty (30) days written notice.

5. Parks may excuse Contractor's failure to meet revenue projections if, in Parks' sole discretion, there have been conditions or events which made the Golf Course unusable for ten consecutive calendar days or more. This provision shall not apply during the months of December, January and February of each year.

- F. Gas and Electric Utilities: Louisville Metro Government will pay for of gas and electric utilities and Contractor shall reimburse for same as set forth in Section III, D, 1 of this Agreement. LMPR will work with the utility provider to isolate gas and electric charges for clubhouse and – if applicable – cart charging areas.
- G. Credit Card Merchant Fees: Contractor shall pay all credit card merchant fees. By no later than January 15th following the end of the preceding calendar year, Contractor shall submit to the Metro Government a copy of each month's credit card statements verifying that preceding year's credit card merchant fees. Within thirty (30) calendar days after receipt of Contractor's submission, the Metro Government shall remit to Contractor a payment for one half of that preceding year's merchant fees.

IV. DURATION

A. This Contract shall begin on the date of final approval of this Contract by the Louisville Metro Council and shall continue for four (4) years thereafter. This Contract may renew for an additional one (1) year term upon written agreement of the parties. In addition, after Council approval of this Contract, the parties shall thereafter execute an Amendment to this Contract memorializing the calendar date at which this Contract began.

B. This Agreement may be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. For purposes of this Agreement "work completed" shall mean any and all Gross Revenue received by Contractor prior to termination.

V. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this agreement nor does it cause Contractor to be an officer or official of the Metro Government. By executing this agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

VI. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for Contractors' and any other third parties' charges.

VII. INSURANCE REQUIREMENTS AND HOLD HARMLESS AND

INDEMNIFICATION

Contractor agrees to comply with the insurance and hold harmless and indemnification requirements attached hereto and fully incorporated herein as Attachment C.

VIII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate Contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

IX GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

X. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement

supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XII. OCCUPATIONAL HEALTH AND SAFETY

Contractor agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 et. seq., as amended, and KRS Chapter 338. Contractor also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Contractor performs work under this Agreement. Contractor agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

XIII. SUCCESSORS

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVI. CAPTIONS

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XVII. ASSIGNMENT

Contractor shall not assign or subcontract any portion of the Contract without the express written consent of Metro Government. Any purported assignment or subcontract without the written consent of the Metro Government shall be void. Contractor agrees that the Metro Government shall consent to any request for assignment or subcontract in its sole discretion. If ownership of Contractor changes, Contractor or its successor firm shall notify Metro Purchasing in writing within 30 days of the Contractor's receiving notice that its ownership is changing, including but not limited to purchase or other transfer.

XVIII. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XIX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS

Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

Witness the agreement of the parties hereto by their signatures below.

APPROVED AS TO FORM AND
LEGALITY:

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

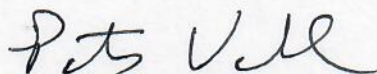
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

JOEL NEAVEILL
DIRECTOR
PURCHASING DEPARTMENT

Date: _____

Date: _____

PATRICK VADDEN



PATRICK VADDEN

Date: 2/3/2020