



ADDENDUM NO. 2

DATE: February 14, 2018
FROM: City of Grand Junction Purchasing Division
TO: All Interested Parties
RE: Golf Course Lease or Management Services RFP-4459-18-SH

Firms responding to the above referenced solicitation are hereby instructed that the requirements have been clarified, modified, superseded and supplemented as to this date as hereinafter described.

Please make note of the following clarifications:

Question #1: “Are the golf courses currently being operated by City staff or are there currently any existing agreements with a contractor or organization for Maintenance and Golf Operations?”

Answer: The Courses are currently operated and maintained by the Grand Junction Parks Department.

Question #2: “What is the structure of the Food and Beverage lease at Tiara Rado: 1) when did it start, when does it end? 2) Base rent/ % rent / required capital? 3) Hours of operation/pricing etc? 4) Can you supply a copy of their Agreement?”

Answer: The Food and Beverage contract is not part of this solicitation. The current vendor is in the second year of a three year contract.

Question #3: “Under a lease scenario, how will the Interfund Charges be handled going forward? 1) Fleet Accrual – Replacement? 2) Interfund Charges-General Govt-what are these?”

Answer: 1) Fleet Accrual is for the lease of the equipment used by the Golf Course/s. If the new leasee chooses to procure equipment on their own, this charge will go away. 2) Interfund Charges are for services such as Legal, HR, Finance, etc. This would go away under a lease scenario.

Question #4: “Can you supply an org chart with positions and general compensation packages which make up the FT work force?”

Answer: Please see Attachment 1.

Question#5: “Can you supply a PT employee listing with wage rates and benefit packages/costs?”

Answer: Please see Attachment 1.

Question #6: “Has there been a study/report which outlines future capital improvements needed?”

Answer: The ten year capital plan includes parking lot improvements at Tiara Rado in 2020/2021 estimated at \$600,000 and roof replacement at Lincoln Park in 2021 estimated at \$38,000.

Question #7: “What are the type of bonds on the property/will they impact lease structure based upon IRS 97-13?”

Answer: No, this structure is in the form of an internal loan from the City of Grand Junction’s General Fund so it is not associated with a tax exempt bond structure.

Question #8: “Under a lease scenario are there requirements or limitations on hours of operation, rates for golf, capital investment or minimum base rent?”

Answer: This information should be included as part of the lease proposal. In general, the hours of operation should be set to maximize customer use each day. Rates typically are in line with the average rates of the five other local courses.

Question #9: “I noticed the Bar & Grill is currently outsourced. Typically, we like to bid on the full scope of golf course services. If allowed, we plan to include Food & Beverage offering in our management scope. Is this okay with you?”

Answer: Food and Beverage is not part of this solicitation. The current contractor is two years into a three year contract. However, you could offer F&B as an option in your Proposal for future consideration..

Question #10: “Is it possible to provide ROUNDS data at each course for the years provided in the financials?”

Answer: The Rounds information is available for 2017, 2016 and 2015. All rounds are considered 9-hole rounds. If a customer wants to play 18 holes, it is considered two 9-hole games.

	2017	2016	2015
Tiara Rado; 9-Holes	57,034	57,099	58,637
Lincoln Park; 9-Holes	24,156	22,140	24,580

Question #11: “Could you answer Rounds played for the past 3 years for each course?”

Answer: See Question 10 above.

Question #12: “Are the golf cars and equipment at each course owned or leased?”

Answer: Golf cars are leased. All other equipment is city-owned.

Question #13: “Could you provide an equipment list of maintenance equipment for each course?”

Answer: Lists are as follows:

Lincoln Park:

- 1 beverage cart, drop-in box
- 1 range picker cart, to be replaced in 2018
- 1 small overseeder
- 4 Club Car utility vehicles, 2 electric, 2 gas

1 regular sized pick-up, 1 small
1 Jake greens mower, 3 Toro triplexes
1 bunker rake
1 Toro sprayer, shared with TR
1 old sprayer used as back-up
1 Pro Gator
1 fairway mower
1 Jake AR-30
1 rough mower
1 Dakota topresser
1 roller to be replaced in 2018
1 walking greens mower
Various reels, verticutters, small pull behind sprayer, trim mowers, etc.

Tiara Rado:

1 small overseeder
2 mid-sized workman carts
4 club car utility carts 2 Electric, 2 Gas
1 utility Tractor
1 sand pro, to be replaced in 2018
4 triplexes, 1 Jake greens mower
1 Dakota topdresser
1 self contained beverage cart
1 range picker cart
2 Pro Gators
1 small pick-up, 1 regular pick-up, 1 hybrid car
1 Cushman dedicated to the core processor
1 old rough mower used on the range
2 fairway mowers
1 rough mower
1 old fairway mower used on the range and after tee aerification
1 walking greens mower
1 sidewinder
1 Bobcat
1 small hydro seeder
1 regular lawn mower
Various reels, verticutters, small pull behind sprayer, 1 set triplex greens rollers, trim mowers, etc.

Question #14: “How many full time staff at each location and their job title?”

Answer: See Attachment 1.

Question #15: “Does Lincoln Park have a liquor license?”

Answer: Lincoln Park has a 3.2% on/off premise license. Only 3.2% beer is permitted on the course.

Question #16: “Could you provide a copy of the food and beverage lease at Tiara Rado?”

Answer: See Question 9 above.

Question #17: “What flows the interfund charges General Govt on the income statements?”

Answer: See Question 3 above.

Question #18: “If possible, I would still like to see a copy of the food and beverage lease to determine what expenses that leaseholder is accountable for in order for us to put our pro forma together.”

Answer: Please see Attachment 2. Keep in mind food and beverage is not part of this solicitation.

Question #19: “What is the size of the golf cart fleet as each course?”

Answer: There are 20 carts at Lincoln Park and 70 at Tiara Rado.

Question #20: “Can you supply a copy of the cart lease for each?”

Answer: Please see Attachment 3.

Question #21: “Are these leases expensed on the income statements, and if so, what line description?”

Answer: Yes, the charges are listed under Operating Equipment, but this account includes more than just this one lease. The total lease amount is found in Attachment 3.

Question #22: “Please define in additional detail what is included in the following Interfund Charges;

- a. Interfund Utilities – what specific utilites? Are these specific to the golf courses?
- b. Interfund Charges_General Govt
- c. Utilities_Energy Service Contract
- d. Interfund Fuel-how is this calculated?”

Answer:

- a. Interfund Utilities are charges for electricity and gas that are paid centrally and charged back to the using fund.
- b. See question 3 above
- c. This is repayment of a loan for capital improvements. The capital improvements were recommended and implemented as a result of an energy audit. The energy savings from the capital improvements exceed the capital costs.
- d. Interfund fuel is based on the actual fuel usage at the golf courses and is calculated based off of the RAC rate established by a contract between the City and the Contractor .

Question #23: “In a Third Party Management Agreement, what requirements are in place for IT Systems, server and Data Interfund Charges? What charges, if any, would continue if a management company provided independent IT support and management?”

Answer: This could be done either way and will be negotiated with the awarded firm.

Question #24: “Please provide a detailed estimate of average hours worked by volunteers per department per month as well as current volunteer program details to include volunteers golf course privileges and rates they pay when they play, etc.”

Answer: There are typically 6-8 volunteers at LP and 12-15 at TR. They average 35 hours per month are provided with a 10 punch (9 hole) card each month for green fees only.

Question #25: “Are there written agreements for water rights and timing of access that can be provided for both facilities?”

Answer: Water at both courses is based on water shares the City owns. Tiara Rado has shares on the Redlands Canal with water coming from the Gunnison River. Lincoln Park shares are on the Grand Valley Canal with the water coming from the Colorado River. LP generally gets water from April 1 to November 1. TR generally gets water from April 15 to October 15. Lately, Redlands has turned the water in a little early and out a little later based on weather.

Question #26: “What limitations or restrictions on rates exist or would be implemented with a lease or management agreement?”

Answer: Historically, Grand Junction surveys rates from other courses in the local service market. GJ Rates are typically set in line with the average of the other courses surveyed.

Question #27: “What is the current Golf Now Agreement and other Third Party Providers for Tee Times details?”

Answer: Golf Now is an agreement where 3 tee times per day are traded in exchange for internet booking and hosting services. They also power our website, golfgrandjunction.net.

Gallus Golf powers the course app that allows golfers to book tee times, has course specific GPS and scoring.

There are currently three different options to book tee times for our courses: GolfNow, Gallus Golf (App), and by website golfgrandjunction.net.

Question #28: “What type of Point of Sale do the golf courses use?”

Answer: GEN2016 (ActiveGolf).

Question #29: “How large is the data base for each golf course?”

Answer: Total customers combined is 8,857 for both courses. LP totals 5,813; TR 6,275. There is cross over between the two courses.

Question #30: “Can you please provide a copy of the marketing program for the past year or current year?”

Answer: Marketing for the courses is done by:

Facebook Page – Golf Grand Junction – Timely posts regarding tournaments, events, maintenance updated, pro shop specials, etc.

Facebook Ads – 2016: Golf Pass End of Year Specials, Black Friday/Holiday Sales

2017: Masters – Discounted Golf Passes/Punch Cards, PGA Junior Golf League, Golf Punch Cards Sale, Golf Pass End of year Specials, Black Friday/Holiday Sales

Marquee – Advertisement on City owned marquee on corner of major Grand Junction intersection with 35,000 traffic counts per day.

Promotions in seasonal Activity Guide run 4 times a year; 4500 printed copies; 16,000+ online views per year (costs associated)

Question #31: “Under a Lease Agreement with the tenant be required to insure the buildings/property? How are these currently insured?”

Answer: The City will continue to insure the buildings and the properties. The City is currently covered through an intergovernmental risk sharing agency.

Question #32: “Under a Lease Agreement, is there an expectation be for retaining existing staff?”

Answer: It would be desirable to retain existing staff. The City is interested in seeing what solutions are offered.

Question #33: “Have all employees been verified through E Verify?”

Answer: No. It is not required in Colorado.

Question #34: “What Term is the City of Grand Junction looking for under a management and lease agreement structure? Is there a minimum and maximum for each which would be considered?”

Answer: Please submit your desired contract structure. The City is not in a position to provide a preference at this point.

Question #35: “What is your schedule or estimated timeline for reviewing proposals, evaluating firms, and expected start date.?”

Answer: Please see the Tentative Time Schedule in Section 3.5 of the original RFP document.

The original solicitation for the project noted above is amended as noted.

All other conditions of subject remain the same.

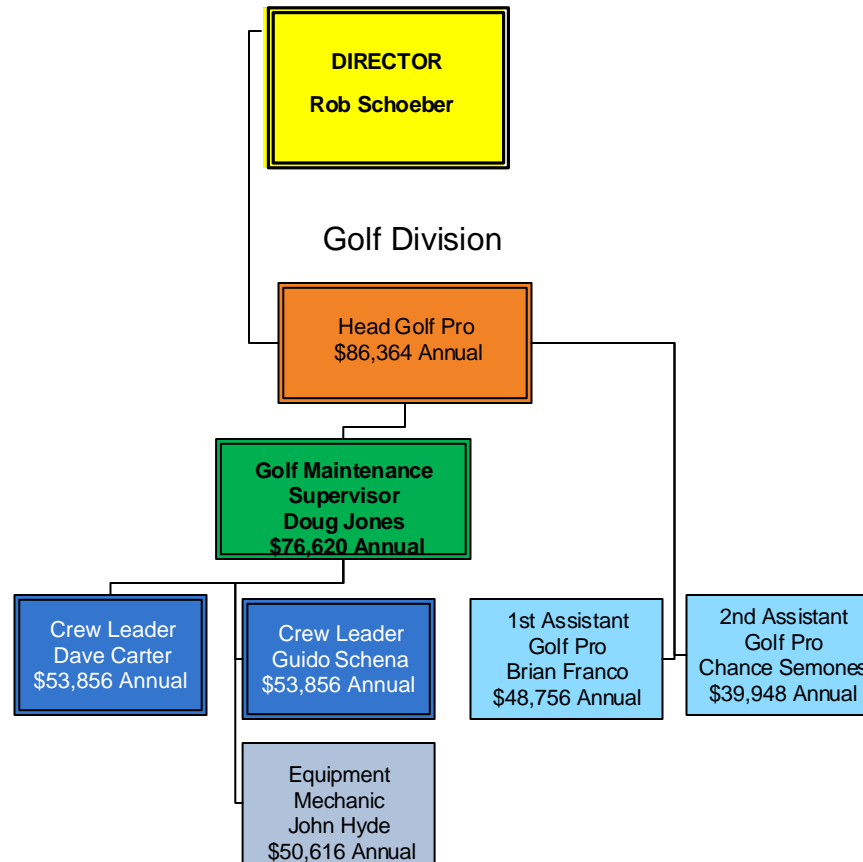
Respectfully,

Susan Hyatt
City of Grand Junction, Colorado

ATTACHMENT 1

Golf

1/23/2018



2017 Seasonal Salaries:
Lincoln Park: \$73,498.00
Tiara Rado: \$122,545.00
Total: \$196,044.00

* 2017 actual salaries for all categories (salaries do not reflect cost for City benefit package)

ATTACHMENT 2

AGREEMENT

THIS AMENDMENT, made this 12th day of December, 2015 by and between the CITY OF GRAND JUNCTION, a municipal corporation, hereinafter referred to as "CITY" and Texas Food Company, a Colorado limited liability corporation, hereinafter referred to as "CONCESSIONAIRE."

WITNESSETH:

This agreement contemplates lease of all restaurant, food and beverage service facilities located on the premises of Tiara Rado Golf Course (Tiara Rado) located at 2057 S. Broadway, Grand Junction, Colorado (known as the "Premises" or the "Facilities" unless specific references in context apply). The Concessionaire's purpose, as stated in its response to the CITY's request for proposal RFP-4302-16-DH is to fulfill the food and beverage service needs of patrons of Tiara Rado Golf Course. The proposal and response are incorporated herein by this reference as if fully set forth. Accommodating the golf patrons using the Premises shall be the Concessionaire's first priority.

I. LEASED PREMISES/UTILITIES/HOURS

A. The Concessionaire shall have the exclusive right to operate on the Premises food service and vending operations, including food and beverage sales, tobacco and snack food product sales and other machine vended items. There shall be no smoking in any enclosed area of the Premises. Failure to provide any service provided for herein or otherwise commercially required or reasonably requested by the City, in a suitable quality, will be considered a breach of this Agreement and the Concessionaire will be considered in default. The Facilities outlined in this Agreement shall be exclusively managed and controlled, subject to the limitations herein contained, during the pendency of this Agreement by the Concessionaire.

B. City agrees to lease to Concessionaire the facilities located at Tiara Rado, including the restaurant, bar and snack bar facility, and beverage cart from January 1, 2017 to December 31, 2019 on terms and conditions stated below, unless or until the Concessionaire or the City is in breach.

C. The City reserves the right to renew this contract for two (2) additional one (1) year periods annually upon review and recommendation of the Parks and Recreation Director, the satisfactory negotiation of terms, and the annual availability of budget appropriation.

D. The Tiara Rado Restaurant Facility shall be open on all days the golf course is open by 11:00 a.m. The Snack Bar Facility shall be open at least all hours the golf course is open, plus one-half hour past sunset. Snack Bar shall have vending machine(s) and water available. All special events or gatherings shall be scheduled so as not to interfere with golf activities. Golf activities shall have first priority to use the Facilities.

E. The Concessionaire shall maintain the Premises and Facilities in good repair. The City shall maintain the exterior of the Facilities in good repair including heating, cooling, lighting, water and sewer systems.

F. The Concessionaire shall pay grease disposal costs and the cost to maintain the stove hood for the Tiara Rado Restaurant Facility.

G. The City shall pay the cost of gas, electric, sewer and water utilities and services for the Tiara Rado.

H. The Concessionaire shall promptly and timely pay any and all vendors who supply materials, merchandise, food, food stuffs, liquor, wine, beer or other beverages or other goods to the Concessionaire. Nonpayment of any or all vendors or account delinquencies of thirty (30) days or more shall constitute a breach of this Agreement.

I. The Concessionaire shall bear the cost of insect and rodent control. Insect and rodent control shall be provided at each location by a licensed contractor of the Concessionaire's selection. Should insect and rodent control not be satisfactory, as determined by the City in its sole discretion, the City may as a condition of this agreement, require the Concessionaire to increase the frequency or change the method of extermination services at the facilities.

J. The Concessionaire shall be responsible for all telephone, internet and cable/satellite television expenses, charges and fees.

K. The Concessionaire shall be responsible for interior maintenance of all portions of the Premises and maintain the same in a first class condition. Maintenance shall include painting walls and ceilings, maintaining carpet and floor coverings and proper maintenance of all fixtures, including tables, chairs and the like. The City and Concessionaire will equally divide the cost of replacement of City -owned floor coverings, window coverings, tables and chairs as required by the normal course of wear and tear occasioned by the food service business. Any and all replacement shall occur only upon the mutual consent and concurrence of the Concessionaire and the City. Such consent and concurrence shall not be unreasonably withheld by either the City or the Concessionaire.

L. The Concessionaire shall maintain, repair and replace all equipment and/or furnishings provided by the Concessionaire under the terms of this Agreement. The Concessionaire acknowledges that the Premises and City-supplied equipment are in good and satisfactory condition and accepts the same.

M. In the operation of the Agreement, it shall be understood and agreed that the Concessionaire is an independent contractor and not an agent, servant or employee of the City.

II. INSPECTION AND ALTERATION OF PREMISES

A. Concessionaire agrees that the Director of Parks and Recreation, or his duly authorized agent(s), shall have the right to enter the Premises at any reasonable time to inspect the same. Costs for additional electrical wiring, outlets, facilities, shelving, fixtures, improvements or installations installed by the Concessionaire shall be the sole responsibility of the Concessionaire and shall be done only with the written consent of the City and shall become the property of the City at conclusion or termination of this Agreement.

B. The use of extension cords shall be as limited by fire, building and electrical codes. All signs erected on the Premises by the Concessionaire shall conform to applicable codes and shall not be erected or installed until the City has given its approval in writing. All improvements and or renovations including, but not limited to, paint, floor coverings, window coverings and decorating shall be made only with prior approval of the City. City and Concessionaire agree that the Director of Parks and Recreation or his designee is the party to whom any and all notices required to be given under this Agreement by Concessionaire shall be delivered and the person from whom all City consents shall be obtained.

C. In the event this agreement is terminated prior to the full amortization of any capital expenditure that has been provided by the Concessionaire, the Concessionaire will be reimbursed at the non-amortized amount of the capital expenditure. The Concessionaire shall prepare an amortization schedule in accordance with Generally Accepted Accounting Principles (GAAP) that shall be presented to the City upon completion or acquisition of the capital expenditure. Capital expenditures are defined as furniture, fixtures, equipment of improvements with an initial cost of \$5,000 or more and an estimated life in excess of three years.

III. LICENSES, TAXES AND FEES

A. It is further agreed and understood by the parties that certain licenses issued by the City, the County and the State are necessary requirements to Concessionaire's operation. Concessionaire agrees to obtain all necessary licenses at its sole and separate expense and shall maintain the same in full force and effect during the term of and under the conditions of this Agreement.

B. The registered manager for purposes of liquor license at the premises shall be Brent Miller. As a condition of this Agreement, Brent Miller shall be the registered manager of the Hotel/Restaurant liquor license held by the City for the clubhouse premises and optional premise licenses for the Tiara Rado Golf Course. The Concessionaire shall pay the annual renewal fees for all licenses. All beverages served shall be canned or contained in plastic cups or containers if consumed on the golf courses. Concessionaire shall strictly enforce and limit containers as provided by this paragraph and furthermore, the Concessionaire and/or the Manager shall not serve or dispense beverages in violation of applicable law.

C. Service in violation of this Agreement and/or applicable law or the loss of or the failure to renew the Tiara Rado liquor licenses shall be deemed a breach of this Agreement.

D. Concessionaire shall adhere to and comply with all liquor, wine and beer laws, codes or regulations of the State of Colorado, City of Grand Junction or other regulatory entities having jurisdiction. Concessionaire shall have and does affirmatively acknowledge its duty to be circumspect and prudent with regard to over-service, underage-service and compliance with commercially reasonable alcohol service practices.

E. Concessionaire shall pay all license fees, taxes and all retail sales taxes on the products or services which the Concessionaire provides hereunder, including, but not limited to, all federal and state payroll and income taxes, including withholding, state and local sales taxes, compensation payments, unemployment insurance, and other taxes with respect to services provided under this Agreement and all other taxes arising from the Concessionaire's operation.

F. The Concessionaire and all Concessionaire's employees shall attend the Alcohol Server Responsibility Class, or similar class approved by the City, on no less than an annual basis beginning at the employee's date of hire.

IV. EMPLOYEES OF CONCESSIONAIRE

A. In the operation of the Facilities, Concessionaire will need to employ certain personnel. It is agreed and understood that any person or persons employed by the Concessionaire shall be employees of Concessionaire and not the City. The Concessionaire assumes full responsibility for the action(s) of such personnel while performing service(s) pursuant to this Agreement and shall be solely responsible for supervision, payment of wages or salary, withholding and income taxes, social security taxes and unemployment insurance, as required by law. Concessionaire further agrees that Worker's Compensation insurance shall be provided for said employee(s) in

conformity with the Colorado law and that a certificate of Worker's Compensation Insurance evidencing continuous coverage shall be filed with the City Risk Manager.

B. The Concessionaire and each of its agents and employee(s) shall provide at all times courteous service to customer(s). Concessionaire shall employ, train and deploy employees in optimum numbers who are proficient, productive and courteous to patrons. Concessionaire shall furnish all necessary qualified supervision for the performance of food and beverage service and agrees to maintain highly competent management staff at all times. Concessionaire and its employees shall, no less than once per year per employee, attend the City's customer service training. The cost of the training shall be borne by the City.

V. INSURANCE

A. Concessionaire agrees to procure and maintain in full force and effect, at Concessionaire's sole expense, commercial general liability insurance and liquor liability insurance for and covering the Premises naming the City of Grand Junction, its agents, servants, employees and elected and appointed officials as additional named insureds. This insurance shall reflect minimum coverage in the following amounts:

COVERAGE

Injury or death	\$ 500,000
Property damage	\$1,000,000
Product liability	\$ 500,000
Liquor liability	\$ 500,000
Automobile liability	\$ 500,000

B. A certificate evidencing such insurance policy coverages shall be provided to the City Risk Manager and shall have a provision that any and all of the same shall not expire or be canceled or terminated without first giving written notification thereof to the City Risk Manager thirty (30) days prior to termination, expiration or cancellation. A renewal policy shall be delivered to the City at least fourteen (14) days before a policy's expiration, except for policy(ies) in effect upon termination of this Agreement. Failure to maintain such insurance coverage shall be deemed breach of this Agreement.

C. Concessionaire shall furnish fire, theft and contents loss insurance for Concessionaire-owned material(s), supplies and equipment. City will not be responsible for any loss of, or damage to, or replacement of material, supplies and equipment of Concessionaire due to theft, natural disasters or other events beyond the control of the City. If City property, material(s), supplies or equipment are damaged by acts or omissions of Concessionaire, agent(s), or employee(s) of Concessionaire. Concessionaire shall be responsible for the depreciated cost of replacement, whether replaced by the City or not. City-owned material(s), supplies and equipment are insured against fire and theft for acts not occasioned by Concessionaire, agents or employees of Concessionaire.

VI. WAIVER OF SUBROGATION

Concessionaire, its agent(s), employee(s) and insurers hereby release the City, its officers, employees, agents assigns ("City") from any and all liability or responsibility, including anyone claiming through or under City by way of subrogation or otherwise, for any loss or damage which Concessionaire, its agents or insurers may sustain incidental to or in any way related to Concessionaire's operation under this contract, except for loss or damage due to breach of this Agreement by the City or due to the City's gross negligence or willful or wanton conduct.

VII. LIABILITY AND INDEMNIFICATION

The Concessionaire shall indemnify and hold harmless the City against all action(s), claim(s), proceeding(s), demand(s), loss(es), cost(s), damage(s) and expense(s) whatsoever which may be brought against or suffered by the City or which it may sustain, pay or incur, by reason of, or on account of any injury, illness or death of persons and/or damage to property arising out of, or incidental to, the Concessionaire's provision of food and/or beverage service(s) herein provided for and/or any negligence, act of omission or commission, by Concessionaire's employee(s), licensee(s) or invitee(s). The Concessionaire's agreement to indemnify and/or hold harmless shall survive termination, expiration or cancellation of this Agreement and/or termination or expiration of any or all insurance coverage required hereunder.

VIII. STANDARDS OF PERFORMANCE

A. Providing quality food and beverage service to golf course patrons shall be the Concessionaire's top priority. The Concessionaire shall organize, operate and manage efficiently the food and beverage operations of the Facilities to provide high quality food, beverage and vending services in a clean, attractive and pleasant environment.

B. As an express condition of this Agreement, the City requires the Concessionaire to have and provide adequate capitalization to operate the Facilities at the expected level of excellence. To ensure adequate ability to perform, Concessionaire shall agree and allow the City to conduct routine credit and financial background checks of the business or corporate finances of the Concessionaire. If each or any of such inquiries disclose insufficient capitalization or outstanding judgment(s), liabilities or delinquencies which may impair or prevent the proper operation of the facility, the City may declare this Agreement breached, void and of no effect.

C. Concessionaire hereunder shall provide unencumbered capitalization of \$10,000.00 and shall maintain a net worth of no less than \$10,000.00, as determined by generally accepted accounting principles (as opposed to generally accepted tax accounting principles). The City may, in writing, accept smaller amounts of capitalization and net worth if Concessionaire shows reasonable cause therefor. The Concessionaire shall maintain the equipment, assets and the Premises in good and serviceable condition.

D. Concessionaire's responsibility shall include, but not be limited to, the following as costs and requirements of operation:

Purchasing all inventory and supplies required for food service operations;

Routine cleaning of the food preparation areas and floors, storage areas and counter tops and service areas including, but not necessarily limited to, cleaning all hoods not less than two times per year;

Supplying and laundering of kitchen and banquet linen including, but not limited to: uniforms, aprons, cleaning cloths, table cloths, napkins, *etc.*;

Purchasing replacement small wares as necessary, including, but not necessarily limited to: china, glassware, flatware, cooking utensils and sundry items. Any and all replacement shall be deemed a cost of Concessionaire's operation;

Installing, servicing and maintaining vending machines in good repair at such locations as may be agreed upon and keeping the machines adequately supplied with merchandise;

Keeping all Premises, including patio and service areas, clean and sanitary in conformance with the guidelines in Appendix A, attached hereto and incorporated by reference. The City shall provide paper, cleaning and soap products for restrooms. Transportation of all waste materials, including grease, from the food/beverage areas to the garbage pick-up area in a manner designated by the City and health/restaurant codes. The Concessionaire shall not discharge any grease into the building drains but shall keep grease in proper containers for disposal by the Concessionaire. If the Concessionaire fails to comply with this provision, any cost, charge or expense involved in opening, cleaning or repairing drains necessitated by such failure shall be paid by the Concessionaire;

Maintain all food service equipment (both City provided and Concessionaire provided) in good repair. Concessionaire shall be responsible for repair and/or replacement of City provided equipment used in the fulfillment of this Agreement, normal wear and tear excepted;

Provide beverage sales on the golf course as deemed appropriate by the Parks and Recreation Director or designee.

E. Only quality food and beverages shall be purchased and served by Concessionaire. Upon delivery, all merchandise shall be checked for quality and shall be stored in proper areas in sanitary containers, which are dated for effective rotation of stock on a first-in, first-out basis.

F. The City may require the Concessionaire to sell items that the City reasonably deems necessary to the operation of the facilities. The City may limit or require the discontinuance of the sale of products which the City reasonably deems not in the best interest of the operation of the Facilities.

G. At the City's option a survey of Facility users by the City or an independent contractor may be conducted to determine Concessionaire's performance. Facility users may be surveyed to determine if they are "very satisfied," "satisfied," "dissatisfied," or "very dissatisfied" with the Concessionaire's operation. The acceptable performance standard shall be 75% of Tiara Rado Facility users "satisfied" or "very satisfied" with the food and beverage concession. A rating below either or both satisfaction standards may be considered by the City as grounds for declaring the Concessionaire in breach of this Agreement. If a user survey results in customer satisfaction less than required by this Agreement, the Concessionaire may contract and pay for a second survey to be performed by an independent third party agreed to by the City and the Concessionaire. All costs of this second survey shall be at the Concessionaire's sole expense. If the results of the second survey show customer satisfaction to be at or above standard, Concessionaire will be deemed to have met a standard of acceptable performance. Failure to attain customer satisfaction at one Facility shall not be deemed a breach of this Agreement for the other Facility.

IX. TERMINATION

A. The Concessionaire must be able at all times to meet the standard of 75% customer satisfaction as determined by the user survey explained in paragraph VIII (H).

B. In the event that compensation provided for is in arrears, or if Concessionaire is in default of any covenant, term or agreement as herein provided, the City shall give the Concessionaire a written notice specifying the default. In the event Concessionaire fails to remedy and cure said default within ten (10) calendar days from mailing of such written notice, the City shall be entitled to declare this Agreement terminated and may immediately reoccupy the premises with or without process of law using such reasonable force as may be necessary without being liable to prosecution for damages therefor. In the event of repeated default by Concessionaire, the City may declare this Agreement terminated and may reoccupy as provided. Repeated default(s) shall be defined as three (3) notices of violation within a twelve- (12) month period. Concessionaire covenants and agrees to surrender and deliver up said premises peaceably to the City upon expiration or termination. Any notice provided for herein may be mailed or may be served upon the Concessionaire by delivering a copy thereof to it in person or by leaving it with any person employed by the Concessionaire at the concession.

C. Any notice or communication of default shall be deemed made if personally served or received by certified mail at:

CITY OF GRAND JUNCTION
Attn: Director of Parks and Recreation
1340 Gunnison Ave. Grand Junction, CO 81501

CONCESSIONAIRE
2057 South Broadway, Grand Junction, CO 81503

The City or Concessionaire may from time to time change the above address upon written notice to the other.

D. In the event of litigation hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees in addition to all other damages or remedies authorized by law.

E. Upon termination or expiration of this Agreement, Concessionaire agrees to return all equipment and supplies furnished by the City. Said equipment and supplies shall be in as good condition as originally furnished, ordinary wear excepted.

F. Notwithstanding any provision to the contrary, upon termination by the City for default by Concessionaire, Concessionaire's duties to indemnify and hold harmless the City shall continue and survive.

G. Upon termination or expiration of this Agreement, for any reason, all installed equipment purchased by the Concessionaire becomes the property of the City. The City agrees to pay Concessionaire depreciated fair market value for this equipment if the City desires to retain said equipment. Any equipment the City does not want will remain the property of the Concessionaire and will be removed at no expense to the City. An independent third party appraiser shall determine value of Concessionaire's equipment if the parties disagree. Cost of appraisal shall be the City's sole responsibility.

H. The City may terminate this Agreement if any of the liquor or beer licenses obtained or managed by Concessionaire are revoked, suspended or any action or proceeding is initiated by the City or State against the licensees and/or the Manager or any person operating under the direction or authority of the Manager.

I. Any failure by the City to give Concessionaire any notice hereunder in a timely manner, *e.g.* a notice of breach or default, shall not be deemed to waive the City's right to do so thereafter.

X. ASSIGNING OR SUBLETTING PROHIBITED

Concessionaire shall have no right to assign, sell, transfer or in any way convey any of the rights or obligations attached or arising hereunder. Further, the portion of this Agreement relating to the granting of this concession is a personal service agreement and the parties agree and understand that the Concessionaire shall not assign or in any way divest itself of any of the duties or responsibilities provided herein.

XI. PATENTS, TRADEMARKS, ETC.

Concessionaire represents that it is the owner of and fully authorized to use any and all services, processes, machines, articles, names or slogans used by it in its operation under or in any way connected with this concession. Concessionaire agrees to save and hold the City, its officers, employees, agents, and representatives free and harmless from any loss, liability, expense, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright or unfair competition arising out of the operations of this concession or in any way connected to this concession.

XII. SUSPENSION OF OPERATIONS

If either or both of the Facilities are closed for a period in excess of three (3) days due to no fault of the Concessionaire for reasons such as fire or natural disaster, the monthly rent payments to the City shall be suspended on the third day of closure but shall recommence when reopened. In the event of a closure more than fourteen (14) consecutive days, the City may require that Concessionaire will operate out of a temporary facility and provide minimum food and beverage service as directed by the City. Operation of such temporary facility(ies) shall be at the Concessionaire's sole expense. The Concessionaire shall be responsible for the cost and availability of utility services for such temporary facility(ies). The Concessionaire may choose not to install the utilities and may terminate the Agreement if the cost of installation is, in the Concessionaire's sole discretion and determination, prohibitive.

XIII. COMPENSATION TO CITY

A. In consideration of the lease of the Premises to the Concessionaire, the Concessionaire shall pay the City according to the following schedule:

01/01 to 12/31	\$1,300.00 per month for Tiara Rado. Payments due by the seventh day of each month beginning 1/7/17.
04/01 to 10/31	\$800 per year for Tiara Rado beverage cart lease. Payment due no later than 10/31/17.

Compensation due the City under any extension of this Agreement shall be negotiated to the mutual satisfaction of the parties at that time. Compensation for the first year of this agreement will begin January 1, 2017. Compensation for annual extensions beyond 2017 will begin January 1st.

B. For the purpose of this Agreement, gross sales shall be defined as the total amount of money or the equivalent thereof in kind received by the Concessionaire in exchange for the goods or services rendered by Concessionaire at the Premises. Gross receipts shall also include any and

all monies received from the operation of any vending machines owned by Concessionaire or leased by Concessionaire from third parties. Concessionaire agrees that it shall keep a true and accurate account of all monies received pursuant to this Agreement and deliver the required monthly financial report to the City Financial Operations Manager.

C. At the conclusion of the term of this Agreement the parties may, conditioned on full and faithful performance of and under this Agreement by the Concessionaire, renew the agreement on then mutually acceptable terms. Renewal, if exercised, shall be annually for up to two years. Concessionaire may renew the agreement for none, one or both premises. If Concessionaire opts to renew, any subsequent extension or renewal of this Agreement if any shall be subject to the approval of the Parks Director.

XV. BANKRUPTCY, REORGANIZATION

This Agreement and all rights of Concessionaire hereunder, shall terminate if:

A. Concessionaire, while in possession of the Premises, files a petition in bankruptcy, or insolvency, or for reorganization under the Bankruptcy Code, or voluntarily takes advantage of any such filing by answer or otherwise, or makes an assignment for the benefit of creditors; or

B. Involuntary proceedings under any bankruptcy law or insolvency act are instituted against Concessionaire, or if a receiver or trustee is appointed of all, or substantially all, of the property of Concessionaire, and such proceedings are not dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment.

XVI. EQUAL OPPORTUNITY

The Concessionaire agrees not to exclude anyone from participation in or deny anyone any benefits of Concessionaire's services, or otherwise subject anyone to discrimination because of the person's race, sex, color, religion, national origin or physical handicap. Concessionaire warrants that it will comply with all applicable local, state and federal laws relating to employment practices.

XVII. ATTACHMENTS

Attached and incorporated herein:

Appendix A

Cleanliness Guidelines

XIX. OTHER

A. In the event of any dispute arising hereunder, either the City or the Concessionaire may request in writing that the matter be heard by the Grand Junction Parks and Recreation advisory Board (Parks Board). Upon receipt of such request, the Parks Board shall schedule a public meeting at which time the parties shall be entitled to present such information and testimony as they desire. The Parks Board shall thereafter render a decision by majority vote resolving the matter. The Parks Board shall hold such meeting and render its decision within 90 days of the initial request letter. If either party is dissatisfied with the decision of the Parks Board, or if the Parks Board does not act within the 90-day period, they may take such other legal action as is available to them, including filing a complaint in court. However, neither party may file any court proceeding without first seeking a resolution of the dispute by the Parks Board.

IN WITNESS WHEREOF, the parties have hereunto placed their hands and seals the day and year first above written.

CITY OF GRAND JUNCTION, COLORADO
a municipal corporation

DocuSigned by:
by Duane Hoff 12/14/2016 | 08:35 MST
9F789E7D60F148C...
Duane Hoff Jr., Senior Buyer

CONCESSIONAIRE: Texas Food Company

DocuSigned by:
by Brent Miller - Texas Food Company 12/13/2016 | 22:55 MST
331AC8B686024C6...
Brent Miller, Texas Food Company

Appendix A

Cleanliness Guidelines

The Concessionaire shall maintain the Facilities, including, but not limited to the kitchen, food preparation, dining, service and banquet areas and all equipment, fixtures, materials, utensils, accessories and other items therein in a clean and sanitary manner. Volunteer(s) chosen by mutual consent of the City and the Concessionaire shall clean and maintain restrooms at Tiara Rado. The Tiara Rado Golf Shop will directly supervise volunteer(s). Concessionaire shall comply with all applicable health and sanitation laws and regulations in effect for the food/beverage preparation and service areas. The Concessionaire shall permit and facilitate inspection of the food/beverage preparation and service areas by the City and its representatives and by any and all authorized public health, sanitation, building and fire authorities.

The following shall establish the minimum sanitation guidelines for the Concessionaire:

1. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
2. All State of Colorado Laws, Acts, Statutes and Regulations governing food and beverage service operations.
3. All applicable City of Grand Junction and Mesa County public health/sanitation regulations, rules and codes.
4. All applicable Federal Government Laws, Acts, Rules and Regulations.
5. Any and all applicable statutes, codes, regulations or requirements enacted by the City, County, State or Federal government or which become effective during the pendency of the Agreement.

Sanitation Regulation and Job Inspection

1. Informal inspections of the Facilities are to be conducted weekly by the Concessionaire. An inspection checklist is to be prepared and completed by the Concessionaire for each inspection, and said checklists are to be made available to the City upon its request. A complete report of corrective measures taken or to be taken for any deficiencies noted should accompany the inspection report.
2. Informal inspections of the Facilities are to be conducted daily by the concessionaire with immediate corrective measures taken for any deficiencies noted.
3. Formal inspections of the Facilities are to be conducted a minimum of four (4) times per year, on a quarterly basis, by the City's designated representative, accompanied by the Concessionaire.

ATTACHMENT 3

Certificate of Appropriation To Bruning State Bank

Ref: Municipal Lease Purchase Agreement #616127

I, Jay Valentine, Internal Services Manager for the City of Grand Junction, Colorado (Borrower/Lessee) hereby certify that the loan/lease payments due by Borrower or Lessee to **Bruning State Bank** (Lender) under Lease/Loan Agreement dated as of the 19 day Feb., 2016 between the City of Grand Junction, Colorado as Borrower and Bruning State Bank as Lender, for the fiscal year ending 12/31, 2016 are within limits of Borrower's fiscal year budget and thereby constitute an available and unencumbered appropriation for Lender.

In Witness Whereof, I have set my hand this 19 day of February 2016.

Borrower: City of Grand Junction, Colorado

By: _____



Jay Valentine, Internal Services Manager

**Acceptance Certificate
Bruning State Bank Commercial Lease**

This is an Acceptance Certificate ("Certificate") dated 2/19, 2016 by the City of Grand Junction, Colorado, (Lessee) and is made a part of Municipal Lease Purchase Agreement #616127. Lessee states to the Bruning State Bank ("Lessor") that the Lessee has received and read Municipal Lease Purchase Agreement #616127, dated 2/19, 2016 and all the schedules and attachments thereto, and understanding that the goods and equipment described by the Municipal Lease Purchase Agreement #616127 are accepted by the Lessee pursuant to said lease.

I, Jay Valentine, Internal Services Manager for the City of Grand Junction, CO, certify that:

- 1) I am a duly authorized, appointed, and designated officer, employee or agent of Lessee, and make this Certificate for and on behalf of Lessee.

- 2) The following items of Equipment have been (a) fully and completely delivered and/or installed, (b) tested by Lessee (to the extent Lessee deems appropriate in order to make this Certificate), (c) put into use on or as of the Commencement Date, and (d) accepted by Lessee, and Lessee hereby waives any right to revoke its acceptance with respect hereto:

Description of Equipment Leased:

(90) Ninety 2016 Club Car Precedent i3 Golf Cars as well as accessories, attachments, and accoutrements.

Notice: By signing below I am accepting all terms of the "Municipal Lease Purchase Agreement #616127 " and understand that as Lessee, am responsible for any personal property, sales/use tax that may be applicable or imposed upon Lessor arising from this Commercial Lease.

IN WITNESS WHEREOF, Lessee has signed this Certificate as of the date set forth below.

Witness: Susan Mueller

Lessee: City of Grand Junction, Colorado

Date: 2/19/2016

By: [Signature]

Title: Internal Services Manager

MUNICIPAL LEASE PURCHASE AGREEMENT (#616127)

This Equipment Lease Purchase Agreement ("Lease") dated this 19 day of Feb., 2016, entered into between **BRUNING STATE BANK** (as "Lessor"), and the City of Grand Junction, CO, ("City") a municipal corporation and political subdivision duly organized under the laws of the State of Colorado, (as "Lessee").

WITNESSETH:

WHEREAS, upon Acceptance (as defined below), the City desires to lease from the Lessor certain equipment described in Exhibit A, subject to the terms and conditions of and for the purposes set forth in this Lease; and

WHEREAS, the City and the Lessor are each authorized to enter into this Lease for the purposes set forth herein;

NOW, THEREFORE, for, and in consideration of the premises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and the City hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Acceptance" means the City Representative has certified, pursuant to the Acceptance Certificate, that the Equipment ordered is the Equipment received, that the Equipment has been installed, tested, and found acceptable for the purposes for which it was ordered, and that the Lessor is thereby directed to pay the Vendor pursuant to the Related Vendor's Contract or Proposal, all as further set forth in Section 5.01.

"Acceptance Certificate" means a certificate that is substantially the form set forth as Appendix A addressed to the Escrow Agent (if one is utilized for this Lease) which may be executed by the City Representative and delivered to the Lessor.

"Acceptance Date" means the date on which the Lessor received the Acceptance Certificate and pays the Vendor as directed in the Acceptance Certificate, which date shall not be later than the first Rental Payment Date as set forth in Exhibit C hereto.

"Agent" means any agent for the Registered Owners, if any, to which all or a portion of the Lessor's right, title, and interest in, to and under this Lease and the Equipment may be assigned for the benefit of such Registered Owners; provided that the Mayor or City Manager or designated representative has received notice of such assignment and such assignment has been granted, all in accordance with Section 11.01.

"Appropriation" means the collective procedure by which the City Council specifically appropriates funds for this purpose and the City thereby affects an Encumbrance for such purpose.

"City" means the City of Grand Junction, CO, only in its capacity as the lessee under this Lease and not in respect to its police powers or any other capacity, power or function of the City.

"City Attorney" means the City Attorney or any attorney duly appointed or engaged or otherwise designated by the City.

"City Representative" means the City Manager or a designee of such a representative by the City.

"Code" means the Internal Revenue Code of 1986, as amended and rulings and regulations issued or promulgated thereunder.

"Encumbrance" means (a) the act of submitting a written request of the City to the City Manager

or Manager of Finance of the City and (b) the certification in writing by the City Mayor or Manager of Finance for the City for the applicable Fiscal Year that (1) there is an unencumbered balance in the appropriation and the appropriate fund chargeable therefore sufficient to provide for the Rental Payments and any other amounts to be paid hereunder, as the case may be, for this Lease and for the period specified in this Lease and (2) such amounts have been set aside for such purpose.

"Equipment" means the property as described in Exhibit A hereto and all replacements, repairs, restorations, modifications and improvements of or to such Equipment.

"Event of Default" means an event of default described in Section 12.01.

"Event of Non-appropriation" means an Event of Non-Appropriation described in Section 3.03.

"Fiscal Year" means the City's fiscal year which begins October 1 and ends on September 30.

"*Force Majeure*" means, without limitations, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any other cause or not within the control of the Lessor or the City in the City's capacity as the Lessee hereunder.

"Lease" means this Equipment Lease Purchase Agreement, including all Exhibits hereto, together with all amendments and modifications to this Lease pursuant to Section 13.05.

"Lease Term" means the Original Term and any Renewal Terms as to which the City may exercise its option to renew this Lease by effecting Appropriations of funds for the Rental Payments and other obligations hereunder, as provided in and subject to the provisions of this Lease.

"Manager of Internal Services" means the City Representative duly appointed by the City as set forth in Exhibit E hereof.

"Manager of Finance" means the Manager of Finance as set for the in Exhibit E hereof.

"Original Term" means the period that commences with the Commencement Date and terminates on the 30th of September of the Fiscal Year in which this Lease commenced.

"Purchase Price" means the amount that the City may pay to the Lessor to purchase such Equipment in accordance with Section 10.01 and as set forth by Exhibit C.

"Registered Owners" means the registered owners of the certificates of participation that may be executed and delivered by an Agent with respect to this Lease.

"Related Vendor Contract" means the contract (if any) entered into with the Vendor for the acquisition, delivery, installation and testing of the Equipment and related to this Lease.

"Renewal Terms" means the renewal terms of this Lease, each having a duration of one year and a term corresponding to the City's Fiscal Year.

"Rental Payments" means the basic rental payments payable by the City under this Lease pursuant to Section 4.01 and as set forth in Exhibit C hereto with respect of each Fiscal Year during the Lease Term.

"State" means the State of Colorado.

"Vendor" means the supplier or manufacturer of the Equipment as set forth in Exhibit A as well as the agents or dealers of the manufacturer or supplier from whom the Lessor purchased or is to purchase such Equipment as directed by the City Manager pursuant to the Acceptance Certificate.

ARTICLE II

Section 2.01. Representation and Agreements of the City. The City represents and agrees, for the benefit of the Lessor and to the extent allowed by law and subject to renewal of this Lease and Appropriations as set forth herein, as follows:

- a) The City is a municipal corporation and political subdivision duly organized and existing with full power and authority to enter into this Lease and the transactions contemplated hereby and to perform all of its obligations hereunder.
- b) The City is authorized to enter into this Lease and to carry out its obligations hereunder. The City has duly authorized the execution and delivery of this Lease by proper action of its City Council or by other appropriate official approval. The City Council has authorized and directed, and hereby authorizes and directs, the City Manager to execute the Agreement on behalf of the City.
- c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both, would constitute an Event of Default exists at the date hereof.
- d) The City has complied with applicable procurement requirements, if any, related to this Lease and the acquisition of the Equipment pursuant to the terms of this Lease.
- e) During the Lease Term, the Equipment will be used by the City only for the purpose of performing essential governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.
- f) The Manager of Finance or the City Manager or other designee of the City Council will annually provide the Lessor with current financial statements, budgets, and certificates with respect to Appropriations for the ensuing Fiscal Year as the same may be requested in writing by the Lessor to the City Manager or the Manager of Finance.
- g) The City has an immediate need for the Equipment and, after the City Representative has delivered the Acceptance Certificate to the Lessor, expects to make immediate use of the Equipment. The City's need for the Equipment is not temporary and the City does not expect the need for the Equipment to diminish in the foreseeable future including the maximum lease term. This statement is subject to and qualified by the provisions of this Lease, including but not limited to the provisions of Section 3.03.
- h) The City will comply with all applicable provisions of the Code and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

Section 2.02 Representations and Agreements of the Lessor. The Lessor represents and agrees, for the benefit of the City as follows:

- a) The Lessor is a Nebraska Commercial Bank with full power and authority to enter into this Lease and the transactions contemplated hereby and to perform all of its obligations hereunder. The Lessor is authorized to enter into this Lease and to carry out its obligations hereunder. The Lessor has duly authorized the execution and delivery of this Lease by proper corporate action.
- b) So long as no Event of Default or Event of Non-appropriation has occurred and is then existing, the Lessor shall not pledge, assign, mortgage, encumber or grant a security interest in its right, title and interest in, to, and under this Lease or the Equipment, except as may be permitted under Section 11.01.
- c) The Lessor agrees to make payment on outstanding invoices directly to the vendor, provided that the Lessor has received from the City, on or before the date of this Lease, the following:
 - 1) An opinion of the City Attorney with respect to this Lease in substantially the form attached hereto as Exhibit G.
 - 2) All other documentation relating directly to this Lease and the Equipment, as mentally agreed by the Lessor and the City and in form satisfactory to both the Lessor and the City.

Section 2.03 Nature of this Lease. The annually renewable obligations of the City under this Lease are payable solely from funds for which an Appropriation has been effected by the City and

shall not constitute or give rise to a general obligation or other indebtedness of the City or a multiple fiscal year direct or indirect or other financial obligation whatsoever of the City, within the meaning of any constitutional, Charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond the then current Fiscal Year. This Lease may not be renewed in the event that funds are not specifically budgeted and available from an Appropriation which has been affected by the City to continue making all Rental Payments and other amounts that may be due hereunder during the next occurring Fiscal Year, and that the act of affecting an Appropriation budgeting funds is a governmental act and, as such, is solely within the discretion of the City.

Article III Section 3.01. Lease of Equipment. The Lessor hereby demises, leases, transfers, and lets to the City, and the City acquires, rents, leases and hires from the Lessor, the Equipment in accordance with the terms hereof.

The Lease term may be continued, solely at the option of the City, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in greater detail in Exhibit C. At the end of the Original Term and the end of each Renewal Term until the maximum Lease Term has been completed, the City shall be deemed to have exercised its option to continue this Lease for the next Renewal Term unless the City shall have terminated this Lease pursuant to the provisions of this Lease, including but not limited to the provisions of Sections 3.03, 5.01, and 10.01.

The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except the Rental Payments in respect to each Fiscal Year shall be as provided in Exhibit C.

Section 3.02. Continuation of Lease Term. As of the date of this Lease, the City currently intends, subject to the provisions of this Lease, including but not limited to the provisions of Section 3.03 and 5.01, to continue the Lease Term of this Lease through the Original Term and all Renewal Terms and to pay the Rental Payments hereunder during the Lease Term. The City Representative or City Manager reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the maximum Lease Term can be obtained by Appropriation. Notwithstanding the forgoing, it is the intention of the City that any decision to effect and Appropriation for the Rental Payments shall be made solely by the City and the actions of the officials of the City as further provided in this Lease, including but not limited to the provisions of Sections 3.03 and 5.01.

Section 3.03. Non-appropriation. If sufficient funds are not appropriated by the City for Rental Payments due in any Fiscal Year, then the Event of Non-appropriation shall be deemed to have occurred. The City Representative or City Manager shall deliver notice thereof to the Lessor promptly, but not later than thirty (30) days after the occurrence of an Event of Non-appropriation. Failure to give such notice shall not prevent the Lessor from declaring an Event of Non-appropriation or from taking any remedial action otherwise available to the Lessor.

Upon the occurrence of an Event of Non-appropriation, the City agrees that the Lessor may reclaim possession of the Equipment and make demand upon the City for immediate payment of all other amounts (other than subsequent Rental Payments) then due and outstanding under this Lease, to the extent permitted by law and, if and only if, an Appropriation for the payment of such amounts has been effected by the City for this purpose. The City agrees to peaceably deliver the Equipment in accordance with Section 12.02.

The making of Rental Payments and the payment of any other obligations of the City contained in this Lease are subject to annual Appropriation by the City. In the event that the City does not effect an Appropriation with respect to any Renewal Term, thereby renewing this Lease for the related Fiscal Year and allowing the City to continue paying the related Rental Payments, regardless of the reason therefore or the failure of the City to act, this Lease shall automatically

terminate on the last day of the Fiscal Year with respect to which such an Appropriation to make Rental Payments has been effected, and the Equipment shall be returned to the Lessor without further obligation of the City for any amount, fee, penalty, interest or damage whatsoever.

The exercise of the City's annual option to appropriate Rental Payments shall be conclusively determined by whether or not the City has, on or before the last day of each Fiscal Year, effected an Appropriation to make Rental Payments for the ensuing Fiscal Year. In any Fiscal Year in which this Lease shall be in effect, the City Representative or City Manager or other officer of the City then charged with the responsibility of formulating budget proposals with respect to this Lease is hereby directed to include or cause to be included in the annual budget proposals submitted to the City Council for all payments required for the next subsequent Renewal Term under this Lease. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the City that any decision to effect an Appropriation for the Rental Payments shall be made solely by the City and the actions of the officials of the City as provided in this Section.

ARTICLE IV

Section 4.01. Rental Payments. If the City has effected an Appropriation to make Rental Payments in the Original Term and any Renewal Term as provided in Article III, the City shall promptly pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to the Lessor on the dates and in such amounts as provided in this Lease, including but not limited to Exhibit C.

The City shall pay the Lessor a charge on any Rental Payment not paid within five (5) business days after the date the City Mayor shall have received written notice from the Lessor that such Rental Payment is due during the related Renewal Term at the rate of 12% per annum or the maximum amount permitted by law, whichever is less, from such fifth (5th) business day, provided such charge shall only be paid from funds for which an Appropriation has been effected by the City. Rental Payments consist of principal and interest components as more fully detailed in Exhibit C, the interest on which begins to accrue as of the Commencement Date.

Section 4.02. Rental Payments to Constitute a Current Expense of the City. The Lessor and the City acknowledge and agree that the Rental Payments shall constitute currently budgeted expenditures of the City, if an Appropriation has been effected for such purpose. The City's obligation to pay Rental Payments under this Lease shall be from Fiscal Year to Fiscal Year only (as further provided in Section 2.03 and Article III), shall extend only to moneys for which an Appropriation has been effected by the City and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of the governmental powers or as creating a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City or a general obligation or other indebtedness of the City within the meaning of any constitutional, Charter or statutory debt limitation of the Constitution of the State. This Lease shall not directly or indirectly obligate the City to make any payments beyond those for which an Appropriation has been effected by the City for the City's then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or to create a lien on any City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from City moneys.

Section 4.03. Rental Payments to be Unconditional. The obligations of the City to make Rental Payments in any Fiscal Year for which an Appropriation has been effected by the City of the payment thereof and to perform and observe the other agreements contained in this Lease shall be absolute and unconditional without abatement, diminution, dedication, deduction, set-off or defense, for any reason, including without limitation any defects, malfunction, breakdowns or infirmities in the Equipment after Acceptance thereof or any accident, condemnation or unforeseen circumstances.

ARTICLE V

Section 5.01. Acquisition; Delivery, Installation and Testing of Equipment; Acceptance.

The City agrees to order the Equipment and cause the Equipment to be delivered, installed, and tested at the location specified in Exhibit A, all pursuant to the Related Vendor Contract (if any). After the Equipment has been delivered, installed and tested, the City agrees to accept the Equipment provided that the Equipment satisfies the requirements of the City as set forth in the Related Vendor Contract (if any). If the Equipment satisfies the requirements of the City therefore, all as set forth in the Related Vendor Contract, the City Mayor shall promptly notify the Lessor of Acceptance of the Equipment and direct Lessor to pay the Vendor pursuant to the agreement by executing and delivering to the Lessor the Acceptance Certificate.

Within three (3) days of the receipt of the Acceptance Certificate, the Lessor shall approve the payment of the invoice of the Vendor for the delivery, installation and testing of the Equipment as such invoice shall be attached to and approved in the Acceptance Certificate.

In the event that the Acceptance Certificate has not been delivered to the Lessor by the first Rental Payment Date set forth in Exhibit C, the City Representative or City Manager may negotiate with the Lessor and agree with the Lessor as to the later Acceptance Date.

Section 5.02. Enjoyment of Equipment. After Acceptance, the Lessor shall provide the City with quiet use and enjoyment of the Equipment during the Lease Term, and the City shall peaceably and quietly have, hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from the Lessor, except as otherwise expressly set forth in the Lease. No Registered Owner shall interfere with such quiet use and enjoyment during the Lease Term so long as this Lease has not been terminated as a result of the occurrence of an Event of Non-appropriation or an Event of Default.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved from the location specified for it in Exhibit A without the Lessor's consent, which consent shall not be unreasonably withheld. If the Lessor provides, on any business day, to the City's Representative or City Mayor at least 24 hours' written notice or by e-mail of the Lessor's intent to inspect, the Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the locations of the Equipment for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. After Acceptance, the City will not use, operate or maintain the Equipment carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. With respect to the Equipment, the City agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided that the City may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not adversely affect the interest of the Lessor in and to the Equipment or its interest or rights under this Lease.

The City agrees that it will, at the City's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order. Normal wear and tear expected. The Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, legal title to the Equipment and any and all repairs, replacements, substitutions and modifications to such Equipment shall be in the Lessor. Such title shall be held by the Lessor subject to this Lease. The City agrees that so long as legal title shall be in the Lessor and the City shall not be considered to hold legal title to the Equipment under Section 10.01, the Lessor shall be entitled to receive (a) any money attached or added to the Equipment at any time, (b) any money or property from the sale of the

Equipment, and (c) any money or property from an insurance claim if the Equipment is lost or damaged. Unless an Event of Non-appropriation or an Event of Default has occurred and is continuing, upon acceptance thereof, the City shall have the right to peacefully possess and use the Equipment during the Lease Term. The City will at all times protect and defend, at its own cost and expense, the Lessor's title from and against all claims, liens, and legal processes of the City's creditors, and keep all Equipment free and clear of all such claims, liens and processes.

Section 6.02. Financing Documents. Neither the Lessor nor the City will execute or cause to be filed, any financing or security documents with respect to this Lease or the Equipment unless such financing or security documents shall consist of financing statements filed by the Lessor reflecting (a) the Lessor's legal title to the Equipment and designating such financing statement as "filed for notice purposes only" or (b) the Lessor's assignment of its interest in this Lease and the Equipment as provided in Section 11.01.

Section 6.03. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or part of the real estate on which it may be situated, notwithstanding that the Equipment or any part of thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Lessor, the City will, at the City's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

ARTICLE VII

Section 7.01. Liens, Taxes, and Other Governmental Charges and Utility Charges. The City shall keep the Equipment free of all levies, liens and encumbrances except those created by this Lease. The Lessor and the City contemplate that the Equipment will be used and possessed by the City for a governmental or proprietary purpose of the City and that the Equipment will therefore be exempt from all property taxes. Because of such contemplation, the Lessor agrees that it will not declare the Equipment to the Assessor's office of the City, the State, or any other taxing entity and will not take any other action that may cause an improper tax billing to be prepared with respect to the Equipment. If the use, possession or acquisition of the Equipment is nevertheless determined to be subject to taxation, the City shall pay when due (a) all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment and (b) all utility and other charges incurred in the use and maintenance of the Equipment, provided that the City shall have effected an Appropriation for the payment of any such taxes or charges. The City shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, the City shall, during the Lease Term, either (a) maintain casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, in an amount at least equal to the then applicable Purchase Price of the Equipment or (b) self-insure against such risks evidencing such self-insurance by providing a statement of self-insurance coverage in an amount not less than the cost of the Equipment. Upon the Lessor's written request to the City Representative or City Manager from time to time throughout the Lease Term., City Representative or City Manager shall furnish to the Lessor evidence of such insurance or self-insurance coverage. The City shall not materially modify or cancel such insurance or self-insurance coverage without first giving written notice thereof to the Lessor at least ten (10) days in advance of such cancellation or modification. To the extent that the City is not self-insured with respect to the Equipment, the required casualty insurance shall contain a provision making any losses payable to the City and the Lessor as their respective interests may appear.

Section 7.03. Advances. In the event the City shall fail to keep the Equipment in good repair and working order, the Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the costs thereof. All amounts so advanced by the Lessor shall constitute additional rent for the then current Original Term or Renewal Term and, only if an Appropriation

has been effected by the City for this purpose, the City agrees to pay such amounts so advanced by the Lessor with interest thereon from the due date until paid at the rate of Twelve (12%) per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of power of eminent domain by any governmental authority or by any person, firm or corporation acting pursuant to governmental authority, the City and the Lessor will cause the Net Proceeds to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment to substantially the same condition unless the City shall have exercised its option to purchase the Equipment pursuant to Section 10.01 Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the City.

For purposes of the Article, the term "Net Proceeds" shall mean (a) the amount of insurance proceeds received by the City for rebuilding, repairing, restoring, or replacing the damaged or destroyed Equipment or (b) the amount remaining from the gross proceeds of any condemnation award or sale under threat of condemnation award or sale under threat of condemnation after deducting all expenses, including attorney's fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement the City shall (a) pay any costs thereof in excess of the amount of the Net Proceeds or (b) pursuant to Section 10.01 purchase the Lessor's interest in all the Equipment. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Lessor's interest in all the Equipment shall be retained by the City. If the City shall make any payments pursuant to this Section, the City shall not be entitled to any reimbursement therefore from the Lessor nor shall the City be entitled to any diminution of the amounts payable under Article IV. If the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b), available to it following an Event of Non-appropriation.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. The Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment. In no event shall the Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or the City's use of any item, product or service provided for in this Lease. The City may proceed to assert claims and rights relating to the Equipment as provided in Section 9.02 hereof.

Section 9.02. Vendor's Warranties. The Lessor hereby irrevocably appoints the City its agent and attorney-in-fact during the Lease Term, so long as the City shall not be in default under this Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that the Lessor may have against the Vendor or any person other than the Lessor. Any such matter shall not have any effect whatsoever on the rights or obligations of the Lessor with respect to this Lease, including the right to receive full and timely Rental Payments for which an Appropriation has been effected by the City for this purpose.

ARTICLE X

Section 10.01. Purchase Option. The City shall have the option to purchase the Lessor's ownership in all the Equipment, at the following times and upon the following terms:

a) On the date of the last Rental Payment set forth in this Lease (assuming this Lease has been renewed at the end of the Original Term and each Renewal Term), if this Lease is still in effect on such day, upon payment in full of Rental Payments due on this Lease to the Lessor;

b) Upon giving written notice to the Lessor at least sixty (60) days before the date of purchase, on the Rental Payment dates set forth in Exhibit C, upon payment in full of the Rental Payments then due plus the then applicable Purchase Price as set forth in Exhibit C to the Lessor; or

c) In the event of substantial damage to, or the destruction or condemnation of substantially all of the Equipment, then on the day specified in the City's notice to Lessor of its exercise of the Purchase Option upon payment in full to the Lessor of the Rental Payments then due plus the then applicable Purchase Price; provided that (1) such notice shall be given in writing at least sixty (60) days prior to the purchase date and (2) if the purchase date is not a Rental Payment date, the City shall also pay an amount equal to the portion of the interest component of the Rental Payment accrued from the immediately preceding Rental Payment date to such purchase date, computed on the basis of a 365 day year.

Section 10.02. Manner of Conveyance and Other Agreements Regarding Purchase. At the closing of the purchase or other conveyance of the Equipment pursuant to Section 10.01, the Lessor shall release and terminate this Lease and deliver to the City Manager a document in substantially the form set forth as Exhibit D releasing, assigning, transferring and conveying title to, and the Lessor's interest in, the Equipment and this Lease. The Lessor shall also cause a termination statement to be filed if the Lessor has filed any "notice" financing statement as permitted under Section 6.02.

ARTICLE XI

Section 11.01. Assignment by Lessor. The Lessor's right, title, and interest in, and to Rental Payments and any other amounts payable by the City under this Lease and its ownership in the Equipment and all proceeds there from, may be assigned and re-assigned in whole or in part to one or more assignees or sub assignees by the Lessor and, to the extent of its interest, by any Registered Owner, without the necessity of obtaining the consent of the City; provided that (a) any such assignment, other than an assignment by a Registered Owner, shall not be effective until the City Mayor has received written notice, signed by the assignor, of the name and address of the assignee, and (b) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent as agent for such. The City hereby agrees that the Lessor may, without notice to the City, sell, dispose or assign this Lease through a pool, trust, limited partnership, or similar entity, whereby one or more interests are created in this Lease, the Equipment or the Rental Payments.

The Lessor and the City agree that any such assignment of this Lease is not intended as the offer or sale of a security, and the Lessor and all assignees hereof understand and agree that (a) the City shall not be responsible for any information provided to any assignee or sub assignee in connection with any such assignment and (b) if any such assignment constitutes the offering of a security under applicable securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Lessor in connection with such assignment shall include a statement to the effect that the City has assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

Manager of Finance or City Manager shall (a) retain all assignment notices as a register of all assignees (other than Registered Owners) and (b) shall be responsible for making all payments during the Lease Term, if an Appropriation has been effected by the City for such purpose, only to the Lessor at the address set forth in Section 13.01, notwithstanding any assignment by the Lessor pursuant to the terms of this section.

Provided that the City shall have accepted the Equipment, the City shall not have the right to and shall not assert against any assignee or Registered Owner any claim, counterclaim or other right the City may have against Vendor.

The option granted in this Section does not permit the assignment of less than all of the Lessor's interests in all the Equipment.

Section 11.02. Assignment and Subleasing by the City. None of the City's right, title and interest in, to and under this Lease or any portion of the Equipment may be assigned or encumbered by the City for any reason; except that the City may sublease all or part of such Equipment if (a) such sublease is to an agency or department of, or a political subdivision of, the State or (b) the City obtains the prior written consent of the Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to the Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to this Lease and the rights of the Lessor in, to and under this Lease and with respect to the Equipment.

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under this Lease:

- a) Failure by the City to pay Rental Payment or other payment, for which an Appropriation has been effected by the City for such purpose, during the Original Term or any Renewal Term, five (5) Business Days after the date the City Mayor or City Manager shall have received written notice from the Lessor that such payment is due;
- b) Failure by the City to observe and perform any agreement on its part to be performed, other than as provided in (a) above, for a period of forty-five (45) days after written notice specifying such failure and requesting that it be remedied is given to the City by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected and provided further that, if, by reason of *Force Majeure*, the City shall be unable to carry out such agreement, the City shall not be deemed in default during the continuance of such inability;
- c) Any representation made by the City in this Lease or in any writing by any official of the City specifically related to this Lease or the execution, delivery or performance of this Lease shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- d) The City shall (1) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the City, or of all or a substantial part of the assets of the City, (2) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (3) make a general assignment for the benefit of creditors, (4) have an order for relief entered against it under applicable federal bankruptcy law, or (5) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the City in any bankruptcy, reorganization or insolvency proceeding; or
- e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of the City or a substantial part of the assets of the City, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, the Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- a) By written notice to the City, the Lessor may declare all Rental Payments and other amounts for which an Appropriation has been effected by the City, to the end of the then current Original Term or Renewal Term, to be immediately due and payable;

b) With or without terminating the Lease Term, the Lessor (1) (A) at the Lessor's expense, may enter the premises where the Equipment is located and retake possession of the Equipment or (B) may require the City at City's expense to promptly return any and all such Equipment to the possession of the Lessor at such place within the United States as the Lessor shall specify and (2) may sell or lease the Equipment or, for the account of the City, sublease the Equipment, continuing to hold the City liable for the difference between (i) the Rental Payments and other amounts for which an Appropriation has been effected by the City to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of the Lessor in exercising its remedies under this Lease, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all reasonable brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of this Lease, including but not limited to the provisions of Section 3.03 hereof; and provided that an Appropriation has been effected by the City for such purpose; and

c) The Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Lease or as owner of all the Equipment.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised any remedy to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article.

Section 12.04. Application of Moneys. Any net proceeds from the exercise of any remedy under this Lease (after deducting all expenses of the Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all reasonable brokerage, auctioneer's and attorney's fees) shall be applied to the Rental Payments and other amounts due under this Lease to the end of the then Current Original Term or Renewal Term.

ARTICLE XIII

Section 13.01. Notices; Payments to Lessor. All notices or other communications under this Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the Lessor and the City at the addresses listed below (or at such other address as either the Lessor or the City shall designate in writing to the other party hereto). Any payments that may be due to the Lessor during the Lease Term shall be mailed to the Lessor by the City with a City warrant therefore enclosed or shall be transferred by the City by electronic transfer.

a) Notice and Payment to Lessor: Bruning State Bank
P. O. Box 2407
Kearney, NE 68848-2407

Attention: Douglas King
Phone: (308) 455-3042 or (308) 627-1415
E-mail: dking@bruningbank.com

b) Notice to the City: City of Grand Junction, CO
Attention: Mr. Jay Valentine, Internal Services Manager
250 N. 5th Street
Grand Junction, CO 81501
(970) 254-1517

CC: City Attorney at the same address

Section 13.02 Release of Indemnification. Pursuant to the Constitution of the State, the City is prevented by law from indemnifying the Lessor.

Section 13.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the City and their respective successors and assigns. References herein to "Lessor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment as permitted and limited by Section 11.01, provided that the City Mayor shall only be required to provide payment to the Lessor as described in Section 11.01.

Section 13.04 Severability. Except for the requirement of the City to make Rental Payments for which a specific Appropriation has been effected by the City for such purpose and the requirement of the Lessor to provide quiet enjoyment of the Equipment and to convey the Equipment to the City as set forth in Sections 6.01, 10.01, and 10.02 (which, if held invalid or unenforceable by any court of competent jurisdiction, may have the effect of invalidating or rendering unenforceable the other provisions of this Lease), in the event that any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 13.05. Amendments. This Lease may be amended by mutual written consent of the Lessor and the City.

Section 13.06. Execution in Counterparts. This Lease may be simultaneously executed in no more than two counterparts, each of which shall be an original and both of which shall constitute but one and the same instrument.

Section 13.07. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 13.08. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 13.09. No Discrimination in Employment. In connection with the performance of the work under this Lease, the Lessor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the forgoing provision in all subcontracts hereunder.

Section 13.10. Audit. The Lessor agrees that it will keep and preserve for at least six (6) years all directly pertinent books, documents, papers and records of the Lessor involving transactions related to this Lease, and that it will give the City's authorized representatives access during reasonable hours to examine and/or copy such books and records.

The authorized representatives of the City and the Lessor have signed this Equipment Lease Purchase Agreement. By the signatures below, the City and the Lessor agree to the terms and conditions of this Equipment Lease Purchase Agreement, including all Exhibits hereto.

City of Grand Junction, CO

By:  _____
Jay Valentine, Internal Services Manager

Attest: 

Title: Sr. Adm. Asst.

Bruning State Bank

Taxpayer ID # 47-0114250

By: _____

Attest: _____

Branch President

Title

Title

Counterpart No. ___ of 2 manually executed and serially numbered counterparts. To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

Exhibit A
Description of the Equipment

Description and Location of the Equipment:


Ninety (90) 2016 Club Car Precedent i3 Golf Cars

Said equipment to be used on the city-owned golf courses

Representations Regarding the Equipment/Code Section 103 Arbitrage Limitations: The City hereby represents as follows:

- a) The estimated total costs of the Equipment listed above is not less than the total Principal Portion of the Rental Payments set forth in the Rental Payment Schedule in Exhibit C.
- b) The Equipment has been ordered or is expected to be ordered within thirty (30) days of the Commencement Date and the Equipment is expected to be delivered, installed, and tested and the Vendor fully paid, within six (6) months from the Commencement Date.
- c) The Equipment has not been and is not expected to be sold or otherwise disposed of by the City, either in part or in whole, prior to the last payment date for the principal component of the Rental Payment Schedule in Exhibit C.
- d) To the best of the City Representative's or City Mayor's knowledge, information and belief, the above expectations are reasonable.

By: _____



Jay Valentine
Internal Services Manager
Title

Exhibit C
Lease Term and Rental Payments/Purchase Price Schedule

Lease Term

The term of this Lease shall begin April 1, 2016 and shall conclude on April 1, 2021.

Rental Payments: Seasonal monthly payments of \$8,507.00 on or before the 1st day of April, May, June, July, August, and September in the year 2016: Seasonal monthly payments of \$8,729.59 on or before the first day of April, May, June, July, August, and September in years 2017, 2018, 2019, and 2020. The total rental amount (sum of monthly payments) is \$260,552.16.

Final payment for purchase is \$108,000.00 and is due April 1, 2021.

Exhibit D
Form of Release and Conveyance

Release and Conveyance

Equipment Lease Purchase Agreement Dated Feb, 19, 2016

KNOW ALL MEN BY THESE PRESENTS, that Bruning State Bank ("Lessor"), for good and valuable consideration to it in hand paid, at or before the ensembling or delivery of these presents, by the City of Grand Junction, CO (the "City"), the receipt of which is hereby acknowledged, has released, assigned, transferred, granted and conveyed, and by these presents does release, assign, transfer, grant and convey unto the City, all of its interests, including legal title, in the following property to wit:

All of the property identified on Appendix I attached hereto and hereby made a part hereof and the related Equipment Lease Purchase Agreement between Bruning State Bank, as Lessor, and the City as Lessee.

To Have and To Hold the same unto the City, forever.

IN WITNESS WHEREOF, Bruning State Bank has executed this Release and Conveyance as of the ____ day of _____, 201_.

Bruning State Bank

By: _____
Authorized Officer

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, as _____ of Bruning State Bank.

Witness my hand and official seal.

My commission expires: _____

Notary Public

**APPENDIX I
(TO RELEASE AND CONVEYANCE)**

Description of Property Release and Conveyance

None

Exhibit E

Certificate of Appointment of City Representative

(a) The City Manager of Grand Junction, CO (the "City") hereby certifies, in connection with this Lease and the Equipment, as follows:

(b) The City has complied with all applicable procurement requirements, if any, related to

Proposal and estimate of cost prepared by Colorado Golf & Turf, Inc. dated January 8, 2016

(c) The City Council has appointed and designated Jay Valentine, Internal Services Manager to execute the documents on behalf of the City of Grand Junction, CO.