

Edgebrook Golf Course Clubhouse & Driving Range Management Agreement

This agreement for the management of Edgebrook Golf Course Clubhouse & Driving Range (this “Agreement”) is entered into this _____ day of _____, 2025 (the “Effective Date”), by and between the **City of Brookings, South Dakota**, a municipal corporation, by and through the Department of Parks, Recreation & Forestry, hereafter referred to as the “City”; and **Gary Moen, dba Moen Management**, hereafter referred to as “Manager”.

I. PURPOSE

The purpose of this Agreement is to provide certain services, on a contract basis, related to public recreation golfing for Edgebrook Municipal Golf Course (“Golf Course”) and Clubhouse (“Clubhouse”), consistent with the goal of the City, which focuses on maintaining number of rounds of play and maintaining a high standard of customer service to all members and customers.

II. TERM OF AGREEMENT

The term of this Agreement will commence on January 1, 2026, and continue through December 31, 2027 (the “Term”), covering each annual golf season, unless sooner terminated by either party in accordance with this Agreement.

The City and Manager will meet no less than annually to review quality of services, revenue performance, sponsorship income, and operational expenses associated with this Agreement. Based on the review, both parties may mutually agree to adjust revenue allocations, sponsorship rates, or other financial terms as appropriate to reflect current operations and market conditions. In the event the parties cannot agree, the Agreement may be terminated by either party in accordance with the terms of this Agreement.

III. INDEPENDENT CONTRACTOR STATUS

Manager will act as an independent contractor, not an employee of the City. Nothing herein shall be construed to create a partnership, joint venture, or employer-employee relationship. Manager will have no authority to bind or obligate the City in any way without express consent from the City.

IV. SCOPE OF SERVICES – MANAGER RESPONSIBILITIES

During the Term, Manager agrees to act as an independent contractor for the City subject to the terms and conditions of this Agreement. The City engages Manager to provide the services set forth herein. In performing the services required by this Agreement, Manager must, to the Manger’s ability, capacity, and in good faith act in a manner that serves the best interests of the City. Manager will be required to perform under this Agreement as may be necessary to provide the required Services in a timely and productive manner. Manager will exercise independent judgment and control over the provision of the services and will provide the services pursuant to the highest professional and ethical standards and in accordance with accepted industry standards and the City’s expressed preferences and requests. Manager will be free to contract for services to other parties without the consent of the City, provided

such services do not interfere with Manager's services for the City or violate any other provisions of this Agreement.

As part of Manager's services, Manager must:

1. Operate the Clubhouse, pro-shop, and driving range during each golf season, maintaining regular open hours (generally from April 1 through November 1), subject to weather and course conditions. The Clubhouse should be open daily no later than 7:00 AM, unless the parties mutually agree in writing to other terms. Moen Management must be on-site during high-use times, including evenings, weekends, tournaments, and peak play periods, to ensure smooth operations and address any issues promptly.
2. Oversee daily operations including:
 - a. Tee time management and customer service, ensuring all patrons are treated fairly and uniformly.
 - b. Clubhouse upkeep and ensuring a clean, safe, and orderly environment, keeping the surrounding area clean, and reporting any damaged or non-functioning equipment, doors, windows, or other components of the Clubhouse and golf course buildings to the City.
 - c. Administration of driving range play and golf cart rentals.
 - d. Coordination of tournaments, leagues, events, and basic golf instruction.
 - e. Hiring, managing, and compensating seasonal staff (e.g., cashiers, Clubhouse attendants), including payroll, benefits, HR management, and day-to-day supervision of seasonal staff while on duty.
3. Food & Beverage Operations: Manager will be solely responsible for the procurement, purchasing, management, and sale of all food and beverage items offered at the clubhouse. Manager will assume all associated financial risks, inventory controls, and compliance with local and health regulations. Manager may collaborate with the City for input or mandated product offerings, but all financial responsibility lies with Manager.
4. Pro Shop Operations: Manager will be solely responsible for the procurement, purchasing, management and sale of all pro shop inventory, including apparel, golf balls, clubs, accessories, and sundries. Manager will retain ownership of the inventory and must collaborate with the City on product selection and logo usage.
5. Point-of-Sale (POS) Operations: Manager must ensure accurate transaction recording, daily deposit of funds, inventory controls, and timely reporting.
6. Business Continuity: Manager must provide a qualified substitute during any absence of Gary Moen or Jason Evens so that operational standards and customer service continue uninterrupted, with a 7-day notice provided to the City in advance of any leave, with the exception of emergency circumstances. Manager agrees to keep and maintain records devoted exclusively to its management of the course. The City or its authorized agent will have the right to audit and inspect such records at any time, upon reasonable notice to Manager. Manager agrees to keep the records generated each year for a minimum of 3 years. All customer records,

tee sheet data, and patron contact information collected in the course of business will remain the property of the City.

7. Manager must comply with all applicable federal, state, and local laws and regulations in the operation of the Clubhouse, Golf Course, and related services.
8. Manager must not engage in any discriminatory practices in the operation of the Clubhouse, Golf Course, and related services.

V. CITY RESPONSIBILITIES

The City agrees to:

1. Facility and Utility Support
 - a. Provide and maintain access to the Clubhouse, driving range, and related facilities.
 - b. Cover utilities, including electricity, gas, water, internet, and basic telephone service to the Golf Course and Clubhouse.
 - c. Supply necessary sanitation supplies as well as the POS system hardware/software and related licensing.
2. Operational Support
 - a. Establish the fees annually for greens fees, season passes, and motorized cart rental rates in consultation with Manager. Such fees must be uniformly enforced by Manager and may not be deviated from or discounted without prior authorization in writing by the City.
 - b. Determine golf package plans in consultation with Manager.
3. Course & Equipment Maintenance
 - a. Provide for all turf maintenance on the Golf Course, including the course, driving range, short course, and practice green.
 - b. Provide for the maintenance and repair of the grounds, parking lot, signage, sidewalks, buildings, and structures.
 - c. Maintain the infrastructure and equipment (e.g., range ball collectors, golf carts, dispenser, cleaners, and range balls) required for safe and efficient operation of the driving range and Golf Course.
 - d. Provide a minimum of 50 golf carts and the availability to secure additional carts from the cart lessor on a short-term basis for special events.
 - e. Provide a minimum of 1 beverage cart for use at the Golf Course.
4. Sponsorships
 - a. Coordinate and collect sponsorships as cooperatively determined by the City and Manager.
 - b. Establish sponsorship opportunities available at the Golf Course, including rates and recognition formats.

VI. COMPENSATION

The City agrees to compensate Manager as follows:

- Base Annual Commission: \$100,000, payable in 6 installments occurring every other month starting in January of each year of the contract. Check will be mailed out prior to the last day of each of the months listed below.
 - January: \$30,000 – larger initial payment intended as startup funds for the Clubhouse
 - March, May, July, September, and November: \$14,000 each month listed
 - Daily Driving Range, Pro-Shop, and Food & Beverage will be paid to Manager each month
 - Manager may receive reimbursement for up to \$5,000 for driving range balls; receipt(s) must be provided to City to receive reimbursement. All driving range balls remain property of the City and cannot be resold by Manager.
 - In addition to Base Annual Compensation, Manager will retain certain categories of revenue related to management of the Clubhouse and Golf Course, as follows:

	Moen Management	City
Golf Fees	0%	100%
Packages and Memberships	0%	100%
Punch Cards	0%	100%
Cart Rentals	0%	100%
Daily Driving Range	100%	0%
Pro-Shop	100%	0%
Food and Beverage	100%	0%
Sponsorships	0%	100%

VII. TAXES

Manager will be responsible for payment of all taxes including federal, state, and local taxes arising out of Manager’s activities in accordance with this Agreement. By way of illustration, these taxes may include, but will not be specifically limited to, federal and state income, social security, sales, use, excise, FICA, unemployment insurance taxes, and any other business taxes or license fees arising out of Manager’s services.

VIII. BENEFITS

As an independent contractor, Manager is not eligible for any employee benefits offered by the City, including but not limited to health insurance, retirement plans, paid time off, sick leave, or workers’ compensation.

IX. ACCOUNTING & REPORTING

Manager must:

1. Use the City-provided POS system, ensuring that all transactions are accurately recorded.
2. Submit daily deposit reports and monthly summaries of revenues, transactions, and operational activities.

3. Provide an annual income statement by April 15th each year, subject to review by the City Finance Department.
4. Cooperate fully with any financial audits or review processes initiated by the City.

X. INSURANCE & LIABILITY

1. Manager's Insurance.

a. Manager's Liability Insurance. Manager will procure and maintain through the Term of this Agreement a policy or policies of commercial general liability insurance with contractual liability coverage, at its own cost and expense, insuring Manager and insuring the City as an additional insured with respect to liability to third parties arising out of Manager's use and occupancy of the Golf Course and Clubhouse, from all claims, demands, or actions for bodily injury or death sustained by one or more persons and damage to property as a result of any one occurrence in the amount of not less than \$1,000,000. Manager will obtain a per location aggregate limit endorsement.

b. Manager's Property Insurance. Manager must carry throughout the term of this Agreement CP 10 30 Causes of Loss-Special Form property insurance, or its equivalent, covering the full insurable replacement cost of Manager's alterations, installations, or additions to the Golf Course and Clubhouse, and Manager's goods and merchandise, trade fixtures, furniture, signs, decorations, furnishings, wall coverings, floor coverings, window coverings, equipment, and all other items of personal property of Manager located on or within the Golf Course and Clubhouse. Replacement cost means the cost to replace without deduction for depreciation. The deductible amount may not exceed \$5,000.

c. Manager's Worker's Compensation and Employer's Liability Insurance. Manager will procure and maintain throughout the term of this Agreement, at its own cost and expense, a policy of worker's compensation insurance at statutory limits, and employer's liability insurance with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit.

d. Manager's Business Auto Liability Insurance. Manager will procure and maintain throughout the term of this Agreement a policy of business automobile liability insurance coverage for all of Manager's owned, leased, or hired vehicles with policy limits of not less than \$1,000,000.

e. Umbrella/Excess Liability Insurance. Manager may provide for a portion of the coverages for commercial general liability insurance and employer's liability insurance by way of an excess liability policy or an umbrella liability policy with at least as broad of coverage as provided by the liability policies identified herein. The policies must be written on an occurrence basis and have the same inception date. Manager will obtain a per location aggregate limit endorsement with respect to the commercial general liability coverage.

f. Manager's Proof of Insurance. Proof of insurance for all policies will be deposited with the City at commencement of the term by providing to the City certificates of insurance, copies of declaration pages, the schedule of forms and values, and all endorsements issued by

Manager's insurance carriers. At least 45 days prior to the expiration of any policy, Manager will provide the City with proof or renewal of each insurance policy, a copy of the declarations page, and copies of all endorsements providing additional coverages. At the City's request, Manager will provide to the City certified copies of all insurance policies.

g. Notification of Cancellation. All of Manager's insurance policies must not be subject to cancellation or non-renewal, except after at least 30 days' prior written notice to the City by the insurance carriers; and if the insurance carriers are unable or unwilling to provide such notice to the City, then Manager must provide such notices prior to the cancellation or non-renewal of any Manager policies of insurance required by this Agreement. If the insurance carriers are willing to provide written notice of cancellation or non-renewal, proof of compliance with this requirement must be provided by endorsements issued by Manager's insurance carriers. In addition, Manager will provide to the City within 10 days of the effective date of any modification to the terms of a policy, a notice of modification of any of the policies required of Manager herein.

h. The City's Additional Insured Status. The City, the City's managers, officials, employees, agents, and representatives must be added as additional insureds with respect to Manager's commercial general liability insurance. Proof of compliance of this requirement must be provided by a written endorsement issued by each of Manager's insurance carriers.

i. Manager's Cross Liability Coverage. If Manager's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they must be endorsed to provide cross-liability coverage.

j. The City's Right to Purchase Insurance at Manager's Expense. If Manager fails to comply with the requirements of this Section upon 10 days' prior written notice, the City may obtain the insurance and keep the same in effect, and Manager will, upon demand, pay the City the premium cost thereof.

XI. INDEMNIFICATION

Under no circumstances will the City be liable for any act, omission, debt, or other obligation of Manager or Manager's employees, agents, invitees, licensees, or other persons involved, directly or indirectly, in Manager's performance of its services ("Manager Parties"). Manager will defend, indemnify, and hold harmless the City, its managers, officials, employees, agents, and representatives from ("City Indemnitees") from and against any and all claims, liabilities, losses, causes of action, costs, and expenses (including attorneys' fees and expenses and applicable sales taxes) asserted against, imposed upon, or incurred by any of the City Indemnitees arising out of or related to the Contractor Parties' negligence, acts, errors, omissions, or misconduct in the performance of or failure to perform the obligations under this Agreement.

XII. TERMINATION

Manager or the City may terminate this Agreement with 60 days' written notice (or 90 days if given between January 1 and August 31). The City reserves the right to terminate the Agreement without notice for any breach of this Agreement.

Upon termination, Manager must:

- Return all City property and equipment.
- Provide access to all social media platforms and email lists
- Provide a final accounting of any outstanding credits, gift certificates, or related items.
- Provide a list of current vendors and sponsors with contact information.
- Ensure that the premises are left clean and free of personal property.

XIII. MICELLANEOUS PROVISIONS

1. Communication and Notices. Communications by and between the parties concerning this Agreement will be Gary Moen for Manager, and the Director of Parks, Recreation & Forestry for the City.
2. Severability. The provisions of this Agreement will be deemed severable. If any part of this Agreement is held to be invalid, illegal, or unenforceable, the remainder of this Agreement will remain fully enforceable and in effect as written or subsequently amended.
3. Breach of contract; remedy process. In the event either party believes the other party is in default of a material violation of any portion of this Agreement, the aggrieved party shall serve notice to the other party as identified of such breach, and within ten (10) days both parties agree to meet and work to resolve such matter. Unresolved matters will be referred to the City Manager for attempted resolution.
4. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota, without regard to its conflict of laws principles. Any action or proceeding arising out of or relating to this Agreement must be brought exclusively in the courts located in Brookings County, South Dakota, and each party hereby consents to the jurisdiction and venue of such courts.
5. Authorization. Each party represents, covenants, and warrants that the making and execution of this Agreement and all other documents and instruments required or related hereunder have been fully authorized by the necessary corporate action of each such party and are valid, binding, and enforceable obligations of each party in accordance with the respective terms.
6. Entire Agreement. Only those terms in writing are enforceable. No other terms or oral promises not contained in this Agreement may be legally enforced and the parties hereto may change the terms only by another written agreement or amendment.
7. Assignment/Transferability. This Agreement will only be assignable to another party upon the consent of the original parties and such assignment must be agreed to in writing as an amendment.
8. Headings. The headings contained in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
9. Binding effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
10. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach.
11. Counterpart Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which, when taken together, will be one and the same document. Counterparts may be signed and delivered via electronic mail (including by .pdf, .tif, .gif, .jpeg, or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date above.

CITY OF BROOKINGS:

MANAGER:

By: Paul Briseno, City Manager

Gary Moen

ATTEST:

Bonnie Foster, City Clerk