

CITY OF ELIZABETHTON
REQUEST FOR PROPOSALS
CONTRACT MANAGEMENT OF
THE ELIZABETHTON MUNICIPAL GOLF COURSE

PART 1 INTRODUCTION

Purpose

The City of Elizabethton, Tennessee owns and operates the Elizabethton Municipal golf course. The golf course is an eighteen hole, public, daily fee course designed by D.J. DeVictor in 1973. The Elizabethton golf course originally opened in 1938.

The City is seeking to maximize the profit from the operations and maintenance of the golf course in order to sustain the quality of the facility and to reduce the dependency on tax revenue to meet annual golf course expenditures.

The City is seeking proposals from all interested firms to provide management services for the daily operations and maintenance of the golf course.

PART 2 INSTRUCTIONS FOR PROPOSAL

The proposal must be prepared in strict compliance with the "Proposal Format" contained herein. Failure to comply with all provisions of the Request for Proposal (RFP) may result in the proposal being disqualified.

2.1 Proposal Deadline

Proposals shall be received by **4:00 p.m. local time on Friday, September 29, 2017**. Three (3) complete hard copies of the proposal and one (1) complete electronic copy of the proposal shall be submitted. Any proposal received after the time stipulated shall not be considered, but shall be rejected or returned to the firm. Hard copies of the proposals shall be addressed to:

Greg Workman
Purchasing Director
City of Elizabethton
136 S Sycamore Street
Elizabethton, TN 37643

Proposals shall be opened publicly in a manner to avoid public disclosure of contents; however, names of the firms shall be read aloud.

City staff will be available to answer questions about the proposal at any time prior to the date of submittal. Those firms with questions about the proposal are invited to make an appointment with City staff to confer either in person or by telephone. In person conferences shall be held in the Office of the Purchasing Director on the second floor of City Hall, 136 S Sycamore Street, Elizabethton, Tennessee. Telephone conferences may be scheduled during the City's normal business hours, which are Monday through Friday, from 8:00 a.m. to 5:00 p.m. (EDT). The City Hall telephone number is 423-542-1505. Firms with questions concerning this RFP are encouraged to submit their question in writing by submitting an email to the Purchasing Director at least one (1) day prior to the staff conference. Requests for appointments and emails regarding RFP questions may be submitted to:

Greg Workman
Purchasing Director
City of Elizabethton
136 S Sycamore Street
Elizabethton, TN 37172
423-542-1505
gworkman@elizabethton.org

2.2 Procurement Timetable

The evaluation of proposals and the contract negotiation and execution of a contract with the successful firm shall take place as soon as possible.

2.3 Disclaimers

The City reserves the right to withdraw this RFP at any time and for any reason, and to issue such clarifications, modifications, and/or amendments as it may deem appropriate.

Receipt of proposed materials by the City or submission of a proposal to the City offers no rights upon the Firm nor does it obligate the City in any manner.

The City reserves the right to waive minor irregularities in proposals, provided that such action is in the best interest of the City. Any such waiver shall not modify any remaining RFP requirements or excuse the Firm from full compliance with the RFP specifications and other contract requirements, if the Firm is awarded the contract.

2.4 Ambiguity, Conflict or Other Errors in the RFP

If the Firm discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by issuing a revision and shall be given by written notice to all parties who have received this RFP from the City. The Firm is responsible for clarifying any ambiguity, conflict, discrepancy, omission or other error in the RFP prior to submitting the proposal or it shall be deemed waived.

2.5 Proposals and Presentation Costs

The City shall not be liable in any way for any costs incurred by Firms in the preparation of their proposals in response to this RFP nor for the presentation of their proposals and/or participation in any discussions or negotiations.

2.6 Rejection of Proposals

The City reserves the right to accept or reject in part or in whole any or all proposals submitted. The City shall reject any proposals determined to be unresponsive or incomplete.

2.7 Acceptance of Proposals

All proposals properly submitted shall be accepted by the City, however, the City reserves the right to request clarifications or corrections to proposals. Requests for clarifications or corrections by the City shall be in writing. Said requests for clarifications or corrections shall not alter the Firm's price contained in the cost proposal.

2.8 Proposal Format

Firms shall submit proposals that are complete, thorough and accurate. Brochures and other similar material may be attached to the proposal but shall not be used by the evaluation team in determining the extent to which the proposal is responsive or complete.

2.9 General Instructions

2.9.1 Proposal Term: All proposals shall be valid for ninety (90) days from the proposal submission date.

2.9.2 Late Submissions: Proposals received after the specified date and time for proposal submission shall not be accepted.

2.9.3 Letter of Transmittal: The Letter of Transmittal shall be a formal letter from the Firm prepared in standard business format. It should be brief, signed by a person who is authorized to commit the Firm to perform the work included in the proposal, and should identify all materials and enclosures being forwarded in response to the RFP.

2.9.4 Executive Summary: The Executive Summary of the proposal shall be limited to three (3) single spaced typewritten pages. The purpose of the Executive Summary is to provide a high-level description of the Firm's ability to meet the requirements of the RFP.

2.10 Proposal

2.10.1 Outline of Proposal: The Firm shall submit a narrative response to Part 4 of the Request for Proposals (RFP), "Specifications and Requirements." Responses shall be prefaced with the summary title and corresponding section number.

2.10.2 Proposed General Terms and Conditions - The Firm shall submit a narrative response or acknowledged agreement to the attached Contract stating the General Terms and Conditions. Responses shall be prefaced with the summary title and corresponding section number.

2.10.3 Appendices – The content is left to the Firm’s discretion, but should be limited to materials that will be helpful in describing the services proposed.

2.10.4 Firm Qualifications and Experience – This section shall contain pertinent information relative to the firm’s background, expertise, qualifications, and experience to accomplish all tasks set forth in this RFP.

2.10.5 Management Services to be Provided – This section should demonstrate the Firm’s understanding of the City’s need and how closely the proposed plan for services complies with the requirements of the RFP.

2.10.6 Cost of Proposed Services - This section should include the Firm’s proposed fees to be billed to the City for the services proposed. This section should also include an hourly rate for additional services requested by the City.

2.10.7 Alternate Proposals – Firm’s may submit, under separate cover, alternate proposals which meet the requirements of this RFP.

2.11 Exceptions to Format

It is intended that this RFP describe the requirements and response format in sufficient detail to secure comparable proposals, recognizing various proponent approaches may vary widely. Proposals which differ from the described format may be rejected. All information requested must be submitted, or alternatively, a statement giving the rationale of the Firm for not submitting requested information must be provided. The City may, if it deems it to be in its best interest, take such statements into consideration in determining the responsiveness of the proposal.

2.12 Implied Requirements

Services and products which are not specifically requested in this RFP, but which are necessary to provide the functional capabilities proposed by the Firm, shall be included in the proposal.

PART 3 EVALUATION OF THE PROPOSALS AND AWARD

3.1 Process Overview

Proposals will first be examined to eliminate those which are clearly non-responsive to stated requirements. Firms should exercise particular care in reviewing the Proposal Format of this RFP.

The detailed evaluation may result in one or more finalists. At this point, presentations by Firms and contract negotiation will be carried out to finalize the award of the project. Finalists shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure or any information derived from proposals submitted by competing Firms.

3.2 Proposal Evaluation Factors

Proposals shall be evaluated by a panel. Any response that takes exception to any mandatory items in this Proposal Process may be rejected and not considered. Proposals shall be evaluated using the factors detailed below. While the City believes all these items to be of importance, they are ranked in descending order of importance.

1. Management Services to be Provided
2. Firm Qualifications and Experience
3. Qualifications of the Key Personnel to Manage the Golf Course, including National and Regional Support Personnel
4. Cost of Proposed Services
5. The Firm's proposed General Terms and Conditions for the Management Contract

3.3 Contract Development

The City prefers to execute a new contract which is similar to its draft golf course management contract, with regard to the general terms and conditions. The draft contract is attached as a part of the RFP. Firms submitting proposals shall stipulate specific changes, modifications or additions to the existing contract that they would require or recommend.

The City reserves the right to negotiate further with one or more Firms. The content of the RFP and the successful Firm's proposal(s) will become an integral part of the contract, but may be modified by the provisions of the contract.

By submission of proposals pursuant to this RFP, Firms acknowledge that they are amenable to the inclusion in a contract of any information provided either in response to this RFP or subsequently during the selection process.

A proposal in response to this RFP is an offer to contract with the City based upon the terms, conditions, scope of work, and specifications contained in the City's RFP. If the selected Firm fails to sign and return the contract documents within fifteen (15) days following the receipt thereof, the City may annul the award. Upon annulment of the award as aforesaid, the City may then award the contract to the next highest ranked Firm. The City retains the right not to make any subsequent award.

Further, all Firms, by submitting proposals, agree that they have read and are familiar with all terms and conditions of the different documents making up the contract documents and will abide by the terms and conditions thereof. The terms and conditions of the contract attached to

this RFP shall be considered the minimum requirements. Additional terms and conditions of the contract may be negotiated between the City and the successful Firm, if it is determined to be in the best interest of the City to do so, and the conditions negotiated impose a higher duty on the Firm than the minimum requested.

The City has the right to use, as the City determines to be appropriate and necessary, any information, documents, and anything else developed pursuant to the RFP, the proposal and the contract.

The successful proposal shall be incorporated into the resulting contract and shall be a matter of public record subject to the provisions of Tennessee law.

The City shall have the right to use all system ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal shall not affect this right.

PART 4 SPECIFICATIONS AND REQUIREMENTS

4.1 General Requirements of the Contractor

The successful contractor shall provide management services for all golf course operations and maintenance, including the following specified areas:

- Golf course maintenance and repair
- Facility maintenance and repair
- Equipment maintenance and repair, including golf carts
- Golf course marketing
- Driving range operations and maintenance
- Pro shop operations
- Restaurant operations
- Accounting and administration of the annual operating budget

The contractor shall also be available to assist the City in other areas of its golf course management program as the City may require from time to time.

4.2 Minimum Qualifications of the Firm

In order to be considered, the Firm must show demonstrated and successful experience in the overall management of similar sized, profit generating, municipal and/or public golf courses in the southeastern United States.

4.3 Information to be Submitted

Firms shall submit a proposal divided into five (5) sections. Any offer received which fails to address all areas requested shall not be considered. The sections are as follows:

- A. Management Services to be Provided
- B. Firm Qualifications and Experience
- C. Qualifications of Key Personnel to Manage the Golf Course, including National and Regional Support Personnel
- D. Cost of Proposed Services
- E. The Firm's proposed General Terms and Conditions for the Management Contract

A. Management Services to be Provided

Firms shall submit a description of how they propose to meet the requirements set forth herein in Section 4, "Specifications and Requirements." More specifically, provide detail of how the requirements shall be met including the number of employees to perform the required tasks, employee pay rate classification and benefit plan, whether the employees will be the Firm's or subcontracted workers, financial accounting and reporting capability, marketing support and assistance, agronomic expertise, and the ability to secure corporate discounts from vendors.

B. Firm Qualifications and Experience

1. A description of experience in golf course management. The Firms shall list ALL past and present golf course management contracts, services provided and year in which the services were provided. The Firms must identify those management contracts terminated and indicate the reasons for the termination.
2. A description of the organization size and structure, and the history of the Firm, as well as a statement on the extent of any corporate expansion required to handle the management of the Elizabethton Municipal Golf Course.
3. A minimum of three (3) client references, including firm, name of contact person, position, address and telephone number, and a current client list shall be provided.

C. Qualifications of Key Personnel to Manage the Elizabethton Municipal Golf Course, including National and Regional Support Personnel

1. Qualifications and experience of management personnel who will be utilized to carry out the terms of the contract.
2. A minimum of one (1) page resume of each of the Firm's employees who would be assigned to this contract to either oversee or be directly responsible for the contract's success.

D. Cost of Proposed Services

Firms shall submit the following:

1. In the submittal, the Firm shall quote an annual fee for its services.
 2. The Firm shall quote an hourly fee for any additional services the City requests it to perform.
- E. The Firm's proposed General Terms and Conditions for the Management Contract

The Firm shall submit in writing any exceptions or additions it will require to the City's existing golf course management contract.

Draft
MANAGEMENT AGREEMENT

THIS AGREEMENT is made as of this **1st day of December 2017**, between Company and the City of Elizabethton, Tennessee ("Owner") having an address of 136 S Sycamore Street, Elizabethton, Tennessee 37643.

WHEREAS, Owner owns an 18-hole golf course and clubhouse, located in Elizabethton, Tennessee, hereinafter referred to as The Elizabethton Municipal Golf Course (the "Course"); and

WHEREAS, Company is in the business of managing golf courses and related facilities; and

WHEREAS, pursuant to the terms and conditions contained in this Management Agreement, Owner desires to engage Company to manage The Elizabethton Municipal Golf Course;

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein, it is mutually agreed as follows:

1. **TERM OF AGREEMENT:** The initial term of this Agreement shall commence effective December 1, 2017 and shall expire three (3) years thereafter, on November 30, 2020. The Agreement may be renewed for an additional three (3) year term based upon the written mutual consent of Owner and Company.

2. **COMPANY SERVICES:** Services rendered by Company to Owner shall be as follows: Owner agrees that Company shall, during the term of the Agreement and subject to the terms of this Agreement, have the sole and exclusive right to manage The Elizabethton Municipal Golf Course as an agent pursuant to the terms of this Agreement. Owner and Company agree that they will cooperate reasonably with each other to permit Company to carry out its duties under this Agreement. Throughout the term of this Agreement, Owner will have the sole and exclusive right to manage and direct Company and Company shall have the responsibility of providing and the authority to provide general operational management services for The Elizabethton Municipal Golf Course, subject to Owner's continuing performance of its obligations hereunder, including the ongoing requirement of Owner to provide operating capital for the operation of The Elizabethton

Municipal Golf Course pursuant to the Annual Budget and Program as set forth in Paragraph 3, including without limitation, the following services:

A. Company shall, pursuant to the Annual Budget and Program and after consulting with the Owner, recruit, hire and supervise all on-site staff personnel (including salaried and hourly personnel) necessary to provide services at The Elizabethton Municipal Golf Course as may be contemplated by the Annual Budget and Program, all of whom shall be employees of Company. Provided, however, all expenses in connection with the employment of all on-site personnel shall be the responsibility of Owner, pursuant to Owner's obligation to provide funds for the Operating Account, as set forth in Paragraph 3 hereof.

B. Company shall, at the expense of Owner, obtain (in accordance with the Annual Budget and Program) merchandise for the pro shop at The Elizabethton Municipal Golf Course, and shall make available for the benefit of The Elizabethton Municipal Golf Course any national purchase discounts which may be negotiated.

C. Company shall supervise and operate on behalf of Owner the golf course, pro shop, food and beverage services, and other ancillary services at The Elizabethton Municipal Golf Course.

D. Company shall develop a list of required equipment and a purchase/lease schedule and maintain in good working condition and order the physical plant and equipment at The Elizabethton Municipal Golf Course, including the golf course and all physical structures which are part of The Elizabethton Municipal Golf Course, and all vehicles and other maintenance equipment necessary to the maintenance and operation of The Elizabethton Municipal Golf Course in the normal course of business.

E. Company shall, to the extent it deems reasonably necessary or desirable in connection with the performance of its obligations hereunder, be entitled to bring its staff to The Elizabethton Municipal Golf Course for such oversight, training and consultation from time to time at no additional charge to The Elizabethton Municipal Golf Course other than reimbursement of reasonable out-of-pocket, travel-related expenses, not to exceed _____ dollars annually.

F. Company shall recommend a schedule of prices and fees for all golf course products and services for Owner's approval and design and implement such special events and marketing programs and strategies, such as junior golf programs, priority tee times, league play, events, tournaments, exhibitions and clinics, as it may deem appropriate to promote The Elizabethton Municipal Golf Course as may be contemplated in the Annual Budget and Program. Company shall also develop and implement the program for solicitation of group outings at The Elizabethton Municipal Golf Course.

G. Company shall provide the following budgeting, bookkeeping and reporting services to Owner (it being understood that copies of all books and records shall be kept at The Elizabethton Municipal Golf Course):

1. Company shall prepare and deliver to Owner in accordance with its own procedures and formats regular monthly and annual operating statements which shall include,

without limitation, recommendations regarding each monthly and annual report and such other items Owner may reasonably request. Monthly operating statements shall be furnished to Owner by the 20th day following the last day of each month; and annual operating statements shall be furnished by the 45th day following the last day of each calendar year.

2. Company shall prepare and deliver to Owner no later than April 2 of each year for the duration of this Agreement for the following year, (a) an annual operating budget, including a projection of anticipated monthly revenues and expenses and cash flows for The Elizabethton Municipal Golf Course for the following fiscal year, including, without limitation, a reasonable contingency and anticipated Operating Account requirements over the course of the year, (b) a capital improvements budget for the next fiscal year, and (c) a general marketing and operational program with respect to The Elizabethton Municipal Golf Course, including, without limitation, operating policies, standards for operations and quality of service standards (collectively, the "Annual Budget and Program"). Company and Owner shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before fiscal year end. Owner shall have the final approval of the Annual Budget and Program. Each party may from time to time propose to the other party during the course of the year such changes or amendments to the Annual Budget and Program as such party may consider necessary or appropriate, and Company and Owner shall use their mutual best efforts to agree upon such changes or amendments within thirty (30) days after such proposal is made. Company shall obtain prior approval from Owner for contracts in excess of Fifteen Thousand Dollars (\$15,000) or twelve (12) months in duration. Company shall secure the approval of Owner for expenditures in excess of One Hundred Ten Percent (110%) of any line item in the Annual Budget, except for expenditures necessary in the event of emergencies of which prompt notice will be given to Owner.
3. Company, on behalf of Owner, shall establish, administer and maintain the payroll procedures and systems for the Company employees at The Elizabethton Municipal Golf Course under the supervision of Company and shall be responsible for overseeing certain benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits will be limited to vacations, sick leave and medical insurance coverage, as approved by Owner pursuant to the Annual Budget and Program. Employees shall be employees of Company and all costs related to their employment shall be borne by Owner, pursuant to Owner's obligation to provide funds for the Operating Account as set forth in Paragraph 3, and Company shall comply with Federal and State employment laws.

H. Company shall, at the end of each calendar month remit directly to Owner all amounts then in the Operating Account (as hereinafter defined) in excess of the Minimum Funds Balance (as hereinafter described) as may be requested by Owner from time to time by written notice to Company. Company shall pay all operating expenses for The Elizabethton Municipal Golf Course on behalf of Owner from the Operating Account which expenses shall include, but not be limited to, payments of all monthly payroll and related expenses for Company on-site employees, management

fees, and operating expenses. Company will not pay debt service, bond interest payments, real estate, or personal property taxes.

3. OPERATING ACCOUNT: Owner shall provide all funding of the Operating Account requirements of The Elizabethton Municipal Golf Course for all operating years during the term hereof as set forth in the Annual Budget and Program then in effect. Company shall maintain a business checking account for receipt and disbursement of funds used in connection with the operation of The Elizabethton Municipal Golf Course (the "Operating Account"). Owner agrees to fund the Operating Account for the operation of The Elizabethton Municipal Golf Course in a business-like manner, as prescribed within the Annual Budget and Program, for the remaining term of this Agreement, and Owner shall provide sufficient funds (which funds shall be defined as the "Minimum Funds Balance" and shall be an amount not less than Fifty Thousand Dollars (\$50,000) for the Operating Account to allow Company to operate The Elizabethton Municipal Golf Course in a generally accepted business-like manner consistent with both parties objective of operating a high-quality golf facility available to the golfing public; provided further that upon cancellation or termination of this Agreement for any reason or upon the occurrence of a material default by Company, the delegation of control over such Operating Account to Company shall be immediately revoked and all funds in the Operating Account shall be immediately paid over to Owner by Company.

4. INSURANCE: Company shall secure and at all times maintain liability, property damage and other insurance for The Elizabethton Municipal Golf Course in such amounts and through agents and with underwriters acceptable to Owner. Owner shall be liable for the payment of the premiums of said insurance for so long as Owner shall own The Elizabethton Municipal Golf Course during the term of this Agreement. Such policies shall name Company and Owner as co-insureds under such policies. All insurance policies required hereunder shall contain a provision requiring the insurer to notify Company and Owner at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions. Company shall be responsible for securing and maintaining all of the insurance policies required hereunder, provided, however that Company shall have no obligation to pay such premiums from its own funds. Company shall obtain competitive bids for the coverage each year. If Company secures such insurance as a part of any blanket policy, the premiums attributable to The Elizabethton Municipal Golf Course shall be determined by making a reasonable allocation based on the relation of the amount of insurance carried for The Elizabethton Municipal Golf Course to the total policy amount. The liability insurance must have a minimum limit of One Million Dollars (\$1,000,000) and the property damage insurance shall be written on a full replacement cost basis and otherwise in accordance with the requirements of Owner. The premiums for any such policies shall be paid from the Operating Account funds to be provided by Owner pursuant to Paragraph 3 hereof and in accordance with the Annual Budget and Program, or by Owner in the event there is insufficient Operating Account funds available.

5. COMPENSATION AND FEES:

A. For its services hereunder, Company shall be entitled to a monthly fee (the "Base Fee") equal to _____ dollars with respect to each month during the term of this Agreement. Provided, however, in the event that The Elizabethton Municipal Golf Course achieves any of the following threshold results in any fiscal year after the fiscal year ending June 30, _____ the Base

Fee shall increase by three (3%) percent over the Base Fee in the immediately preceding year:

- i. Fiscal Year Gross Income of more than One Million Dollars (\$1,000,000);
or
- ii. Fiscal Year Rounds in excess of thirty five thousand(35,000); or
- iii. Fiscal Year Net Operating Income exceeding Twenty Five Thousand Dollars (\$25,000). [Not including contributions from City.]

The three percent (3%) increase would be effective on January 1 of the next following calendar year.

B. In addition to the Base Fee, Company shall be entitled to an incentive fee (the "Incentive Fee") based on the Gross Revenue (as defined in Paragraph 5(D)). Company shall be paid five percent (5%) of all Gross Revenues over Nine Hundred Dollars (\$900,000) in a fiscal year. The Incentive Fee shall be limited to an amount equal to twenty percent (20%) of the total Base Fee in the immediately preceding year. The Incentive Fee is to be paid within thirty (30) days of financial statements being agreed upon by both Owner and Company.

C. Upon reasonable notice (which may be verbal), representatives of Owner shall have the right to any time during normal business hours to review all of Company's books and records, including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to The Elizabethton Municipal Golf Course including, without limitation, Company's work papers related to Company's preparation of operating statements and calculating any Incentive Fees. All owner-related expenses related to any such review shall be exclusively borne by Owner for purposes of this Agreement unless such review reveals an overpayment of any fees or other amounts in which case Company shall pay for the review. Owner's exercise of its right of review or to dispute any fee or expense reimbursement claimed by Company shall not delay payment of the undisputed portion thereof by Owner within the time frames set forth herein. However, payment by Owner of a fee or other amount hereunder shall not constitute a waiver of Owner's right to subsequently dispute the amount thereof. If Owner and Company determine that any portion of its fees was improperly paid to Company, Company shall refund such improperly paid fee together with interest thereon from the time when such fee was paid to Company within five (5) business days after receipt of notice from Owner to Company. If there is any dispute between the parties regarding payments of its fees, such disputes may be resolved by arbitration.

D. The term "Gross Revenues from The Elizabethton Municipal Golf Course" as used herein shall include the total aggregate amount of revenue for the business done, sales made, and services performed in, on, or from The Elizabethton Municipal Golf Course both for cash and on credit (net of credit card discounts), including, without limitation, all charges for greens fees, annual passes, cart rentals, and other rentals, the gross amount charged for merchandise, food and beverage, and the gross amount received from all other sources and income derived from activities in, on, or from The Elizabethton Municipal Golf Course less any and all actual refunds or credits for returned merchandise, exchanges, and allowances, including allowances for bad debts (provided the purchase price of the merchandise was previously included in The Elizabethton Municipal Golf Course's gross sales), and less all sums collected by The Elizabethton Municipal Golf Course from The Elizabethton Municipal Golf Course's customers and paid by The Elizabethton Municipal Golf Course for all sales,

use, value-included, and excise taxes on sales and rentals where such taxes are both added to or included in the selling price or charge, and paid by The Elizabethton Municipal Golf Course directly to the taxing authorities. The term Gross Income ("Gross Income") shall mean Gross Revenue reduced by cost of goods for golf shop and food and beverage retail sales.

E. As used herein, Gross Revenues from The Elizabethton Municipal Golf Course shall be exclusive of all insurance and condemnation proceeds, and proceeds and sales of equipment and property, other than inventory in the ordinary course of business.

F. Any interest due to either Company or Owner pursuant to this Agreement shall accrue at a rate equal to the prime rate publicly announced by Citibank, N.A. on the date such interest began to accrue which thirty (30) days after the date shall be due. Except as otherwise specifically provided herein, interest on any payment due by either party to the other hereunder shall be payable from and after the date upon which such payment was due if such payment is not timely made.

G. Annual Net Operating Income. The term "Annual Net Operating Income" as used herein shall be defined as Gross Revenues from the Course as defined in Paragraph 5A, minus all operating expenses which are attributable, in accordance with generally accepted accounting principles, to the use and operation of the Club including, without limitation, employee costs, the Base Fee, expense reimbursements (including, without limitation, reasonable out-of-pocket travel related expenses), all insurance costs related to the operation of the Course and personal and real property taxes; provided, however, such expenses shall not include any charges for amortization and depreciation, debt service, capital expenditures, State and Federal income taxes, Owner salary, or Owner distributions or overhead allocations, or any Annual Operating Incentive Fees paid to Company hereunder.

6. CAPITAL EXPENDITURES:

A. Capital improvements shall be deemed to include any item purchased in connection with the operation of The Elizabethton Municipal Golf Course which:

1. has an economic useful life in excess of one (1) year; and
2. costs in excess of _____ Five Thousand Dollars (\$5,000).

Except as provided in Paragraph 3, all costs for capital improvements shall be the responsibility of Owner and all decisions as to whether or not to undertake any capital improvement projects or otherwise in respect of any capital improvements shall be made by Owner in consultation with Company.

B. Company shall (except in the case of supervision of repair and replacements made in the normal course which shall be a part of Company's regular duties under this Agreement) upon the request of Owner perform any of the following services on behalf of Owner provided, however, that prior to performing such services the parties shall have agreed to the amount of additional compensation to be paid to Company for said services as well as the scope of the additional services:

1. golf course design or construction services, including supervisory duties overseeing

the performance of others performing such design or construction services; and

2. construction supervision over any capital development or capital improvement to The Elizabethton Municipal Golf Course, its related facilities or the land upon which they are erected.

Notwithstanding the foregoing, Company shall, as a part of its regular duties, but without the obligation to supervise the capital improvement project in question, review with Owner, solely in its capacity as manager of The Elizabethton Municipal Golf Course, the design and construction of such capital improvement projects and alert Owner to any problems or defects of which it becomes aware.

7. DEFAULT AND REMEDIES:

A. The following shall constitute an event of default ("Event of Default") by Owner under this Agreement:

1. Failure to timely pay Company any fees, compensation, or reimbursement due Company pursuant to this Agreement, unless said amounts are under legitimate dispute;
2. Failure to timely provide funds for the Operating Account in accordance with Paragraph 3 hereof;
3. Breach by Owner of any other provision of this Agreement such as, but not limited to, failing to consult with Company regarding budgets or capital improvements; or
4. Owner makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

B. The following shall constitute an event of default ("Event of Default") by Company under this Agreement, provided that Owner has fulfilled its obligations hereunder:

1. Committing waste upon The Elizabethton Municipal Golf Course or failure to maintain in good working order any material improvement or component of The Elizabethton Municipal Golf Course;
2. Failure to maintain the amenities of The Elizabethton Municipal Golf Course in reasonably good condition, subject to abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of Company;
3. Breach by Company of any other provisions of this Agreement or failure to provide customary management services to operate The Elizabethton Municipal Golf Course

or utilize its best efforts to maintain and maximize profitability; or

4. Company makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

C. When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party, and the Defaulting Party shall have ten (10) days in the event of a payment default, or such longer period (not to exceed a period of thirty (30) days unless Company has begun to cure within the thirty (30) day period and is diligently pursuing such cure) as shall be reasonably necessary due to weather, growing conditions, or other factors beyond the reasonable control of the Defaulting Party, within which to cure the default.

D. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 7(C) above, the other party may terminate this Agreement on sixty (60) days' written notice to the defaulting party and pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 5 hereof, subject to legitimate offsets. Notwithstanding any contrary provisions hereof, Company's rights to recover damages from Owner shall be limited to collection of accrued and unpaid Management Fees and the payment of the Cancellation Fee (or the Termination Fee if applicable) provided in Paragraph 8 below as liquidated damages (it being agreed by the parties that Company's damages would be extremely difficult to measure and that the Cancellation Fee (or Termination Fee if applicable) has been agreed upon, after negotiations, as a reasonable estimate of such damages. The parties also agree that notwithstanding any contrary provision hereof, the Owner's damages shall be limited as provided in Paragraph 12(C)(3).

8. TERMINATION AND CANCELLATION:

A. This Agreement shall automatically terminate upon expiration of the term of the Agreement and any automatic renewals.

B. Either party may terminate this Agreement upon the occurrence of an Event of Default by the other party after giving notice as provided in Paragraph 7 above.

C. In the event Company terminates this Agreement due to the Default of Owner, Company shall receive within ten (10) days of termination from Owner a cancellation fee ("the Cancellation Fee") equal to the total compensation and fees (pursuant to Paragraph 5 hereof) earned by Company for the immediately preceding calendar year multiplied times the number of full and fractional years remaining in the terms of this Management Agreement.

D. Owner may terminate this Agreement on thirty (30) days' written notice to Company, without the payment of a Cancellation or Termination Fee, in the event that The Elizabethton Municipal Golf Course fails to exceed an Annual Net Operating Income of eighty percent (80%) of the amount set forth in the Annual Budget and Program for six (6) consecutive calendar quarters during the term hereof.

E. Owner shall have the right to terminate this Agreement at any time on thirty (30) days written notice, and this Agreement shall automatically terminate upon the closing of a sale, lease, or transfer of The Elizabethton Municipal Golf Course to a new entity. In the event of such unilateral termination or termination due to the transfer of The Elizabethton Municipal Golf Course (other than to Company or its affiliate, in which event no Termination Fee shall be payable), the Owner shall pay to Company within ten (10) days of such termination a termination fee ("Termination Fee") equal to the total compensation and fees (pursuant to Paragraph 5 hereof) earned by Company for the immediately preceding calendar year multiplied times the number of full and fractional years remaining in the terms of this Management Agreement.

F. Upon termination or cancellation of this Agreement, for any reason or under any circumstances, Company's (i) proprietary computer programs relating to accounting, operations, marketing, and forecasting, (ii) operations manuals of Company and (iii) the information and processes related to and used by Company in the marketing plan shall remain the sole property of Company and shall be removed by Company upon termination of this Agreement. Additionally, any actual or implied association of The Elizabethton Municipal Golf Course with Company shall cease upon termination.

9. **USE OF THE ELIZABETHTON MUNICIPAL GOLF COURSE:** During the term of this Agreement, The Elizabethton Municipal Golf Course shall be open to the public and operated on a daily-fee basis.

10. **LIQUOR LICENSE AND BEER PERMIT:** Subject to any relevant Tennessee Alcoholic Beverage Control (ABC) licensing requirements and local laws, Owner shall use its best efforts to maintain at all times a valid beer permit on the premises, and Company shall comply with all relevant ABC laws and local laws regarding the use of such beer permit.

11. **FORCE MAJEURE; FIRE AND OTHER CASUALTY:** If all or any portion of The Elizabethton Municipal Golf Course is destroyed by fire or other casualty, such damage or destruction shall not be a cause for termination hereunder by either party unless such damage or destruction results in the whole or a substantial part of The Elizabethton Municipal Golf Course being unusable for its intended purpose for a period of one year or longer or, in the case of such total or substantial damage or destruction, the Owner shall decide not to rebuild the damaged portion of The Elizabethton Municipal Golf Course, then in either such event, this Agreement shall terminate on notice from Owner to Company of such termination and neither party shall have any further rights or obligations hereunder. Notwithstanding the foregoing, if:

A. as a result of any damage or destruction to any part of The Elizabethton Municipal Golf Course;
or

B. otherwise due to causes (other than strikes within Company's control) beyond Company's reasonable control (and so long as Company uses all reasonable diligence to cure such inability), Company shall be unable to perform its obligations hereunder in respect of the operation of The Elizabethton Municipal Golf Course, Owner and Company shall use their mutual best efforts to agree upon an amendment to the Annual Budget and Program, including, without limitation, the Operating Account provisions thereof, to allow payment of necessary expenses (including, without

limitation, The Elizabethton Municipal Golf Course employee expenses) until such damage or destruction is repaired or such inability is cured and, if the parties are unable to agree on such an amendment within twenty (20) business days after Company shall have given Owner notice of the occurrence of such event, Company shall have the right to terminate this Agreement by notice to Owner of such termination and neither party shall have any further rights or obligations hereunder. In the event of a force majeure, there is no Cancellation or Termination Fee due to Company.

12. INDEMNIFICATION AND LIABILITY:

A. Legal Actions. Legal counsel for Company and Owner shall cooperate in the defense or prosecution of any action affecting The Elizabethton Municipal Golf Course. Company shall not institute or defend any legal action or retain counsel affecting The Elizabethton Municipal Golf Course without Owner's consent. Company shall immediately forward all legal notices to Owner or notices of a financial nature which relate to The Elizabethton Municipal Golf Course, at the address listed under Paragraph 13. Company shall advise and assist Owner in instituting or defending, as the case may be, in the name of The Elizabethton Municipal Golf Course, Owner, and/or Company, but in any event as a golf course expense, all actions arising out of the operation of The Elizabethton Municipal Golf Course and not attributable to the negligence or willful acts of Company, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for Company, Owner, or The Elizabethton Municipal Golf Course, or to lawfully evict or dispossess tenants or other persons in possession thereunder, or to lawfully cancel, modify, or terminate any lease, license, or concession agreement as contained in the Annual Budget and Program in Paragraph 2, herein in the event of breach of default thereof, or to defend any action brought against Owner, unless otherwise directed by the Owner. Company shall assist Owner to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Elizabethton Municipal Golf Course expense, and any violation, order, rule, or regulation affecting The Elizabethton Municipal Golf Course.

B. Choice of Law and Venue. Whereas Company's principal place of business is in the Commonwealth of Virginia, and the Facility is located in the State of Tennessee, the parties agree that this Agreement shall be governed by and construed in accordance with the laws of Tennessee, which shall be the exclusive courts of jurisdiction and venue for any litigation, special proceeding or other proceeding between the parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement.

C. Liability of Company and Owner.

1. Other persons. Company shall not be responsible for the acts or omissions of any of Owner's other contractors or any subcontractor, or any employees of Owner other than those under supervision of Company, or any persons representing Owner performing any services for or in connection with The Elizabethton Municipal Golf Course, or any consultants or other persons engaged by Owner with respect thereto, unless and only to the extent Company is supervising, or should be supervising the same, and Company shall be responsible only for the performance of Company's obligations hereunder in accordance with the terms hereof.

2. **Non-recourse.** In the event that Company makes any claim against The Elizabethton Municipal Golf Course and Owner, Company's recourse shall be limited to the provisions of this Agreement. Company shall have no recourse to members, managers, or employees of the Owner, except for acts or omissions which are outside the scope of their rights or responsibilities as members, managers, or employees.
3. Notwithstanding any other provisions of this Agreement, the maximum liability of Company to Owner for any breach of this Agreement or for any claims arising hereunder shall be limited to the amount of the Management Fees under Paragraph 5 paid as of the date of such breach or claim plus proceeds available from Company's insurance. Company will maintain in force insurance in a minimum amount of One Million Dollars (\$1,000,000). Owner's liability will not exceed the amount of money owed to Company for unpaid management fees for the remaining term of this Agreement and Cancellation or Termination Fees, if any. Owner will maintain in force insurance in a minimum amount of One Million Dollars (\$1,000,000) as set forth in Paragraph 4, herein.

D. **Indemnity.** Company will defend, indemnify and hold Owner harmless from and against any and all claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities that are asserted against, or sustained or incurred by Owner because of Company's breach of this Agreement or because of legal actions or regulatory violations arising from Company's negligence, fraud, or willful misconduct. Further, Company will defend, at its own expense, any actions brought directly against Company as a result of its negligence in managing and/or operating The Elizabethton Municipal Golf Course. Recovery upon an indemnity contained in this Agreement shall be reduced dollar-for-dollar by any applicable insurance collected by either Owner or Company. The scope of the foregoing indemnity includes any and all costs and expenses properly incurred in connection with any proceedings to defend, any indemnified claim, or to enforce the indemnity, or both, provided, however, that Company's liability under all indemnities shall be limited as set forth in Paragraph 12(C)(3). The obligations under this Paragraph 12(D) shall survive the termination of this Agreement.

13. **GENERAL PROVISIONS:**

A. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof; and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.

B. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.

C. The parties hereby agree from time to time to execute and deliver such further and other instruments and documents, and do all such other acts and things which may be convenient or necessary to more effectively and completely carry out the intentions of the Agreement.

D. Company shall at all times operate, use, and conduct the business of The Elizabethton

Municipal Golf Course in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to The Elizabethton Municipal Golf Course, with Owner's full cooperation, in full force and effect and cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of The Elizabethton Municipal Golf Course.

E. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party. Furthermore, the purchaser and/or assignee of Owner shall be bound by the provisions hereof, in which event (excluding the lease of The Elizabethton Municipal Golf Course) Owner shall be released from all liability hereunder except for obligations accruing prior to said sale, lease, or transfer and payment of accrued fees and Paragraph 7 hereof.

F. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given:

1. when delivered, if hand delivered; or
2. one (1) business day after deposit with a reputable overnight courier marked for "next business day" delivery; or
3. upon receipt, if sent by facsimile, provided that an original thereof is thereafter sent in the manner provided above, and shall be addressed as follows:

In the case of Company:

Company Name
Street Address
City, State, Zip Code
Attention:
Telephone:
Facsimile:

In the case of Owner:

The City of Elizabethton, Tennessee
136 S Sycamore Street
Elizabethton, Tennessee 37643
Attention: Greg Workman
Phone: (423) 542-1505
Facsimile: (423) ____ - ____

or to such other address as either party may designate by notice complying with the terms of this subparagraph.

G. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

H. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under, applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.

I. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either party in any event shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided.

J. This Agreement and all transactions contemplated hereunder shall be governed by, construed, and enforced in accordance with, the laws of the State of Tennessee, without regard to its conflicts of law provisions.

K. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of Company to Owner is that of an agent.

L. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

M. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement as of the date first above written.

THE CITY OF ELIZABETHTON, TENNESSEE

By: _____
Curt Alexander, Mayor Date

COMPANY

By: _____
Name, Chief Executive Officer Date