



Professional Services Agreement

This is an Agreement between Ramsey County, a political subdivision of the State of Minnesota, on behalf of Parks & Recreation, 2015 Van Dyke Street, Maplewood, MN 55109 ("County") and Foley Professional Golf Services, LLC, 1301 Berwick Lane, Mahtomedi, MN 55115, registered as a Limited Liability Company in the State of Minnesota ("Contractor").

1. Term

1.1.

The original term of this Agreement shall be from May 15, 2024 through December 31, 2033 and may be renewed for up to one (1) additional five year period(s).

The full term of this agreement (including renewals) is 14 year(s), 7 month(s) and 15 day(s).

1.1.1.

Contract renewals shall be made by way of a written Amendment to the original contract and signed by authorized representatives.

2. Scope of Service

The County agrees to purchase, and the Contractor agrees to furnish, services described as follows:

2.1.

The Contractor shall perform all duties necessary for the professional management and operation of Keller Golf Course (or "Property").

The Contractor shall provide all of the usual and customary pro shop services of a golf course professional ("Golf Professional") necessary to achieve a successful public golf course operation at Keller Golf Course ("Keller" or the "Course"). The Contractor will perform as an independent contractor and be responsible for managing the pro shop to ensure that quality service is provided to the public and that the services of the Golf Professional are performed in compliance with County policies and procedures

Rights, Duties, and Responsibilities of the Contractor

The County grants to the Contractor the exclusive right to operate the golf course Pro Shop at the Keller Golf Course. Except as limited by this Agreement, the right includes collection of green fees; pro shop operation and sales; golf tournaments; parties; and the driving range.

The Contractor shall make every reasonable effort to maintain sufficient staff, facilities and equipment to deliver the services. The Contractor shall inform the County in writing whenever it is, or reasonably believes it is going to be, unable to provide the required quality or quantity of services. The foregoing conditions will be subject to the provisions of the Force Majeure Clause of this Agreement.

The Contractor shall make every reasonable effort to maintain sufficient staff, facilities and equipment to deliver the services. The Contractor shall inform the County in writing whenever it is, or reasonably believes it is going to be, unable to provide the required quality or quantity of services. The foregoing conditions will be subject to the provisions of the Force Majeure Clause of this Agreement.

Services provided under this agreement will be provided by the key personnel for Foley Professional Golf Services at Keller Golf Course. Changes to the Contractor or Golf Professional positions must be approved in advance by the County, however the Contractor agrees that the General Manager position will not change for the first two years of the Agreement. Subsequently, any reduction of hours or other material changes to the existing Contractor is subject to approval by the County. The Contractor must notify the County of any reduction of hours or replacement of the Contractor by November 1 for the following year. The County may withhold consent if it determines that the quality or quantity of service required by this agreement will be decreased by the personnel change or reduction of hours.

The Contractor has the right and responsibility to purchase any and all equipment deemed necessary to perform pro shop and driving range operation.

The Contractor has the right to contract with other vendors in the purchase of supplies and services in order to meet the terms and conditions of this agreement. Any such contracts shall be agreements of the Contractor, and neither the County nor any of its departments, offices, agents or employees shall be liable thereon. The Contractor shall ensure that all vendors of goods and services with which it deals and all persons whom it hires are advised that all contracts or agreements with such third parties are contracts or agreements of the Contractor and that neither the County nor any of its departments, offices, agents or employees shall be liable thereon.

The Contractor agrees that all costs associated with hiring personnel, and employ of outside vendors for supplies and services shall be borne solely by the Contractor.

The Contractor shall not acquire or have any property rights in the property.

The Contractor shall not commit waste or damage to the property. In the event the Contractor commits, threatens to commit, or permits any act or omission which may or will cause damage to the Property, the County may, after reasonable notice, enter onto the Property and take whatever actions it deems necessary and proper to prevent such waste or damage. If the County's actions require expenditures of funds associated with normal maintenance and operation of the Property, such expenditures shall be chargeable to the operation of the Property and the Contractor shall reimburse the County for its expenditures.

The Contractor shall support the tree management program as described in Exhibit B, Ramsey County Ash Tree Management. The County is responsible for funding the execution of the tree management program.

The Contractor shall follow policies, rules and regulations set by the County including, but not limited to, the "Ramsey County Smoking and Commercial Tobacco Use Ordinance" which prohibits smoking or any substance and tobacco use, in any form, on Ramsey County owned properties by guests and employees. For more information go to <https://www.ramseycounty.us/your-government/ordinances-regulations/ramsey-county-smoking-and-commercial-tobacco-use-ordiance>.

The Contractor shall support the principles of the Audubon Cooperative Sanctuary Program for Golf, which is an education and certification program that helps golf courses protect the environment and preserve the natural heritage of the game of golf. Principles include chemical use and safety, wildlife and habitat protection, water conservation, water quality management, environmental planning, and outdoor education. More information can be found at <https://auduboninternational.org/acsp-for-golf/>. Additionally, the Contractor shall support County initiatives to protect pollinator habitats as outlined in County Board Neonicotinoids Resolution 2016-045.

The Contractor shall support the County with all federal, state and local laws, regulations

and ordinances governing the use of pesticides. All pesticides will be applied under the supervision of the county's superintendent.

The Contractor shall make every effort to keep the golf course open for play at all times. The Contractor may close the golf course for improvements, weather delays or other reasonable purpose with reasonable or immediate notice to the County. However, if the Contractor unreasonably threatens to close the golf course or fails to open the course for play on any day County believes opening would be reasonable, the County may immediately assume operation of the course.

Except as otherwise provided herein, the maintenance and repair responsibilities for the pro shop are defined in Exhibit A. The County shall be responsible for repair of County-owned equipment which has failed in the normal course of operation, and for replacement of County-owned equipment and assets according to the Ramsey County Comprehensive Capital Asset Management Preservation Plan (CCAMPP) as approved by the County. Repair and replacement of County-owned equipment and assets damaged as a result of negligence or improper use of operation by the Contractor, its employees, agents, staff, shall be the responsibility of the Contractor. For the elimination of doubt, the words "users" and "Contractor" in the "Notes" column of Exhibit A include the Contractor, its employees, agents, staff.

Repair and replacement of Contractor-owned equipment and furnishings shall be the sole responsibility of the Contractor.

Proposed improvements, alternations, repairs, or additions to be made by the Contractor must be approved by County prior to commencement. Once complete, said improvements, alterations, repairs, or additions shall become the property of the County. The Contractor shall accrue no rights of ownership or interest in the Property or improvements beyond the rights to operate as prescribed in this Agreement.

The Contractor shall not have the right to create or permit the creation of any lien attaching to the County's interest in the golf course, including but not limited to any lien resulting from any construction of capital improvements, alterations or additions.

The Contractor agrees to devote its full and best efforts to employment of a professional golf course operational team to be in attendance at Keller Golf Course during reasonable hours. The Contractor shall be present either in person or through assistants, on the golf course when the course is open for use by the public.

The duties and obligations of the Contractor contained in this Agreement may not be delegated, assigned or subcontracted out to another party either directly or indirectly without the written consent of the County, which may withhold consent at its sole discretion. No such delegation or subcontract, if approved by the County, shall relieve the Contractor of its obligations hereunder.

Except as provided herein, the Manager shall be responsible for paying the cost of all utilities including gas and electric, water, phone, internet, and alarm service, which also includes sewer and parking lot lighting from Maplewood Drive.

The Contractor shall be responsible for operating the pro shop and driving range at Keller Golf Course.

The Contractor shall provide all customary services provided by a golf professional, including but not limited to:

1. The Contractor is responsible for making and selling tee times in accordance with policies established by the County. The Contractor has the right to establish start times for

- tournaments, leagues, and groups. The Contractor is required to use the County's online reservation and Point of Sale system to record all Pro Shop transactions.
2. The Contractor will support the golf industry initiatives to grow the game of golf.
 3. The Contractor shall provide staff as necessary to assist with the start of play, golfer needs during play and act as ambassadors for the course and the County and creating friendly customer service practices.
 4. The Contractor shall organize and recruit for Men's and Women's Keller Golf Course clubs as well as coordinating the club's golf events.
 5. The Contractor shall rule on all golf disputes as to rules, regulations, and etiquette of golf on Keller Golf Course.
 6. The Contractor shall maintain the Pro Shop and other spaces in a neat, clean, and orderly fashion. Public spaces, including but not limited to the Pro Shop must be kept clean, sanitary, and organized at all times. The Contractor shall be responsible for compliance with State and local health department codes, fees, and fines.
 7. The Contractor shall support the County's Waste Resources and Management program, Exhibit C. The County is responsible for the cost of disposal of trash produced as part of the reasonable operation of the course.

The Rights and Responsibilities of the County

The County shall be responsible for funding major capital improvements to the golf course. Funding of these projects is subject to annual approval and appropriations by the County Board. The County shall be responsible for maintaining the driveway and parking lot including sweeping, striping, and major repairs, and snowplowing.

The County shall consult with the Contractor regarding ongoing performance of the employees of the Contractor. The Contractor will give the employee performance recommendations from the County serious considerations for rewards, discipline, and retention.

The County shall have the right to establish reasonable prices for all categories of green fees and motorized golf cart rental charges. The County agrees to work jointly with the Contractor to assess golf rates and present agreed upon recommendations for County Board approval.

Except as otherwise provided herein, the County agrees to pay all property and ad valorem taxes if levied.

The County agrees to monitor any regulatory changes to permits relating to water usage on the golf course and the Department of Natural Resources (DNR). The County reserves the right to amend this Agreement to conform with such changes.

The County maintains the right to review financial records of the Contractor pertaining to the operation of Keller Golf Course under the terms and conditions of this Agreement. Such a review shall include, but not limited to expenditures for supplies, outside services, salaries, and benefits.

Services shall be provided at 2168 Maplewood Drive, Maplewood, MN 55109. If services are provided at any other locations, it shall be deemed an alteration of this Agreement that must be reduced to writing.

2.2.

During the term of the contract, the County reserves the right to add similar in scope goods/services, via written amendment, to accommodate accidental omissions, unanticipated needs, or new offerings.

2.3.

The Contractor shall make every reasonable effort to provide services in a universally accessible, multi-cultural and/or multi-lingual manner to persons of diverse populations.

2.4.

The Contractor agrees to furnish the County with additional programmatic and financial information it reasonably requires for effective monitoring of services. Such information shall be furnished within a reasonable period, set by the County, upon request.

3. Schedule

Not applicable.

4. Cost

4.1.

The County shall pay the Contractor the following unit rates:

Compensation

The Contractor will be paid a retainer of \$44,000 in year 1 and \$47,000 years 2 through 3 and \$49,000 in years 4 through 5. The retainer amounts shall be paid in 4 equal installments on April 1, June 1, August 1 and October 1 of the respected year.

Green fees – The Contractor will receive 10% of the revenue, less sales tax, on green fees up to \$850,000 and 15% of such over \$850,000.

Cart rentals – The Contractor will receive 10% of the revenue less sales tax, on cart rentals up to \$200,000 and 15% of such over \$200,000.

Driving Range – The County shall receive 10% of gross revenues for driving range activities from the first dollar (\$1) up to forty thousand (\$40,000) and 5% of gross revenues for driving range activities beyond \$40,001.

However, the County shall not take a percentage of Pro Shop sales (including sale of golf equipment, apparel, or accessories).

The Contractor shall have the exclusive right to any and all income derived from private, or group golf lessons given by the Golf Professional, sub-contractor of the Golf Professional and/or staff of the Contractor. The Contractor shall be responsible for providing qualified personnel trained to provide private or group lessons.

4.2. Payment Scheduled

Payment shall be made by the County in four (4) installments:

1. From the start of the season through May 15; payable by June 15.
2. From May 16 through July 15; payable by August 15.
3. From July 16 through September 15; payable by October 15.
4. From September 16 through end of season; payable by December 15.

4.3. Season Pass Holders

Season pass holders at other County golf courses have golfing privileges at Keller Golf Course. Similarly, season pass holders at Keller Golf Course have golfing privileges at other County courses. The Manager shall keep verifiable records of actual rounds played by season pass

holders and shall account for rounds played by season pass holders separate from other types of rounds.

4.4. Financial Reporting

By March 31 of each year, the Manager shall deliver to the County a financial report certified by the Manager which sets forth an income statement, balance sheet and gross sales made on or from Keller Golf Course during the previous fiscal year. Said report shall present fairly the financial position of the Manager and its operations and cash flows for fiscal year and be in conformance with generally accepted accounting principles.

4.5. Fourth Year Review

Prior to each 5th year of the contract, the County and Contractor will review past financials to negotiate costs and revenues for the next 5-year term of the contract.

5. Special Conditions

5.1. Interchangeability of Terms

For the purposes of this agreement, the terms “Contractor,” “Manager” and “Golf Professional” herein are interchangeable and are utilized as such.

6. Contracting for Equity

6.1. Commitment to Advancing Racial Equity

The county is committed to advancing racial equity for its residents. The commitment is captured in the county's Advancing Racial Equity policy which states that "Racial equity is achieved when race can no longer be used to predict life outcomes, and outcomes for all are improved."

Consistent with the Advancing Racial Equity policy, contractors will take all reasonable measures to advance racial equity during contract performance. Contractors will recognize and acknowledge this requires deconstructing barriers and changing systems, structures, policies and procedures. Contractors will be equitable, inclusive, transparent, respectful and impactful in serving and engaging residents. Contractors will have meaningful and authentic engagement with community and employees to strengthen the administration, development and implementation of policies and procedures to advance racial equity and ensure that all residents in need have awareness of and access to contracted services.

Please review Ramsey County's [Advancing Racial Equity policy](#) to learn more about Ramsey County's commitment to racial equity.

6.2. Non-Discrimination (In accordance with Minn. Stat. § 181.59)

Contractors will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

6.3. Equal Employment Opportunity and Civil Rights

6.3.1.

Contractors agree that no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, criminal record (subject to the exceptions contained in Minn. Stat. §§299C.67 to 299C.71 and Minn. Stat. §144.057), creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination, including the Civil Rights Act of 1964. Contractors will furnish all information and reports required by the county or by Executive Order No. 11246 as amended, and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6.3.2.

Contractors shall comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

6.3.3.

Contractors shall agree that no qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 or qualified handicapped person, as defined by United States Department of Health and Human Services regulations, Title 45 Part 84.3 (j) and (k) which implements Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, under Executive Order No. 11914 (41FR17871, April 28, 1976) shall be:

6.3.3.1.

Denied access to or opportunity to participate in or receive benefits from any service offered by contractors under the terms and provisions of this agreement; nor

6.3.3.2.

Subject to discrimination in employment under any program or activity related to the services provided by contractors.

6.3.3.3.

If it is discovered that a contractor is not in compliance with applicable regulations as warranted, or if the contractor engages in any discriminatory practices, as described above, then the county may cancel said agreement as provided by the cancellation clause of this agreement.

6.4. Diverse Workforce Inclusion Resources

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the websites below:

1. <http://www.ramseycounty.us/jobconnect>

2. <http://www.ramseycounty.us/constructionconnect>

Job Connect and the Construction Connect provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Connect is an online and in-person network dedicated to the construction industry. Construction Connect connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Connect is a tool for contractors to help meet diversity hiring goals. Additional assistance is available through askworkforcesolutions@ramseycounty.us or by calling 651-266-9890.

7. General Contract/Agreement Terms and Conditions

7.1. Payment

7.1.1.

No payment will be made until the invoice has been approved by the County.

7.1.2.

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

7.2. Application for Payments

7.2.1.

The Contractor shall submit an invoice as mutually agreed upon by Contractor and the County.

7.2.2.

Invoices for any goods or services not identified in this Agreement will be disallowed.

7.2.3.

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount.

7.2.4.

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

7.2.5.

Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

7.2.6.

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

7.3. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

7.4. Successors, Subcontracting and Assignment

7.4.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

7.4.2.

The Contractor shall not assign or transfer any interest in this Agreement without prior written approval of the County and subject to such conditions and provisions as the County may deem necessary.

7.4.3.

The Contractor shall not enter into any subcontract for performance of any services under this Agreement without the prior written approval of the County. The Contractor shall be responsible for the performance of all subcontractors.

7.5. Compliance With Legal Requirements

7.5.1.

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body acting thereunder and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

7.5.2.

Unless otherwise provided in the agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the contract, including registration to do business in Minnesota with the Secretary of State's Office.

7.6. Data Practices

7.6.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state

statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

7.6.2.

The Contractor designates Mark Foley as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

7.6.3.

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data in the course of providing services under this Agreement. Access to County data shall be limited to those persons with a need to know for the provision of services by the Contractor. Except where client services or construction are provided, at the end of the Project all County data will be purged from the Contractor's computers and storage devices used for the Project and the Contractor shall give the County written verification that the data has been purged.

7.7. Security

7.7.1.

The Contractor is required to comply with all applicable Ramsey County Information Services Security Policies ("Policies"), as published and updated by Information Services Information Security. The Policies can be made available on request.

7.7.2.

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the County not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the County may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

7.7.3.

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

7.7.4.

The County retains the right to inspect and review the Contractor's operations for potential risks to County operations or data. The review may include a review of the physical site, technical

vulnerabilities testing, and an inspection of documentation such as security test results, IT audits, and disaster recovery plans.

7.7.5.

All County data and intellectual property stored in the Contractor's system is the exclusive property of the County.

7.8. Payment Card Industry (PCI) Compliance

7.8.1.

All Point of Interaction (POI) devices must meet the Payment Card Industry (PCI) PIN Transaction Security (PTS) requirements and be included in the PCI PIN transaction devices list. In order for these devices to transmit cardholder data on the Ramsey County network these devices must meet the PCI Point-To-Point Encryption (P2PE) standards.

7.9. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

7.10. Contractor's Insurance

7.10.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

7.10.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

7.10.3.

Commercial general liability of no less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations total limit, \$1,000,000 personal injury and advertising liability.

7.10.3.1.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU. Contractor will be required to provide proof of completed operations coverage for 3 years after substantial completion.

7.10.4. Workers' Compensation

Contractor certifies it is in compliance with Minnesota Statutes Ch. 176 (Workers' Compensation). The Contractor's employees, subcontractors and agents will not be considered County employees. Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to

provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota.

Required minimum limits of \$500,000/\$500,000/\$500,000. Any claims that may arise under Minnesota Statutes Ch. 176 on behalf of these employees, subcontractors or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees, subcontractors or agents are in no way the County's obligation or responsibility.

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the County with a certificate of insurance.

7.10.5.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

7.10.6.

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, Pollution and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

7.10.7.

If the contractor is driving on behalf of the County but not transporting clients as part of the contractor's services under this contract, a minimum of \$500,000 combined single limit auto liability, including hired, owned and non-owned.

7.10.8.

The Contractor waives all rights against Ramsey County, its officials, employees, volunteers or agents for recovery of damages to the extent these damages are covered by the general liability, worker's compensation, and employers liability, automobile liability, professional liability and umbrella liability insurance required of the Contractor under this Agreement.

7.10.9.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies and/or certificates of insurance shall be submitted to the County upon written request and within 10 business days.

7.10.10.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

7.10.11.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

7.10.12.

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

7.10.13.

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

7.11. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

7.12. Notices

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

County:

Liz Flinn, Parks & Recreation, 2015 Van Dyke, Maplewood, MN 55109

Contractor:

Mark Foley, Foley Professional Golf Services, LLC, 1301 Berwick Lane, Mahtomedi, MN 55115

7.13. Non-Conforming Services

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

7.14. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

7.15. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

7.16. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

7.17. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

7.18. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

7.19. Termination

7.19.1.

The County may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the County upon the commencement of such proceedings or other action.

7.19.2.

If the Contractor violates any material terms or conditions of this Agreement the County may, without prejudice to any right or remedy, give the Contractor, and its surety, if any, seven (7) calendar days written notice of its intent to terminate this Agreement, specifying the asserted breach. If the Contractor fails to cure the deficiency within the seven (7) day cure period, this Agreement shall terminate upon expiration of the cure period.

7.19.3.

The County or Contractor may terminate this Agreement without cause upon giving at least sixty (60) calendar days written notice thereof to the other party. Such right of termination is subject to the following limitations:

1. The Notice of Termination must specify the date on which termination will be effective. Such effective date must be no fewer than sixty (60) calendar days from the date of the Notice of Termination.
2. If one party delivers a Notice of Termination after February 1 of any year this Agreement, regardless of the date of delivery, termination will not be effective until the end of the golf season as determined by the County.

The County may terminate this Agreement at any time for good cause shown. The County's Notice of Termination must specify the good cause for termination and allow Contractor ten (10) calendar days to cure the actions or omissions described in the Notice of Termination if Contractor fails to cure the actions or omissions described in the Notice of Termination. If Contractor fails to cure within ten (10) days, the termination will be effective twenty (20) days from the end of the cure period.

In such event, the Contractor shall be entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination.

7.20. Interpretation of Agreement; Venue

7.20.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

7.20.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

7.21. Warranty

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

7.22. Infringement

7.22.1.

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation obtained under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding. The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval.

7.22.2.

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such enjoinderment imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation at no additional cost to the County, or propose an equivalent, subject to County approval. The acceptance of a proposed equivalent will be at the County's sole discretion. If no alternative is found acceptable to the County acting in good faith, the Contractor shall remove the software, licenses, materials, reports, documents, data, or documentation and refund any fees and any other costs paid by the County in conjunction with the use thereof.

7.23. Debarment and Suspension

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

7.24. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

7.25. Entire Agreement

The written Agreement, including all attachments, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or contracts, either written or oral. No subsequent agreement between the County and the Contractor to waive or alter any of the provisions of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement signed by authorized representatives of the parties.

8. Special Contract Terms and Conditions

8.1. Damage by Fire or Other Casualty

8.1.1. Limited Damage to Clubhouse and/or Maintenance Building

If all or part of the clubhouse and/or maintenance building is rendered untenable by damage from fire or other casualty which in the reasonable opinion of an architect selected by the County, can be substantially repaired under applicable laws and government regulations within 120 days from the date of such casualty, the County shall forthwith at its own expense, repair such damage other than damage to improvements such as furniture, chattels or trade fixtures owned by the Manager, which shall be repaired forthwith by the Manager at its own expense.

8.1.2. Major Damage to Clubhouse and/or Maintenance Building

If all or a substantial part of the clubhouse and maintenance buildings is rendered untenable by damage from fire or other casualty to such a material extent that in the reasonable opinion of an architect selected by the County, the clubhouse and the maintenance buildings cannot be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty, then the County may elect not to repair the facility and notify the Manager in writing not more than sixty (60) days after the date of such casualty. In the event the County elects not to repair, the Manager shall have the option to terminate this agreement

upon sixty (60) days written notice to the County. If the County elects to repair such damage, it shall do so at its own expense, except the Manager shall repair or replace its own property.

8.2. Payment Card Industry Compliance

- 8.2.1.** The Contractor, in concert with their merchant service provider, must comply with the Ramsey County Payment Card Handling Policy and Procedures and the most current standards established by the Payment Card Industry Data Security Standards Council (PCI DSS – <https://www.pcisecuritystandards.org/>). The Contractor must comply with trainings and procedures including but not limited to training Contractor’s employees on the proper handling of cardholder information, including completion of the appropriate Annual Self-Assessment Questionnaire (SAQ), quarterly network scan by an Approved Scanning Vendor (ASV), and Attestation of Compliance Form (AOC) and forwarding the SAQ, quarterly scans and AOC to Ramsey County on a quarterly basis to corroborate compliance. The merchant service provider is contracted through Ramsey County for tee reservations and point of sale systems.
- 8.2.2.** Ramsey County will provide tee reservation system and include point of sale system through a contracted provider with devices that are compliant with PCI PIN (PTS) requirements and be included in the PCI PIN transaction devices list. System and devices must meet the PCI Point-To-Point Encryption (P2PE) standards.

8.3. Point of Sale Device Networking

- 8.3.1.** Contractor, in collaboration and consultation with Ramsey County, shall utilized private internet services at Keller Golf Course, independent of Ramsey County All credit card processing activities shall occur on these private networks and not on Ramsey County’s network.
- 8.3.2.** Contractor, in collaboration and consultation with the County, shall ensure the County approved merchant service provider account is linked to the bank account designated by Ramsey County.
- 8.3.3.** Contractor shall work with the County approved merchant service provider to obtain PCI compliant credit card terminal / readers at Keller Golf Course.