

**AGREEMENT FOR GOLF COURSE SUPERINTENDENT CONSULTING SERVICES
BETWEEN
THE CITY OF LEMOORE
AND
RHOADS GOLF, LLC**

This AGREEMENT FOR GOLF COURSE SUPERINTENDENT CONSULTING SERVICES (“Agreement”) is made and entered into this 1st day of July, 2014, by and between the City of Lemoore (“City”) and Rhoads Golf, LLC (“Consultant”).

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

Consultant agrees to perform the services set forth in Exhibit “A”, “Scope of Services”, attached hereto and made a part of this Agreement.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit “A”, unless such additional services are authorized in advance and in writing by the City Council. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council.

Consultant has managed the Lemoore Municipal Golf Course prior to this Agreement. Any charges, fees, and/or deposits necessary as a result of this Agreement to maintain and/or transfer utilities and/or services previously provided to the Lemoore Golf Course under the previous arrangement with Rhoads Golf, LLC shall be paid by the City, including, but not limited to, electricity, gas, water, ABC license, and resale license.

SECTION 2. TERM.

This Agreement shall terminate on November 30, 2014, unless sooner terminated as provided herein.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant a management fee of Seven Thousand Five Hundred Dollars (\$7,500) per month, payable in the manner described in Exhibit “A”.

(b) The total sum stated in sub-paragraph (a) above shall be the total the City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for the work to be performed pursuant to this Agreement, or for extra, further or additional services related to this Agreement, unless such service and the price therefore is agreed to

in writing executed by the City Council or other designated official of the City authorized to obligate City thereto prior to the time such service is rendered.

(c) Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 4. CONSULTANT'S BOOKS AND RECORDS.

(a) Prior to execution of this Agreement, Consultant shall deliver to City any and all documents and records demonstrating or relating to Consultant's performance of services at the golf course prior to this Agreement.

(b) Consultant shall deliver to City any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement, including, without limitation, any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement.

SECTION 5. STATUS OF CONSULTANT.

(a) Consultant is and shall at all times during the terms of this Agreement remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) Consultant shall not obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 6. STANDARD OF PERFORMANCE.

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 7. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES.

Consultant shall keep himself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable at law or in equity as a result of any failure of Consultant to comply with this section.

SECTION 8. NONDISCRIMINATION.

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, disability, marital status or sexual orientation in connection with or related to the performance of this Agreement.

SECTION 9. UNAUTHORIZED ALIENS.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U. S. C. A, sections 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

SECTION 10. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Council, except as may be required by law.

(b) Consultant, his officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Council or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories or other information concerning the work performed under this Agreement. A response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officer, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition,

request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 11. MUTUAL INDEMNIFICATION.

(a) Consultant agrees to indemnify and hold harmless the City and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with Consultant's negligent, or deliberately wrongful act, errors, or omissions in connection with the performance of this Agreement. Likewise, City agrees to indemnify and hold harmless Consultant and its officers, employees, and sub consultants from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with the City's negligent, or deliberately wrongful acts, errors, or omissions in connection with the performance of this Agreement.

(b) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Consultant under Section 16 shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

SECTION 12. INSURANCE.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement insurance, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work provided by Consultant, its agents, representatives or employees in performance of this Agreement. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by City Council. Consultant agrees to provide City with copies of required policies upon request.

Consultant shall provide the following scope and limits of insurance:

(a) Minimum Scope of Insurance: Coverage shall be at least as broad as:

- (1) Insurance Services Office Form Commercial General Liability coverage (Occurrence Form CG 0001).
- (2) Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1, "any auto" and endorsement CA 0025, or equivalent forms subject to written approval of City.
- (3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

than: (b) Minimum Limits of Insurance: Consultant shall maintain limits of insurance no less

- (1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(c) Other provisions: Insurance policies required by this Agreement shall contain the following provisions:

- (1) All Policies: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested has been given to City .
- (2) General Liability and Automobile Liability Coverage:
 - (i) City and their respective elected and appointed officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials or employees.

- (ii) Consultant's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.
- (iii) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (iv) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

- (3) Employer's Liability Coverage: Unless the City Council otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

(d) Other Requirements: Consultant agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been met. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

- (1) Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.
- (2) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- (3) The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

SECTION 13. ASSIGNMENT.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under the Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement, entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Consultant, in the performance of his duties pursuant to this Agreement, may utilize subcontractors, with the prior approval of the City Council.

SECTION 14. CONTINUITY OF PERSONNEL.

Consultant currently employs Rich Roads as its only employee. No other employees of Consultant shall perform work under this Agreement without the express written consent of City.

SECTION 15. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving ninety (90) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement at any time upon ninety (90) days written notice of termination to City.

(c) If either Consultant or City fails to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant or City may terminate this Agreement if the failure to perform is not cured within fifteen (15) days following written notice of failure to perform a material obligation.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City.

SECTION 16. DEFAULT.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 17. COOPERATION BY CITY.

All public information, data, and reports as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in Exhibit "A", shall be

breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any provisions of this Agreement.

SECTION 23. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Kings. In the event of litigation in a U. S. City Court, venue shall lie exclusively in the Eastern District of California, in Fresno.

SECTION 24. ATTORNEY'S FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to any award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 25. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibit, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 26. SEVERABILITY.

If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 27. PREPARATION OF AGREEMENT.

This Agreement is the product of negotiation and preparation by and among the parties and their respective attorneys. The parties therefore expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or any party's attorney and will be construed accordingly.

CITY OF LEMOORE

By: _____
Jeff Laws, City Manager

RHOADS GOLF, LLC

By:  _____
Rich Rhoads

Tax ID No.: _____

Approved as to Form:

Laurie Avedisian-Favini,
City Attorney

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EXHIBIT "A"

SCOPE OF SERVICES

- A. Consultant shall do all of the following:
1. Serve as Superintendent at the Lemoore Municipal Golf Course.
 2. Report to the City Manager or Department Head designated by the City Manager.
 3. Perform such duties as directed by the City Manager or designated Department Head.
 4. Consultant shall work 40 hours per week at the Golf Course. Consultant may provide golf lessons on his own time, outside the scope of this Agreement, which time shall not be counted toward the 40 hour per week requirement. Any revenue from such lessons shall belong to Consultant.
 5. Direct and oversee the day to day work of Golf Course Groundskeeper and all golf course employees employed by City, in accordance with direction by the City Manager or designated Department Head. City Manager or designated Department Head shall determine the schedule of Groundskeeper and golf course employees.
 6. Report any concerns regarding Groundskeeper or City employees to the City Manager or designated Department Head. Consultant does not have the authority to hire, discipline or terminate any golf course employees or independent contractors. Such discretion rests entirely with the City Manager or designated Department Head.
 7. Deliver all revenues and bills to the City's Finance Department on a regular basis, in the manner, and pursuant to the schedule, determined by the City Manager.
 8. Take inventory prior to July 1, 2014 to establish the beginning inventory for the term of this Agreement; regularly monitor inventory and supplies; order necessary inventory and supplies and deliver all orders for payment promptly to the City for payment; take inventory on or before November 30, 2014 to establish the final inventory under this Agreement.
 9. Maintain in good standing the liquor license issued to Consultant by the California Department of Alcoholic Beverage Control for use at the Golf Course.
 10. Maintain in good standing the resale license issued to Consultant for use at the Golf Course.
- B. Payments to Consultant
1. Consultant shall receive a monthly Management Fee of Seven Thousand Five Hundred Dollars (\$7,500) per month, payable in arrears on the last regular work day of each month.
 2. Consultant shall receive a one-time payment of One Thousand Dollars (\$1,000) to offset legal fees and other costs incurred by Consultant in connection with this Agreement.
 3. Reimbursement up to One Thousand Dollars (\$1,000) for end of year costs with payroll service attributable to City taking over golf course operations, payable within thirty (30) days of receipt of invoice demonstrating costs attributable to City.
 4. Reimbursement up to Three Thousand Dollars (\$3,000) for end of year costs with accountant attributable to City taking over golf course operations and for end of year costs attributed to General Liability Insurance premiums, payable within thirty (30) days of receipt of invoice demonstrating costs attributable to City.