

COUNCIL AGENDA: JULY 15, 2014

SUBJECT: **AGREEMENT WITH CASEY BUTLER FOR GOLF MANAGEMENT SERVICES**

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: The City's three year agreement with Mr. Casey Butler for golf management services at the Porterville Municipal Golf Course expires August 3, 2014. The agreement provides a sharing of green fees and cart rental fees. Mr. Butler receives 21% of green fees, monthly and yearly tickets, lockers, and 25% of cart rental fees.

Mr. Butler has exclusive rights to operate the Pro Shop, driving range, food concessions, pull carts, and to provide golf lessons. Mr. Butler shall provide monthly revenue and play data to the City.

Mr. Butler is proposing to continue the current agreement with the only revision being the terms of the agreement be for five years, instead of the three years of the expiring agreement. The new term would be set to expire August 3, 2019. The Council may wish to consider a term less than 5 years.

RECOMMENDATION: That Council consider the Agreement, including the term, and authorize and direct the Mayor to execute same.

ATTACHMENT: Agreement
Five Year Financial Report

 Director  Appropriated/Funded

 City Manager

ITEM NO.: 23

PORTERVILLE MUNICIPAL GOLF COURSE

OPERATING AGREEMENT

THIS AGREEMENT, entered into at Porterville, California, by and between the CITY OF PORTERVILLE, a Municipal Corporation of the State of California, hereinafter called "City," and Casey L. Butler, hereinafter called "Operator."

RECITALS

WHEREAS, the City is the owner of a public golf course located within the City of Porterville and known generally as the Porterville Municipal Golf Course; and

WHEREAS, the City maintains said golf course for the purpose of making available to the general public the facilities thereon; and

WHEREAS, in the operation of said golf course, the City desires to make available public food service, professional golfing instruction and other services related to golfing hereinafter set forth; and

WHEREAS, Operator desires to undertake and to perform the services set forth above and other services as hereinafter set forth; and

NOW, **THEREFORE**, it is agreed between the parties hereto as follows:

1. Operator's Rights and Obligations. The City grants to Operator, and Operator hereby accepts, the following exclusive right pertaining to the Porterville Municipal Golf Course, with accompanying obligations:

- a. Right to sale of food, soft drinks, and wine and beer. Operator shall be responsible for obtaining requisite ABC License at his sole cost and expense.
- b. Right to sale of golf equipment and miscellaneous merchandise incidental to the game of golf.
- c. Right to rent City golf carts, golf equipment and other equipment incidental to the game of golf.
- d. Right to provide golfing services such as professional golf instructions and professional golf lessons, driving range, conducting of tournaments and similar competitions.

- e. Operator shall instill and maintain positive customer service and a people-oriented approach to the operation of the course.
- f. Operator is to provide, from time to time, recommendations to the City regarding any suggested adjustments to the existing course fees that will enhance both play and revenue.
- g. Operator is to maintain regular communications with the City's Parks and Leisure Services Director, or designee, regarding all operations and evaluation of all programs and promotional efforts.
- h. Operator's programs and promotional efforts shall target, first and foremost, juniors, ladies senior, and seniors, and new golfers, notwithstanding the continuation of free beginner golf clinics one day per month.
- i. Operator, with concurrence of the City's Parks and Leisure Services Director, shall have the authority to conduct special programs and promotions at reduced fees, which shall be intended to increase play 1) during off-peak hours, and 2) targeted groups. Operator, throughout the term of this agreement, shall remain Certified by the United States Golf Teachers Association.
- j. Operator shall conduct activities under this agreement in manners that respect the goals of the City to achieve fiscal sustainability of the course, as well as promoting golf play.
- k. Operator shall assume responsibility, and relieve the City of all liability for any damages or personal injuries incurred, resulting from the presence of spectators allowed on the course under the age of twelve (12) years, including any actions of such spectators.
- l. Operator shall provide monthly revenue and play data to the City in a spreadsheet format provided by the Director of Parks and Leisure Services.

All of the above specified uses hereby granted under the terms of this agreement shall be permitted, carried on and exercised at locations approved by the City Manager of the City of Porterville, or his designated representative, and at no other place or location than the Porterville Municipal Golf Course.

2. **Term.** The term of this agreement shall be five years commencing on August 3, 2014. At the end of five years, provided that Operator is not in default, and further provided that the City Council of the City of Porterville is satisfied with Operator's performance up to that

time, Operator shall have the option to renegotiate the terms of this agreement for an additional five (5) years, *provided the parties can mutually agree upon the terms for renewal.*

3. Rules and Regulations. Operator agrees to exercise all rights herein granted subject to, and in accordance with, the rules and regulations of the City Council of the City of Porterville that are now, or may hereafter be, in effect; and the City Manager, or his designated representative, shall provide supervisory control, direction, and enforcement of such rules, regulations, and other terms and conditions of this agreement on behalf of the City of Porterville. The rules and regulations to be enforced on the golf course by Operator, include, but are not limited to, the following:

- a. Use of proper etiquette by golfers, including allowing faster players to play through, leaving the green immediately when completing a hole, control of under-age spectators allowed on the course, avoiding practice swings which will damage the course, smoothing holes and footprints left in sand traps, replacing divots, repairing damage to greens such as ball and spike marks, and the proper movement of riding and/or pull carts. Operator, or his designee, agrees to physically marshal the course by inspecting play on the course from time to time.
- b. Operator shall act as starter in conducting starting times, with priority for groups and insuring that all players register prior to playing on the course.

4. Condition of Premises. At the end of the term of this Agreement, or at its earlier termination for any reason whatsoever, Operator agrees to deliver possession of any part of said Municipal Golf Course utilized by Operator, and to clean and restore said premises in a condition satisfactory to the City of Porterville.

5. Insurance. Operator agrees that he or she will procure and maintain in force throughout the term of this Agreement insurance policies insuring Operator and the City against public liability and property damage in the following minimum amounts, to wit:

- a. Comprehensive form of commercial general liability, which shall be primary as respect to the City of Porterville, with aggregate limits not being reduced by prior claims, and naming the City of Porterville, its officers, employees, agents and assigns, as additional insured, in at least the following amounts:
 - i. Bodily injury, including death to one or more persons, each occurrence: \$1,000,000.00.
 - ii. Products/completed operations hazard, each occurrence: \$1,000,000.00.
 - iii. Damage to property, each occurrence: \$100,000.00, with no deductible.

iv. Liquor Liability: \$1,000,000.00.

- b. Workers' compensation insurance, conforming to all applicable statutory limits, and covering all employees of Operator.

All insurance shall be carried with insurance companies having a Best rating of not less than A:VII, and which are admitted and authorized to do business in the State of California by the Insurance Commissioner of California. A renewal policy shall be procured not less than ten (10) days prior to the expiration of any such policy. The policies of insurance as above provided, or certificates of the insurers evidencing insurance carried, shall be deposited with the City Clerk of the City immediately upon the execution of this Agreement. Should the required insurance coverage, for any reason whatsoever, be cancelled, the insurer is required to provide the City with thirty (30) days notice of such cancellation.

6. Indemnification. Operator hereby agrees, to the fullest extent permitted by law, to hold the City, its elective and appointive boards, and its officers, agents and employees harmless from any liability for damage or claims or damage, for personal injury, including death, as well as from claims for property damage which may arise from Operator's operations under this Agreement, or by any one or more persons directly or indirectly employed by, or acting as agent for, Operator. Operator agrees to, and shall, indemnify and defend the City and its elective and appointive boards, officers, agents, and employees from any claims or actions at law or in equity for damages caused, or alleged to have been caused by reason of any of the aforesaid operations, provided as follows:

- a. That the City does not, and shall not, waive any rights against Operator which it may have by reason of the aforesaid hold harmless agreement or because of the acceptance by the City, or the deposit with the City by Operator of any of the insurance policies or certificates of insurance described in this agreement; and
- b. That the aforesaid hold harmless agreement in favor of City shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reasons of any of the acts of Operator regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. Additional Rights and Duties of Operator. Operator further agrees as follows:

- a. Not to assign or sublease this Agreement, or any part thereof, without the written consent of the City first hand and obtained, which consent may be withheld by the City at its sole discretion, and the consent to one assignment or one subletting shall not be construed as a consent to any further assignment or subletting.

- b. To pay the costs of janitorial services inside the clubhouse and locker room, and the cleaning of windows (inside and outside).
- c. Not to violate, permit or suffer the violation of any law, regulation or ordinance of any political subdivision in effect at said premises.
- d. To provide all office supplies necessary for day to day operations. To pay the cost of telephone services utilized by Operator at said premises, with the exception of the credit card processing telephone line. The City will provide credit card processing equipment and telephone service.
- e. To maintain the driving range to include regular trash and ball pick up. The City is responsible for perimeter security fencing. The Operator is responsible for repairs to the safety netting. The City is to mow and provide irrigation water and reserves the right to curtail the driving range irrigation during a water emergency.
- f. To rent City golf carts to the public. The Operator shall receive a percentage of gross revenues for renting the carts. The City shall be responsible for major maintenance of the City-owned golf carts. The Operator will be responsible for cleaning of the carts and minor preventative maintenance including checking oil, batteries, tires, general cart condition and reporting cart repair needed to appropriate maintenance staff.

8. **Waste and Nuisance.** Operator shall not commit, or suffer to be committed, any waste upon said premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of the neighborhood or citizens utilizing said golf course.

9. **Premises.** Operator warrants that he has inspected the premises and accepts them in their present condition and "as is." Operator may from time to time, at his own cost and expense, make alterations to the premises provided Operator obtains from the City prior written approval of said alterations and after obtaining any other permits or licenses as required by law.

10. **Food Services.** In the exercise of this agreement, Operator will provide food, including, but not limited to, hot sandwich or similar service as well as beverage service to the public during that period of time which coincides with the hours of golf play at said Municipal Golf Course. Operator may also provide said food and beverage service at other times in accordance with the regulations and approval of the City. In this regard, Operator shall, at his sole cost, provide all necessary fixtures and equipment for the purpose of supplying said services.

11. **Course Management.** Operator shall, at all times when the Golf Course is required to be open to the public, and subject to the supervision of the City Manager of the City of Porterville, or his designated representative, perform those duties required of the manager of said Municipal Golf Course.

12. **Compensation.** For the services of Operator as professional-manager of said golf course, the City agrees to pay to Operator as consideration the following:

- a. Twenty-one percent (21%) of all fees collected for lockers, monthly and yearly tickets, green fees.
- b. Twenty-five percent (25%) of all cart fees collected.
- c. All revenue generated from the pro shop, restaurant, pull-cart and club rentals, driving range, lessons, food, and beverage sales.

Operator is also entitled to complimentary play for himself and up to three regular employees.

Operator is not an employee of the City of Porterville, and is therefore ineligible for vacation, sick leave or retirement benefits that may now, or hereafter, be available to employees of the City of Porterville. However, Operator will continue to receive the basic consideration as set forth above, although Operator's absence from the premises may occur from time to time for reason of sickness or vacation. Notice of vacation absences shall be given in advance to the Parks and Leisure Services Director, or his Leisure Services Director, or his designee. Said consideration provided for in this paragraph shall be paid to Operator by the City monthly on the basis of the revenue as set forth and received from the preceding month. All funds received at the course will be operated through the City's cash register for accounting purposes.

13. **Business License.** Prior to conducting any business as contemplated herein, and at all times during the term of this agreement, Operator shall secure a business license from the City of Porterville and provide proof of such license to the Director of Parks and Leisure Services for the City of Porterville.

14. **Days of Operations.** Operator agrees that the golf course shall be open for use six (6) days a week, and shall be opened every Monday that is declared to be a state and/or local holiday, except the course will not be open on the following holidays, whether falling on a Monday, or otherwise: Thanksgiving Day, Christmas Day and New Year's Day. Notwithstanding the foregoing, the Operator shall have the discretion to close the course from time to time due to poor course conditions resulting from inclement weather. Furthermore, notwithstanding the foregoing, the Operator shall have the discretion, in consultation and concurrence of the Parks and Leisure Services Director, to open the course on Mondays for special programs and tournaments.

15. **Termination.** This Agreement with Operator is in consideration of the services that Operator shall perform as the professional-manager of the Porterville Municipal Golf Course. In the event that any of said services required by Operator are terminated, then this Agreement may,

at the option of the City, be terminated and cancelled *pursuant to Section 22 below*. In the event Operator breaches or fails to comply with any terms or conditions of this agreement, then, at the option of the City, this agreement shall be terminated, and Operator shall immediately surrender possession of any premises and/or rights herein granted.

16. Independent Contractor. With respect to the performance of the duties and obligations arising under this Agreement, it is mutually understood and agreed that Operator will be acting as an independent contractor. Nothing in this agreement is intended, nor shall be construed, to create a partnership, an employer/employee relationship, a joint venture relationship, or any other relationship between Operator and the City.

17. Annual Audit. The Operator will annually transmit to the City an annual summary detailing player demographics, rounds of golf play, cart rental and driving range activity, clinics conducted, and all revenues received by Operator through exercise of this Agreement, within 60 days after the close of each fiscal year during the term of this contract.

18. Background and Drug Testing. Alcohol and drug testing is a condition of approval for this agreement. The Operator shall submit to an alcohol and/or drug test conducted by the City Physician at the City's expense. The Operator shall submit immediately to an alcohol and/or drug screen test when requested by the City during the term of this Agreement. Refusing to provide a urine specimen as requested by the City Physician will result in the termination of the Agreement. This agreement is also subject to Operator's successful completion of a background check, to be performed by the City at its own cost.

19. Additional Duties. It is contemplated by the parties herein that from time to time there may be required of Operator additional duties not herein specifically set forth. In that event, it is agreed that this Agreement shall be supplemented.

20. City's Financial Commitment. The City agrees to provide services and materials to properly maintain the buildings and grounds of said municipal golf course subject to budgetary funding.

21. Annual Evaluation. This Agreement shall be reviewed annually. Operator's performance will also be evaluated yearly.

22. Notice of Termination. Notwithstanding any provision of this agreement to the contrary, the Agreement may be terminated by either party, without cause, by giving the other party ninety (90) days written notice of termination. Notice shall be given by personal delivery or first class mail, return receipt requested, addressed as follows:

CITY: City Manager
City of Porterville
291 N. Main Street
Porterville, CA 93257

OPERATOR: Casey Lance Butler
Porterville Municipal Golf Course
702 East Isham Avenue
Porterville, CA 93257

With copies to: Director of Department of Parks & Leisure Services
City of Porterville
291 N. Main Street
Porterville, CA 93257

Notwithstanding the foregoing, either party may terminate this Agreement for cause upon thirty (30) days written notice to the other party, in the manner set forth herein. "For cause" shall include a breach of any term or condition of this agreement, *and/or per Section 15 above*.

In the event this Agreement is terminated prior to the conclusion of the term hereof, Operator shall be entitled to retain payments under this Agreement and to receive payment of 21% of green fees and 25% of cart rental fees for that portion of the month in which this agreement is terminated.

In the event that the City terminates this agreement prior to the conclusion of the term herein, the City shall purchase all merchandise in stock and on order at the Operator's delivered cost and at market value. Purchase of merchandise excludes personal property. Operator shall afford the City the first rights to all business merchandise, without removing property from the premises, and shall not retain any merchandise or business related property necessary for the continued conduction of operations, without the concurrence of the City.

23. Equal Opportunity. Neither Operator, nor any agent, servant, or employee of Operator shall willfully discriminate against any employee or patron of the Porterville Municipal Golf Course on any facilities related thereto, based upon their ancestry, sex, national origin, local custom, habit, or sexual orientation. Violation by Operator of this provision of the State Fair Employment Practices Act shall be cause to terminate this Agreement.

24. Attorney's Fees. If any legal action, arbitration or other proceeding is brought in connection with this Agreement, the prevailing parties shall be entitled to recover their actual attorney's fees and costs, in addition to other costs incurred in such action, arbitration or proceeding, reimbursement of fees advanced in the event of arbitration, and other relief to which they may be entitled.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed at Porterville, California, on _____, 2014.

CITY:

CITY OF PORTERVILLE

Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

Approved as to Form:

Julie Lew, City Attorney

OPERATOR:

Casey Lance Butler

CITY OF PORTERVILLE
GOLF COURSE
5-YEAR REVENUES

	2009-10	2010-11	2011-12	2012-13	2013-14
Green Fees	\$ 162,703	\$ 126,219	\$ 123,597	\$ 113,806	\$ 106,001
Membership Fees	60,940	52,825	59,565	55,990	49,355
Golf Cart Rental	54,572	44,274	50,494	53,276	55,721
Locker Fees	2,460	1,935	1,570	2,105	2,405
Total	\$ 280,675	\$ 225,253	\$ 235,226	\$ 225,177	\$ 213,482

