

**THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION  
GOLF COURSE MANAGEMENT AGREEMENT**

**Contract ID: PR0PC25-1434**

THIS GOLF COURSE MANAGEMENT AGREEMENT (“Agreement”) is entered into by and between the City of Seattle (“City”), a municipal corporation of the State of Washington, acting by and through its Department of Parks and Recreation (“Department”) and the Superintendent thereof, and Premier Golf Centers, L.L.C., a Washington limited liability company (“Contractor” or “Operator”).

**RECITALS.**

WHEREAS, pursuant to Article XI of the Seattle Charter, the Superintendent has the responsibility for the operation and control of the parks and recreation system of the City; and

WHEREAS, the City owns the Jackson Park Golf Course (“Jackson”), Bill Wright Golf Complex at Jefferson Park (“Bill Wright”), Interbay Golf Center (“Interbay”), and West Seattle Golf Course (“West Seattle”) and their related facilities (collectively, the “Golf Courses”); and

WHEREAS, the City desires to enter into an agreement with an experienced public and/or municipal golf course operator to provide for the overall management and operation of golf services, collect fees on behalf of the City, and to ensure the highest quality of golf programs and related benefits for the public while operating within the budget approved by the City; and

WHEREAS, the Department issued a request for proposals in order to select a golf course operator and Contractor submitted the successful proposal;

NOW, THEREFORE, in consideration of the mutual commitments and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. DEFINITIONS.**

The following terms shall be defined as follows for the purposes of this Agreement:

- 1.1. “Adjusted Gross Revenue” means Gross Revenue earned from the operation of the City’s Golf Courses reduced only by a) Washington State sales taxes and other tax imposed by any government agency on sales, b) admissions taxes collected, c) lease payments from other parties to the City for cellular tower(s) placed on Department property, and d) revenue collected from the sale or surplus of equipment associated with golf course maintenance.

- 1.2. “Annual Budget” means the annual budget for all Golf Courses. The proposed Annual Budget for the upcoming Fiscal Year shall be delivered by the Operator to the City by May 1 of each year.
- 1.3. “Approved Annual Budget” means the Golf Courses budget that is approved by the City.
- 1.4. “Capital Expenditure” means any expenditure for new or replacement capital equipment or Capital Improvements to the Golf Courses that have an anticipated useful life equal to or greater than one year and a cost of no less than \$5,000 (Five Thousand Dollars).
- 1.5. “Capital Improvements” means any additions, alterations, or changes to the buildings, facilities, golf course, or other amenities at the Golf Courses.
- 1.6. “City” means the City of Seattle, a municipal corporation, and its elected officials and any department or subdivision thereof.
- 1.7. “Tournament Credit Book” means a system of accounts for money won and awarded from tournament events. The system tracks additions and spending from the accounts. The award money is received from entry fees and club contributions for each event.
- 1.8. “Dark” means ½ hour after sunset until ½ hour before sunrise.
- 1.9. “Department” means the City of Seattle’s Department of Parks and Recreation.
- 1.10. “Direct Cost” means any cost which is directly related to the normal and ordinary staffing, operations, or routine maintenance of the Golf Courses as approved by the City in the Annual Budget as further defined in Section 7.1.
- 1.11. “Director” means the Golf Manager in the Department of Parks and Recreation responsible for the management of the Golf Course Management Agreement and the overall operations of the City Golf Courses.
- 1.12. “Driving Range(s)” means the golf practice driving range facilities located at Jackson, Bill Wright, and Interbay, and any other practice driving range facility that may be operated at the Golf Courses during the Term of this Agreement.
- 1.13. “Effective Date” means the date the Agreement is executed by both parties following authorization by an effective ordinance of the City of Seattle.
- 1.14. “Executive” means any person who has a financial interest in Contractor or any officer of the Contractor (e.g., Vice President, Director of Operations or Director of Finance) who performs services for other facilities in addition to the Golf Courses. “Executive” does not include general manager or other managers or

directors performing work solely for the Golf Courses and does not include the Director of Marketing assigned to Contractor facilities in or around the Golf Courses.

- 1.15. "Fees and Charges" means the fees and charges for use of the Golf Courses (greens fees and cart rental fees) as approved by the Department for the applicable Operating Year.
- 1.16. "Fiscal Year" means January 1 through December 31.
- 1.17. "Golf Course Manual(s)" means the manual for the operation of the Golf Courses, and all reasonable revisions thereto promulgated by the Department from time to time made after written notice to and consultation with Operator.
- 1.18. "Golf Courses" means all of the buildings, grounds, fixtures, structures, restrooms, equipment, computers, tools, vehicles, fencing, and all appurtenances thereto at Interbay, Bill Wright, Jackson, and West Seattle, more particularly described on Exhibit A, which is attached and incorporated herein.
- 1.19. "Golf Lessons" means the professional golf instruction given at the Golf Courses by either the Class "A" PGA Golf Professional or qualified golf instructors as approved by the Department and employed or subcontracted by the Operator.
- 1.20. "Gross Revenue" means any and all income received from the operation of the City's Golf Courses and business conducted from or at the Golf Courses, including but not limited to the proceeds from all retail and wholesale sales; sale of food and beverages; sales from vending devices; mail or telephone orders received or filled on or from the Golf Courses; all deposits not refunded to purchasers; orders taken although filled elsewhere; and fees. The term "Gross Revenue" does not mean or include the amount of money refunded to, and not merely credited to the account of, customers who return or do not accept merchandise sold by Operator; any exchange of merchandise between locations or the central warehouses where such exchange is made solely for the convenient operation of Operator's business; returns to shippers or manufacturers; any discount allowed by Operator to customers; business conducted by Operator on behalf of non-City entities; any gratuities or service charges distributed as compensation to the facility's employees; any property and/or liability insurance proceeds (other than business interruption insurance); amounts contributed by owner pursuant to the terms of this Agreement; and income or interest derived from the bank accounts.
- 1.21. "Operating Year" means:
  - 1.21.1. The first Operating Year shall commence on the Effective Date and end on December 31, 2025 at 11:59 p.m.

- 1.21.2. Each Operating Year thereafter shall comprise the period of 12 (twelve) full calendar months.
- 1.22. “Operator” means Premier Golf Centers, L.L.C. (the professional golf course operating company selected to operate the City’s Golf Courses.) Premier Golf Centers, L.L.C. is a wholly owned subsidiary of Troon Golf, L.L.C.
- 1.23. “Operator Offices” means space located at the Interbay Clubhouse in the office area limited to 400 square feet. City has the right to eliminate or reduce space available for the use of Operator’s corporate employees.
- 1.24. “Prepays” means money received on account as a credit available towards customers or groups. Gift cards are accessed by a physical card and good for any item. Credit books are designated by number and are generally for merchandise only unless they are temporary accounts set up for prepaid deposits on banquets or tournaments.
- 1.25. “Pro Shops” means the golf and merchandise facilities located at the Golf Courses.
- 1.26. “Restaurants” means the food and beverage dining facilities located at the Golf Courses. Vending machines, remote food carts, and other food-related activities on the Golf Courses are included in the definition of “Restaurants.”
- 1.27. “Property” means the real property upon which the Golf Courses are located. The Property is described in Exhibit A hereto.
- 1.28. “Superintendent” means the Superintendent of the Department of Parks and Recreation or his designee.
2. RETENTION OF OPERATOR; KEY MONEY CONTRIBUTION.
- 2.1. The City hereby retains the Operator for the management and operation of the Golf Courses and all related facilities and services, including, but not limited to, the Golf Courses, Pro Shops, Restaurants, Driving Ranges, golf cart rentals and barns, restrooms, and all other buildings located at the Golf Courses, excluding the golf course maintenance buildings. Notwithstanding the foregoing, the City reserves the right, in its sole discretion, to change, reduce, or relocate the Golf Courses for reasons that include, but are not limited to, the City’s reasonable determination of regional transit needs or the City’s need to relinquish property rights under threat of condemnation. If the City changes, reduces, or relocates any of the Golf Courses, the parties shall negotiate, in good faith, amendments to the terms of this Agreement consistent therewith.
- 2.2. Key Money Contribution.

- 2.2.1. Operator shall pay to the City a total of One Hundred Thousand Dollars (\$100,000) (the “Key Money Contribution”) each year over the 15-year term to be used by the City for Capital Improvements to the Golf Courses as mutually agreed upon by the City and Operator. The Key Money Contribution shall be paid no later than June 1st of the first year of the Agreement and each year thereafter for the 15-year term as Capital Improvements are agreed upon by the parties. The Key Money Contribution from Operator to the City shall not be treated as an equity or other investment and Operator shall not be entitled to any profit, interest or dividend or other distribution or payment from the operation of the Golf Courses, or otherwise, except as specifically described herein.
- 2.2.2. In the event this Agreement is renewed by Contractor for the Renewal Term, Operator shall pay to the City a total of One Hundred Thousand Dollars (\$100,000) each year over the 5-year renewal term (the “Additional Key Money Contribution”).

### 3. ACCEPTANCE.

Prior to the Effective Date of this Agreement, the Operator has made an inspection of the Golf Courses, the Operator Offices, and related fixtures and facilities and hereby accepts the condition of them for purposes of this Agreement on an “as is” basis.

### 4. TERM.

- 4.1. Term of Agreement. The initial term (“Initial Term”) of this Agreement shall be for a period of Fifteen (15) years, beginning on the Effective Date and terminating at 11:59 pm Pacific Standard Time (PST) on December 31, 2039. After the Initial Term, Contractor shall have the option, in its sole discretion, to renew this Agreement for one (1) five (5) year renewal term conditioned on Contractor providing the Additional Key Money Contribution (“Renewal Term”; collectively with the Initial Term, the “Term”). If Contractor does not intend to exercise Contractor’s option to renew the Agreement for the Renewal Term, Contractor must notify the City of this intention, in writing, at least 120 days before the termination of the Initial Term. The Term, if a Renewal Term is executed, shall be for a total of 20 years.
- 4.2. Transfer. Upon termination or expiration of the Agreement, all employees and agents of the Operator shall vacate the premises of the Golf Courses and the Operator’s Offices and shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, equipment and property, records, all inventories, Prepaids (credit books and gift cards), and change funds of the Golf Courses back to the City. The Operator will maintain a current list of contracts and leases for the benefit of the golf courses and surrender it to the City upon transfer.

- 4.3. Termination for Convenience. Either party to this Agreement shall have the right to terminate this Agreement by delivering to the other party written notice of its intention to terminate at least fifty (50) days prior to the effective date of the termination.

## 5. OPERATOR'S BASIC SERVICE OBLIGATIONS.

- 5.1. Golf Management Services. The Operator shall sell, rent, lease, store, and repair golf equipment, sell golf-related clothing and supplies, provide instructional services in the playing of golf, and operate the Golf Courses, Pro Shops, golf cart rentals, and Driving Ranges consistent with the standards and conditions in this Agreement. The Operator shall employ managers, golf professionals, and other personnel at the Golf Courses. The hiring of new general manager, or any person that reports directly to the general manager, at each Golf Course shall be subject to the approval of the City, which shall not be unreasonably withheld.
- 5.2. Merchandise. The Operator is authorized to make purchases in order to provide and maintain in the Pro Shops such inventory of golf merchandise as deemed necessary within the Department's Approved Annual Budget to adequately meet the expectations of the public.

The Operator is encouraged to prioritize sourcing merchandise from Women and Minority Owned Business Enterprises and locally owned suppliers. The Operator is also expected to have systems in place to report loss of merchandise to the Department and minimize loss wherever possible. The Operator and Department shall meet regularly to ensure that the merchandise being displayed and sold remains in alignment with the Department's Diversity, Equity, and Inclusion goals and objectives (diverse attire merchandise). This can happen as part of the Operator's typical reporting.

If the revenue from merchandise sales exceeds the amount in the Approved Annual Budget, the Operator may exceed the merchandise purchasing amount in the Approved Annual Budget by an amount approved by the Department. After written notice to and consultation with the Operator, the Department shall have the right to prohibit the sale and rental of any item of merchandise if the Department, in its sole discretion, determines that the item(s) is of such inferior quality as to not be in the public interest to be offered for sale or that such item(s) is not necessary or desirable for proper service to the public. Unless otherwise approved by the Director, the Operator will maintain minimum/maximum inventory levels for sale in the pro shops as follows:

- 5.2.1. At Interbay a minimum of \$80,000 (Eighty thousand dollars) to a maximum of \$275,000 (Two hundred seventy-five thousand dollars).
- 5.2.2. At Jackson, Bill Wright, and West Seattle courses a minimum of

\$25,000 (Twenty-five thousand dollars) at each Golf Course to a maximum of \$200,000 (Two hundred thousand dollars) each.

- 5.2.3. In the event that a new facility is built or retail shop expanded, Director and Operator shall set new minimum and maximum inventory levels for that facility.
- 5.3. Tournament Credit Books. The Operator shall keep a system of accounts for prepaid books (credit books) of tournament winnings awarded at each course for tournament play. The course manager shall control the credit book accounts such that he or she can only increase or decrease winners' book accounts. The system will only allow a total increase to winners' book accounts by no more than the total available in the tournaments' credit book account. The Operator shall be able to run reports for all tournaments at all courses and to check all credit book balance sheets. Credit book holders shall be able to spend funds at any of the City facilities. The Operator shall provide monthly credit book details to SPR Accounting.
- 5.4. Golf Lessons. The Operator shall provide for Golf Lessons by employing qualified instructors. Accreditation of such instructors by the PGA, LPGA, and the PGA, LPGA apprentice program is preferred, but not required. The Operator shall cause all golf instructors, including Class "A" PGA Golf Professionals, to comply with the rules and regulations of the Golf Course Manual.

The Operator and Department shall evaluate the cost effectiveness of hiring a full time Class "A" PGA Golf Professional, based on the demand for golf lessons and their alignment with the Department's goals and objectives.

The Operator shall perform background checks on all golf instructors annually and upon rehire after a separation of 6 months or more. The City has strict policies regarding the use of background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing use the following link: [Background Checks and Immigration Status - Purchasing and Contracting | seattle.gov](https://seattle.gov/purchasing/immigration-status).

- 5.5. Golf Programs. Operator shall at minimum implement and promote golf programs as provided in the Golf Course Manual by providing group lessons, range balls, and general golf instruction, and by conducting tournaments for men's and women's clubs, junior and senior groups, leagues, and outings. The Operator shall make good faith efforts to execute an access agreement with First Tee of Greater Seattle.

Unless otherwise directed by the Department, the Operator also agrees to continue the current practices of maintaining the following programs: First Tee Program, Fir State Golf Foundation, Youth on Course, U on Course, and Bogey Bear Golf Foundation. Such programs shall be supported in a manner consistent

with past practice, unless otherwise directed by the Department.

5.6. Minimum Hours of Operation. At a minimum, the facilities shall initially be open and available to the public in accordance with the schedule agreed upon. Thereafter the days of operation and daily hours of operation shall be as recommended by the Operator and as approved by the Department. The Department will monitor and approve hours of operation at all sites, which approval shall not be unreasonably held. SPR will establish -on course hours of operation allowing adequate time to perform maintenance responsibilities in a safe manner without the threat of injury to staff by golfers on course. These hours can vary seasonally based on daylight. The Department will request 30 minutes from the staff's start time before the tee sheet is active. This cannot be changed without prior authorization for tournaments or special events. Failure to operate this schedule will result in later morning start times.

5.7. Food and Beverage. The Operator is responsible for all costs related to the purchasing of all food and beverage inventory at the Golf Courses as Direct Costs to such Golf Courses. The decision to sell alcohol at a Golf Course or Facility must be approved by the Department, and is subject to the operator meeting all legal requirements and providing proper liability insurance, liquor liability coverage, banquet liquor permits, etc.

The Department may review and audit the menu offerings, pricing and hours of operation. The Restaurant services operation shall be used as an enhancement to the golf programs administered by the Operator and will be coordinated with golf events sponsored by (1) the daily clientele visiting the facilities, (2) recognized clubs as defined in the Golf Manual, and (3) corporate groups. Tournament packages shall include special menu selections for events of thirty-two (32) or more golfers. In situations where the food and beverage required to be purchased exceeds the budget due entirely because the revenue for food and beverage exceeds the revenue budget, Operator shall be entitled to exceed the food and beverage purchasing budget by a percentage agreed upon by the Department.

5.8. Quality Control. Operator shall, when reasonably requested by the City in writing, retain a qualified "shopping" service from an outside vendor to use trained shoppers to anonymously evaluate customer service, operations, employee integrity, merchandising, and product quality. All reports from the provider shall be forwarded to the City. These costs will be reimbursed by the City.

5.9. Loyalty Programs. Operator will offer a loyalty program that is fully integrated with Operator's software and provides discounts for green fees through earned spending levels. Program may also include discounts on cart rentals and range use. This program shall be free to all persons and structured so all participants, regardless of economic status can benefit.

5.10. Building and Equipment Maintenance Services. Throughout the term of this



Agreement, the Operator shall keep and maintain as a Direct Cost of the City, in good, operable, usable, and sanitary order and repair the interiors and hard surface exteriors contiguous to the club houses, driving ranges, and parking lots of the Golf Courses, including, but not limited to, the Pro Shops, restrooms, storage spaces, the driving ranges, mini golf course, golf cart rentals, and restaurants, and all buildings, structures, improvements, fixtures, equipment, and utility systems, which may now or hereafter exist on or in the Golf Courses. Excluded are course restrooms, golf course grounds and grounds maintenance buildings maintained by the City. The Operator shall provide all custodial and grounds maintenance (including, shrub bed maintenance) in and around the clubhouses, parking lots, driving ranges, and course restrooms (Operator's employees shall restock bathrooms as needed), provided, however, Operator may engage a third-party for such services if in the Approved Annual Budget. The Operator shall provide for such ordinary repairs, replacements, rebuilding, and restoration as may be required to maintain the Golf Courses in compliance with this Agreement as long as such actions do not result in a new or significantly improved facility and does not require design and/or permitting. All replacements, rebuilding, and restoration, other than ordinary repairs, shall be approved in writing by the City prior to implementation. Maintenance that would exceed the Annual Approved Budgeted amount shall be approved in writing by the City prior to implementation.

- 5.11. Operator-Managed Lease(s). In addition to the building maintenance terms in this Agreement, the Operator also agrees to manage all the lease agreements related to operations at the facility. These leases may include, but are not limited to golf carts, beverage carts, and irrigation leases. Lease agreements are subject to approval by the Department.
- 5.12. Capital Improvements. The Operator shall not undertake any major Capital Improvements projects to the Golf Courses or appurtenant facilities without the prior, written approval of the Department. All work is subject to the Operator securing applicable permits, and compliance with all terms and conditions imposed by the Department in its sole discretion. Improvements shall be reimbursable under this Agreement.
- 5.13. Capital Improvements Projects.
  - 5.13.1. Small Capital Improvements Projects. Under the direction of the Department, Operator is authorized to propose and manage the design and construction of Small Capital Improvements Projects. "Small Capital Improvements Projects" means Capital Improvement projects with an aggregated amount under \$10,000 or an amount otherwise adjusted under SMC 20.40.010. Construction and design costs will be approved by the Department and shall be paid by the City. The Operator will manage the contracts and construction in compliance with all applicable laws, including state laws and City ordinances governing

public works contracts and prevailing wage requirements. The Parks Superintendent will approve all conceptual designs and contract amounts using the standard City procedures for small public works projects. The Department reserves the right of inspection during construction. All work must be approved by Parks prior to start of use by Operator or general public.

- 5.13.2. Major Capital Improvement Projects. The Operator shall not undertake any major Capital Improvements projects with an aggregated amount equal to or in excess of \$10,000 or an amount otherwise adjusted under SMC 20.40.010 (collectively, "Major Capital Improvements Projects") to the Golf Courses or appurtenant facilities without the prior, written approval of the Department. All work is subject to the Operator securing applicable permits, and compliance with all terms and conditions imposed by the Department in its sole discretion, and all applicable laws, including state laws and City ordinances governing public works contracts and prevailing wage requirements. If a Major Capital Improvement Project is managed or implemented by Operator the parties shall execute a separate agreement between the City and the Operator outlining each parties duties and obligations.
- 5.13.3. All costs associated with Capital Improvements projects shall be paid by the City. The Department shall annually review the capital investment plan for the Golf Courses with the Operator and determine the most efficient implementation of Capital Improvement projects.
- 5.14. Department Ownership. Except for leased equipment and proprietary property of the Operator, the ownership of all Golf Courses structures, buildings, equipment, or improvements thereto or thereon, merchandise, golf hand carts, and Golf Course maintenance equipment constructed or acquired by the Department, or by Operator on behalf of the Department, and all alterations, additions, or betterments thereto, shall remain with and be owned by the City.
- 5.15. Inventories. The Operator and the Department shall jointly inventory City-owned maintenance equipment every 2 years.
- 5.16. Inspections. The City may conduct both scheduled and unscheduled inspections of the Golf Courses without interrupting the normal operations. The City shall retain a written report of such inspections for reference and a copy of the report shall be forwarded to the Operator. The Operator shall review the report and prepare a written response to the noted exceptions and findings within 15 (fifteen) days of the receipt of the report, including contemplated courses of action to correct the noted exceptions and findings. After consulting with the Superintendent, the Operator shall take corrective action suggested by the Superintendent.

- 5.17. Operator Offices. City has the right to eliminate or reduce space available for Operator Offices. In the event that the space allocated to Operator Offices is eliminated, Operator shall, with approval of the Department, be permitted to use shared/satellite workstation(s) at the Golf Courses on a periodic basis for the purpose of managing the City's Golf Courses. SPR will only pay for or provide office space for the City of Seattle golf facilities.

## 6. OPERATING RESPONSIBILITIES.

- 6.1. Annual Budget. The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year of this Agreement. The Annual Budget for the first Operating Year will be provided by the City. Beginning in 2025, the Operator will submit a proposed Annual Budget no later than May 1 of each year under the Agreement for the upcoming Fiscal Year (by way of example, the proposed Annual Budget for Fiscal Year 2026 shall be submitted by May 1, 2025). The City shall approve, disapprove, and adjust the proposed Annual Budget by December 1 of each year as part of its annual budget process. Each proposed Annual Budget shall be in a format acceptable to the City and shall include, but not be limited to, proposed Fees and Charges, the projected number of Operator employees, the projected number of rounds of golf played and Driving Range buckets of golf balls purchased, and all projected revenues by source and golf course and the proposed Direct Costs and expenses, identifying those that are paid by the Operator and reimbursed by the City. After consultation with Operator, the Superintendent shall have the authority to negotiate changes to the proposed Annual Budget including, but not limited to, the projected revenue, projected costs, and the method of cost allocation, marketing plans, and advertising.

The Department will review and approve invoices from the Operator and reimburse expenses up to the amount approved in the annual budget, without mark-up or profit, including but not limited to direct and indirect expenses necessary to manage and operate the courses.

Contractor shall comply, to the extent reasonably and commercially practicable, with the applicable Annual Budget. Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge that: (a) the approved Annual Budget is an estimate only, (b) unforeseen circumstances during the course of the applicable Fiscal Year may make adherence to the applicable Annual Budget impractical or impossible, and (c) Contractor shall be entitled to reallocate the amount budgeted with respect to any item in the Annual Budget to another budget item, so long as the total amount of expenditures authorized under the Annual Budget shall not be exceeded.

- 6.2. Annual Operations Plan. As part of the Annual Budget approval process each year, the parties will collaborate to establish a mutually agreed-upon operations plan ("Annual Operations Plan") for the upcoming Fiscal Year. This plan will

outline golf and non-golf community activities, Public Benefits, as that term is defined Section 6.9.2, customer satisfaction and engagement initiatives, as well as overall operational strategies and objectives, including Capital Expenditure and Capital Improvement projects.

### 6.3. Reports

- 6.3.1. Annual Reports. Should be received on or before February 15, each Operating Year during the Term of the Agreement. The Operator shall submit to the Superintendent, for his or her review and approval, an annual report (“Annual Report”). Each Annual Report shall include a description of the physical condition of the Golf Courses and list any repairs or improvements made during the most recently concluded Operating Year. Each Annual Report also shall include a detailed revenue, cost, and expense report in a form acceptable to the City. Annual Reports will be submitted by the Operator in electronic media using mutually agreeable software and in hard copy when requested. If the Superintendent doesn’t approve the Annual Report, the Operator shall take all corrective action and submit a revised report to the Superintendent for review and approval. A report of all inventories (including prepaids and change funds) as of December 31 of each year shall be submitted to the City by January 15 to the Parks Accounting Manager.
- 6.3.2. Financial Reporting. The Operator will provide the Department with an Annual Income and Expenses Report for all courses and any other financial reporting as requested by the Department. The Operator will make its financial records, printed invoices, and financial reports related to the Golf Courses available and accessible to the Department upon the Department’s request. The Operator will keep and maintain an inventory of these financial records for the duration required in the contract.
- 6.3.3. Monthly Reports. The Operator shall submit to the Department, for its review and approval, on or before the 20th (twentieth) day of the month following each month of operations under this Agreement, a detailed and complete report regarding the prior month’s operations in a form acceptable to the Department (“Monthly Report”). Each Monthly Report also shall include a summary of the financial condition of the Golf Courses including the revenue by category and course, the categorized costs, and other financial data as may be required by the Department. The Operator shall provide additional information and documentation relating to any expense or income entry as the Department may require. Monthly Reports will be submitted by the Operator in electronic media using mutually agreeable software and in hard copy when requested. SPR will require quarterly meetings with

appointed SPR staff and Contractor leadership to discuss and review accounting issues, DEI hiring/trainings, access programing, PCI compliance reporting, KPI monitoring. Information and data for these meetings will be the responsibility of Contractor.

6.3.4. Loss Reports. A Loss Report shall be submitted to the Parks Accounting Manager within forty-eight (48) hours for any loss of any asset, including cash of any amount, and inventory or other items valued at more than \$100, capital asset valued at more than \$5000; small and attractive asset \$300 or more per occurrence. The report shall be submitted on the City's Loss Report form and shall include:

- 6.3.4.1. The exact or estimated amount of the loss.
- 6.3.4.2. Composition of the loss (cash/checks).
- 6.3.4.3. Date of the loss.
- 6.3.4.4. When and how the loss was discovered.
- 6.3.4.5. Whether it is known, who is responsible for the loss, (and, if so, the name).
- 6.3.4.6. When possible and appropriate to get, a copy of the police report shall be included in the report to the City.
- 6.3.4.7. Whether the loss is covered by insurance.

6.3.5. Shopper Reports. Reports will be conducted at the request of the Director and will be promptly forwarded to the City.

- 6.4. Compliance with Laws and Policies. The Operator shall comply with all municipal ordinances, all state and federal laws, and all regulations applicable to the operation of the Golf Courses and the management services provided under this Agreement. The Operator will comply with all applicable laws and regulations applicable to management or service contracts that involve facilities financed with tax-exempt bonds under federal tax law. The Operator shall not knowingly permit any illegal activities to be conducted on or at the premises of the Golf Courses. The Operator shall obtain all such required permits or licenses from the appropriate regulatory agency before undertaking any regulated activity.
- 6.5. Compliance with Rules and Regulations. The Operator shall comply with all rules and regulations set forth in the Golf Course Manual and will enforce all such rules at the Golf Courses.
- 6.6. Operator's Obligations to Refrain from Discrimination (Equality of Treatment). Without limiting the generality of Section 6.4, the Operator will comply and shall require its subcontractors to comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended from time to time; and rules, regulations, orders, and directives of the associated

administrative agencies and their officers. In the event that Operator is a party to an administrative charge, litigation or arbitration from an employee (current or former) alleging discrimination or sexual harassment, Operator shall promptly notify Department regarding the same; provided, however, in instances of an administrative charge that are intended to be confidential, Operator shall not be obligated to disclose charging party's name, but only to the extent that the City determines, in its sole reasonable discretion, that the charging party's name is not needed to enforce or comply with applicable laws or City policies.

- 6.7. Compliance with Americans with Disabilities Act (ADA) and other Disability Laws. If Operator is providing services, programs or activities to City employees or members of the public, Operator shall comply with the ADA and other applicable Disability Laws. Operator shall provide the services specified in this Agreement in a manner that complies with Title II of the ADA and any and all other applicable federal, state and local disability laws and regulations at all times and at no additional cost to City, including but not limited to the Americans with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 701 et seq.; and the Washington Law Against Discrimination, Wash. Rev. Code Ann. § 49.60.

The final project design for Capital Improvements shall comply with all applicable laws, building codes and regulatory requirements, including but not limited to the requirements of Title II the Americans with Disabilities Act (ADA) as amended (42 U.S.C. 12101 et seq.), its regulations, standards and guidelines. In cases where Title II and III of the ADA differ, the design shall comply with the provision that provides the highest degree of access to individuals with disabilities. Additionally, in cases where the 2010 ADA Standards for Accessible Design and building codes and other regulations differ, the design shall comply with the standard that provides the highest degree of access to individuals with disabilities. It is the responsibility of the Operator to determine the applicable code provisions.

- 6.8. Signs. The Operator shall not post any permanent signs at the Golf Courses without the prior approval of the Department.

- 6.9. Public Use and Access.

6.9.1. The Operator will ensure all park areas adjacent to the Golf Courses remain free and clear of obstructions to park use caused by the Golf Courses.

6.9.2. Public Benefits. A central element of this Agreement is the Operator's ongoing provision of certain public benefits ("Public Benefits") to the community. Operator will partner with the City to ensure the continuing provision of Public Benefits similar to those identified in Exhibit D in types, scale, frequency and community impact, which is attached and

incorporated herein; provided, however, the parties may modify the types, scale, and frequency of Public Benefits based on the needs of the Golf Courses, the City and the community. The goal of Public Benefits shall be to provide access to Seattle's underserved populations in similar scale and impact as outlined in Exhibit D. Operator shall make commercially reasonable efforts to maintain the Target Metrics and Estimated Value of Services outlined in Exhibit D, provided, however, the parties may modify the Target Metric and Estimated Value of Services goals each year. The Estimated Value of Services shall not increase by more than CPI each Fiscal Year. The Public Benefits and associated Target Metrics and Estimated Value of Services for each Fiscal Year shall be outlined in the Annual Operations Plan, and such determinations shall be based on the most recent Public Benefit Report. The "Value of Services" shall be a mutually agreed upon dollar valuation of Public Benefits based on commercially reasonable and available data. The "Target Metrics" shall be the number of individuals receiving or availing themselves of the Public Benefit. "CPI" shall mean the Consumer Price Index for Urban Consumers for the Seattle-Tacoma-Bellevue area, or its functional widely recognized and utilized successor index as determined by the parties, measured as of June 30 of the prior Fiscal Year.

- 6.9.3. Public Benefit Report. Within sixty (60) days after the end of the Fiscal Year, Operator shall submit to the City a report on the Public Benefits for such Fiscal Year. The Operator will include in each annual Public Benefits report a description of the Public Benefits the Operator has provided, including, but not limited to, descriptions of the Public Benefits, actual Target Metrics, actual Value of Services and the scale and impact of those Public Benefits. A shortfall in Public Benefit Target Metrics or Value of Services during any Fiscal Year will not constitute an event of default as long as the Operator has made commercially reasonable efforts to provide the Public Benefits as set out in this Section.
- 6.9.4. Financial Disruptions. The parties understand that the ability of the Operator to continuously provide and increase the value of Public Benefits as required herein may be compromised by unanticipated reductions in attendance or revenue associated with economic recessions identified by the National Bureau of Economic Research (NBER) or its functional successor; emergency closures; the reduction of amenities; and other events beyond the Operator's reasonable control. While the Operator will make a good faith effort to maintain Public Benefits under such circumstances, the City understands that the scale and value of such benefits that the Golf Courses can reasonably sustain during periods affected by such events may be reduced. When the impact of such events dissipates, the Operator shall endeavor to restore

the scale and value of its Public Benefits to the level before the Operator revenue declined as soon as reasonably possible.

- 6.9.5. Annual Review. The Operator agrees that it will provide at an initial level and value public benefits as summarized in this Section and Exhibit D. The parties recognize that over the Term of the Agreement, the Operator, or the City may develop new programs and strategies that may more effectively achieve the desired outcomes and equity outcomes. The year following the Effective Date and every year thereafter during the Term, the City and the Operator shall review the public benefits outlined herein and, if reasonably approved by both parties, shall modify Exhibit D to reflect the goal of providing public access to the City's underserved populations and allow room for adjustments based on programming and facility changes. While the value of the Operator Public Benefits shall escalate at the level set out in Section 6.9.2 above, the program and strategies used by the Operator to deliver that value will be evaluated every year following the Effective Date in conjunction with the program evaluation.
- 6.10. Marketing and Advertising. The Operator shall use its best efforts to maximize the public use of the Golf Courses by effectively marketing and promoting the Golf Courses to ensure financial and operating success. For each operating year, the Operator shall submit to the Department as a part of the proposed Annual Budget a complete marketing and advertising plan and shall include a year-end marketing and advertising report along with the Annual Report concerning all activities undertaken by the Operator with respect to the approved marketing and promotion plan for the applicable Operating Year. The Operator may deviate from the amounts provided within the budget and marketing plan to respond to unexpected market conditions after first consulting with and obtaining the approval of the Director. The City reserves all advertising rights associated with the Golf Courses and Operator will purchase any advertising on behalf of the City.
- 6.11. Utilities. Upon commencement of the term of this Agreement, the Operator shall be responsible for arranging for the utility services required by the Golf Courses, including, but not limited to, internet, water, gas, electricity, sewer service, and trash removal. The Operator acknowledges that during the term of this Agreement there may be a defect, deficiency, or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, or electrical apparatus or wires serving the Golf Courses. Any expenses incurred by the Operator to correct any such defect, deficiency, or impairment shall be a Direct Cost, aside from Capital Expenditures.
- 6.12. Safety. The Operator shall immediately correct any unsafe conditions to the Golf Courses, or notify the Department of any potentially unsafe conditions, as well as any potentially unsafe practices occurring thereon. The Operator shall contact an



emergency medical response provider as soon as reasonably possible after becoming aware of any person on or at any of the Golf Courses who is in need of medical attention because of illness or injury. The Operator shall cooperate fully with the Department in the investigation of any accidental injury or death occurring at the Golf Courses and shall submit promptly to the Superintendent an accident report describing any injuries or deaths at the Golf Courses. An incident log will be maintained at the Golf Courses by the Operator.

- 6.13. Use of Facilities Restrictions. The Operator shall obtain from the Director prior written approval of any events or activities not otherwise specifically provided for or authorized under the Agreement, or any extraordinary events or activities requiring the exclusive use of any of the Golf Courses or any portion thereof.
- 6.14. Meetings. Representatives of the Operator and the Department shall, at a minimum, meet monthly and at such other times as may be required by the Department to review the Operator's performance under this Agreement, to review the monthly financial reports submitted by Operator, and discuss any problems or emerging issues.
- 6.15. Fee Structure.
  - 6.15.1. Fees and Charges. Initially all Fees and Charges shall be the current Fees and Charges in effect at the Golf Courses as of the Effective Date. Beginning with the Operator's submission of the proposed Year Annual Budget on May 1, each year, the Operator shall propose Fees and Charges for the coming year. Additionally, Operator shall conduct a biannual market survey of comparable local municipal golf courses and driving ranges and provide the Director with the results. The Operator, in the exercise of its professional judgment, shall recommend Fees and Charges at such rates that will best meet the goals of maximizing Golf Courses net revenue and the positive golfing experience of golfers of all ages and skills. The Department will review, revise as needed, and establish Fees and Charges for the upcoming operating year.
  - 6.15.2. Changes to Fees and Charges. At any time during the Term, the Operator may propose off-season Fees and Charges for rounds of golf, cart fees, Driving Range fees, and temporarily lower fees, discounts, or promotional programs based on sound business practice. Any change to Fees and Charges are subject to prior approval by the Department.
  - 6.15.3. Other Charges. All charges directly charged to the public that are related to golf course operations, including course and range fees, fees for classes and lessons, equipment fees and other usual golf course fees and charges paid by golfers shall be proposed by the Operator in its proposed Annual Budget and are subject to approval by the Department. Restaurant and retail prices, including prices for Pro Shop equipment

and supplies, are not included in Fees and Charges and shall be proposed by the Operator in its proposed Annual Budget, and may be changed at other times by Operator as market conditions and costs change, subject to Department approval. The Department shall have the right to reject any price changes and request Operator to change to a specified price. If the Operator proposes an increase in the maximum fees authorized by the Department other than in the proposed Annual Budget submission, the Operator shall submit such proposed changes to the Department for approval at least sixty (60) days prior to the proposed implementation date. Any such change will be implemented only with the written approval of the Superintendent.

6.15.4. Discounts. Except as specifically authorized in writing and by mutual agreement as part of this Agreement, employees of the Operator shall not receive discounts to the above listed fees. Department shall provide its standard policy for food and beverage consumption to Operator each year.

6.15.5. Reciprocal Play. In addition, parties shall agree upon an established reciprocal play policy.

6.15.6. Operator Employee Merchandise Discounts. All Operator employees are eligible to purchase pro-shop merchandise at cost plus 10%. If the item is discounted to the public below this price, then the employee would pay that price with no additional discount. Employees must not use their discount to purchase items for resale.

6.16. Business License, Permits, and Leasehold Excise Tax.

6.16.1. Non-Reimbursed Costs and Expenses. The Operator shall obtain and pay for without reimbursement by the City a) the state licenses, registrations, and permits; unless authorized herein, b) any federal government fees, taxes, charges for the Operator's business, c) the Operator's City of Seattle Business Licenses, and d) leasehold excise taxes, if any. Any Operator legal and administrative costs associated with obtaining these licenses and permits will not be reimbursed by the City. Any late charges or penalties incurred by the Operator associated with obtaining these licenses and permits will not be reimbursed by the City without prior approval.

6.16.2. Reimbursed Direct Costs and Expenses. The City will reimburse Operator, as a Direct Cost, the actual fees paid by the Operator for Washington State Liquor Control Board licenses and permits, Seattle-King County Department of Public Health permits and inspections, and other permits and fees directly related to the operation of the Golf Courses and approved by the City in the Approved Annual Budget. Any

Operator legal and administrative costs associated with obtaining these licenses and permits must be approved in advance by the City. Any late charges or penalties incurred by the Operator that is associated with obtaining these licenses and permits will not be reimbursed by the City without prior approval of the Director.

6.17. Restaurant and other Goods and Services. The Operator shall at all times maintain a complete list or schedule of the prices charged for all goods and services supplied to the public by or at the Golf Courses. Such list or schedule of proposed prices shall be included in each proposed Annual Budget provided to the Department. Such prices shall be based on the following considerations: a) that the Golf Courses are intended to serve the needs of the public with the goods and services supplied at a cost comparable to other local sources of similar goods and services and b) that the potential profit margin should accommodate the cost of providing the goods or services in compliance with the obligations of this Agreement. If the Department notifies the Operator that a fee or a price being charged is not fair and reasonable, then Operator shall have the right to confer with the Department to justify such fee. Following reasonable conference and consultation thereon, the Operator shall immediately make such fee/price adjustments as may be ordered by the Department.

6.18. PCI-DSS Compliance.

6.18.1. Definitions.

6.18.1.1. "AOC" means Attestation of Compliance

6.18.1.2. "PCI-DSS" means Payment Card Industry - Data Security Standards

6.18.1.3. "PTS" means PIN Transaction Security Devices

6.18.1.4. "QSA" means Qualified Security Assessor

6.18.2. Transaction Data Security, Certification and Compliance. Throughout the Term of this Agreement, Operator shall demonstrate compliance and shall provide on an annual basis a current AOC from a PCI-DSS Qualified Security Assessor.

6.18.3. PTS-Devices. Operator will use devices which appear on the PCI Security Standards Council approved PTS device list, if PTS devices are employed.

[https://listings.pcisecuritystandards.org/assessors\\_and\\_solutions/pin\\_transaction\\_devices](https://listings.pcisecuritystandards.org/assessors_and_solutions/pin_transaction_devices)

- 6.18.4. AOC Assessors. A QSA is required to perform annual AOC assessments; the costs of such assessments shall be the Operator's expense and not reimbursable by the City.
- 6.18.5. Operator is responsible for the security of cardholder data that its subcontractor possesses, including the functions relating to storing, processing, and transmitting of the cardholder data.
- 6.18.6. Operator affirms that, as of the Effective Date of this Agreement, it has complied with all applicable requirements to be PCI-DSS compliant.
- 6.18.7. Operator will immediately notify the City if Operator learns that Operator or subcontractor is no longer PCI-DSS compliant and will immediately provide the City with the steps being taken to remediate the noncompliance status. In no event should Contractor's notification to the City be later than five (5) calendar days after Operator learns it or a subcontractor is no longer PCI DSS complaint.

Operator is responsible to reimburse the City of all and any fines or fees associated with any non-compliance to the PCI-DSS. This may include direct fines from the credit card brands and expenses related to remediation efforts by the city to bring the operator into compliance.

- 6.18.8. Unauthorized Access to Cardholder Data.
  - 6.18.8.1. Upon discovery of a breach or intrusion or otherwise unauthorized access to cardholder data stored at or for Operator, shall notify the City's CISO within 24 hours to allow the proper PCI DSS compliant breach notification process to commence. The CISO is to be contacted via email at COS-OIS@seattle.gov. A phone message can be left at 206 615-1233. The DPR Director of Golf is to be cc'd on the email and contacted by phone also.
  - 6.18.8.2. Promptly following Operator's notification to the City, the parties shall coordinate with each other to investigate the security breach. Operator agrees to fully cooperate with the City in City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing City with physical access to the facilities and operations affected; (iii) facilitating interviews with Operator's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise required by the City.

- 6.18.8.3. Operator shall ensure appropriate payment card companies, acquiring financial institutions and their respective designee's access to the Contractor's and subcontractor's facilities and all pertinent records to conduct a review of the Contractor's and subcontractor's compliance with the PCI-DSS requirements.
- 6.18.8.4. Operator acknowledges cardholder data can only be used to assist card brands or acquiring banks in completing a cardholder transaction. Operator will also support and provide documentation upon request, in completing a transaction, supporting a loyalty program, and providing fraud control services, and/or uses specifically required by law.
- 6.18.9. Background/Criminal History Checks.
  - 6.18.9.1. City reserves the right to require background/criminal checks during the course of the Agreement for essential City purposes so long as such background/criminal checks do not violate applicable laws, rules, or regulations. The City has strict policies regarding the use of background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing use the following link: [Background Checks and Immigration Status - Purchasing and Contracting | seattle.gov](https://seattle.gov/purchasing/contracting/background-checks-immigration-status).
  - 6.18.9.2. The City does not intend to request background checks/verifications unless essential to the operation of the Golf Courses, in the reasonable opinion of the City.
  - 6.18.9.3. Contractor shall require employees that operate point of sales systems complete security awareness training as directed by the City.
  - 6.18.9.4. This Section 6.18.9 covers background/criminal checks for Operator workers before they work on certain City tasks, systems and/or locations, to include the discovery and verification of criminal convictions and civil findings.
  - 6.18.9.5. For returning employees who have been laid off for more than one year, the Operator must complete a new background /criminal check.

- 6.18.9.6. The Operator shall revoke access to any PCI applications or areas promptly and provide to the City, no less than forty-eight (48) hours from when the status change becomes effective, notice of any Operator worker who is: (i) reassigned or no longer requires access to the point of sale systems to perform their job, or (ii) terminated by the Operator for cause.
- 6.18.9.7. Upon learning of a change in criminal history or background status of an existing employee, and such change affects their ongoing job duties, the Operator shall promptly notify the SPR Director of Golf. The City may request a new background/criminal check for this or other cause during the term of the worker's access to the secure areas or credit card payment systems.
- 6.18.9.8. Routine background/criminal history check reports shall include identity verification (e.g. social security number or driver's license verification) and a search of records from any federal, state or county court in the United States, based on applicant location or residential information, and records of all convictions or releases from prison within the last seven (7) years.
- 6.18.9.9. Training. The City requires the Operator's employees who have access to credit card data or secure areas to complete PCI training on an annual basis.

## 7. COSTS AND EXPENDITURES; LATE FEES.

- 7.1. Direct Costs. All Direct Costs (the normal and ordinary costs of operating and maintaining the Golf Courses) shall be paid by the Operator from the Operator's bank accounts, and Operator shall be reimbursed by the City. The City will reimburse Direct Costs without mark-up or profit to the Operator, and such costs will include only the actual amount paid by Operator to persons and entities unrelated to the Operator.

The amounts paid by the Operator for salaries, wages, compensation, and benefits to its employees that are to be reimbursed by the City are required to be determined at fair market value and not be based upon any share of net profits from the operation of the Golf Courses. Executive personnel are not to be reimbursed as Direct Costs but instead are to be included as part of the Base Management Fee provided in Section 8 below.

Late fees paid to vendors will not be reimbursed without approval of the Department's Operations Director. Subject to the above limitations, a Direct

Cost shall be any cost which is directly related to the normal and ordinary staffing, operations or maintenance of the Golf Courses only when approved by the City in the Approved Annual Budget or when proposed by the Operator and approved in writing by the City, including but not limited to the following:

- 7.1.1. Operator employee salaries, wages, and compensation.
- 7.1.2. Operator's employee benefits including vacation, sick leave, health insurance, HSA Contributions, 401(k) contributions, disability insurance, and worker's compensation insurance.
- 7.1.3. Employee Incentives and Bonuses. Employee incentives that comply with City policies are authorized and will be considered a Direct Cost. Authorized incentives are to express employee appreciation and are generally of minimal value (\$10 or less). The reimbursement request for any incentives that comply with City policies must include a completed City Form. Any other employee incentive or bonus will be excluded as a Direct Cost and will be paid at Operator's sole expense.
- 7.1.4. Food for Operator Employees. Food provided to employees that complies with City policies is authorized and will be considered a Direct Cost. Operator shall comply with the City's standard policy for food and beverage consumption. All food purchased by employees under such food and beverage policy will be excluded as a Direct Cost and will be at the Operator's or employee's sole expense.
- 7.1.5. Personal Mileage Reimbursement. Reimbursement of Operator employee usage of personal cars for business purposes shall be considered a Direct Cost, up to the then current rate approved by the IRS. Operator employees requesting mileage reimbursement shall maintain and submit mileage/trip logs as required by the Department. Mileage will be reimbursed no greater than the current rate authorized by the IRS. The employee must submit with the reimbursement request a log of beginning and ending mileage and beginning and ending location, the business reason for the travel, along with the date of trip.
- 7.1.6. Lease and/or rental of equipment.
- 7.1.7. Repair and maintenance of golf and hand carts, irrigation systems, and capital equipment.
- 7.1.8. Uniforms, laundry, and linens.
- 7.1.9. Operating supplies, office supplies, cleaning supplies, and other miscellaneous supplies.

- 7.1.10. Audit. Performance or financial audits that may be required by the City.
- 7.1.11. Advertising and marketing expenses.
- 7.1.12. Travel. The City of Seattle's Travel Policy and Procedures is attached and incorporated herein as Exhibit C. All travel must be aligned with this policy unless otherwise agreed in writing by the Seattle Golf Director.
- 7.1.13. Telephone, postage, and freight directly related to the operation of the Golf Courses.
- 7.1.14. Utilities and utility deposits, including natural gas, water, electric power, internet, telephones, garbage, recycling, and trash collection.
- 7.1.15. Parking lot maintenance.
- 7.1.16. Washington State Business and Occupation taxes on the Direct Costs or reimbursement of same. The Operator shall be responsible for the collection and payment of all applicable taxes arising out of the operations, including Sales, Use, Admissions, and Business and Occupation taxes. While these taxes are subject to reimbursement by the City in accordance with Section 7 of this Agreement, any fines or costs that result from not complying with deadlines or administrative requirements imposed by taxing authorities shall be the sole responsibility of Operator.
- 7.1.17. Purchase Refunds. Purchase Refunds will be deducted from expenses.
- 7.1.18. Food, Beverages, and restaurant supplies.
- 7.1.19. Reservation Center. The Golf Courses shall share in the direct and actual costs of a Reservation Center based upon each Golf Course's actual volume of calls as percentage of total calls for the Reservation Center.
- 7.1.20. Shared Services. Costs for Administrative Support (e.g., Accounting, Marketing, HR and IT) shall be paid by each Golf Course on a pro-rata basis to be outlined in the Annual Budget each year by the Parties.
- 7.2. Direct Cost Budget. The Direct Cost Budget is a portion of the Annual Budget and includes inventory.
- 7.3. Excluded Operating Costs. Those operating costs that are paid by the City but are not included in the Direct Cost Budget include and are limited to the following:



- 7.3.1. Those maintenance and/or operating costs that are due to any reason beyond Operator's reasonable control, an "occurrence of force majeure" including, without limitation, acts of God, riots, strikes, and/or fires, provided, however, that such expense shall continue only during the pendency of the particular occurrence of force majeure and are subject to the prior approval of the Superintendent.
- 7.3.2. Base Management Fees and Incentive Management Fee paid as part of this Agreement to the Operator.
- 7.4. Capital Expenditures. A Capital Expenditure is not a Direct Cost and each must be separately approved by the Director before it may be undertaken. The City is responsible for the cost of any Capital Expenditure approved by the Director. Examples of such expenditures include, but are not limited to equipment for the driving ranges, golf course maintenance, kitchen, and restaurant fixtures, etc.

## 8. OPERATOR COMPENSATION.

- 8.1. Base Management Fee. (a) From and after the Commencement Date, the City shall pay to Operator a base management fee (the "Base Management Fee") equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) for each full Fiscal Year during the Term, equitably pro-rated for any partial Fiscal Year. Commencing on January 1, 2026, and continuing on each January 1 thereafter, the Base Management Fee amount for such Fiscal Year shall be the Base Management Fee amount applicable to the last day of the immediately preceding Fiscal Year as increased by two and one-half percent (2.5%)
- 8.2. The Base Management Fee shall be paid monthly based on one-twelfth (1/12th) of the annual Base Management Fee amount for the Fiscal Year in question (pro-rated for any partial calendar month). For the purposes of pro rata calculations only it is agreed months will contain thirty (30) days. The City will pay the Management Fee by EFT to the Operator within ten (10) working days (excluding City holidays) after receipt and City acceptance without contest or question of the Monthly Report and supported by an invoice from the Operator.
- 8.3. Incentive Management Fee. For each Fiscal Year during the Term, the City will pay the Operator an incentive management fee ("Incentive Management Fee") equal to ten percent (10%) of the amount Adjusted Gross Revenue exceeds the annual Adjusted Gross Revenue threshold ("Annual Threshold") for that Fiscal Year if Gross Revenue covers all golf expenses, including the Operator's golf expenses, the City's golf expenses, the required 3.5% contribution to the Park Fund to cover department overhead costs, and the Current Debt Service ("Incentive Management Fee Conditions"). The Annual Threshold for Fiscal Year 2025 is Sixteen Million Five Hundred Thousand Dollars (\$16,500,000). Beginning on January 1, 2026, and continuing each January 1st thereafter, the Annual Threshold amounts for the applicable Fiscal Year shall be the Annual

Threshold amounts applicable to the last day of the immediately preceding Fiscal Year as increased by two and one-half percent (2.5%). For example, the Annual Threshold for Fiscal Year 2026 shall be \$16,912,500. If a revenue-generating amenity is permanently or temporarily closed or modified such that Adjusted Gross Revenue is likely to be negatively impacted, the parties shall negotiate in good faith and agree upon a reasonable reduction of the Annual Threshold during the applicable impact period. If Gross Revenue do not meet the Incentive Management Fee Conditions such that the Golf Courses operate at a loss in any given Fiscal Year, and such losses are determined by the City and Operator, both acting in good faith, to be directly due to Operator failure to operate the Golf Courses as outlined in this Agreement, then any Incentive Management Fee owed to Operator shall be reduced by such loss, provided, however, under no circumstances shall Operator be required to cover such losses beyond the amount of its Incentive Management Fee.

- 8.4. The City will pay the Incentive Management Fee by EFT to the Operator within ten (10) working days (excluding City holidays) after the Annual Report is accepted by the City. The Annual Report will include an invoice from the Operator that details the calculation of the Incentive Management Fee. Operator will allocate a percentage of the Incentive Management Fee to key staff members at each Golf Course as an annual bonus distribution.

## 9. PAYMENT PROCEDURES.

- 9.1. After receipt from the Operator of applicable invoices that have been approved without contest and accepted by the City, the City shall reimburse the Operator for Direct costs by ACH or EFT to the Operator within 10 (ten) business days, excluding City holidays, after receipt of the Operator's invoices in a form approved by the City.
- 9.2. The Operator shall submit original copies of all bills and invoices. Each bill and invoice shall be approved and shall be signed by an Operator management employee. Operator shall submit weekly invoices to be approved and paid by the City.

## 10. REIMBURSEMENT SUBMITTALS.

- 10.1. The Operator will submit receipts, invoices for all Direct Costs, and expenses to the City according to a schedule that has been approved by the City. In no event shall the reimbursement submittals be processed more often than once a week with the exception of twice per month payroll reimbursements. The City reserves the right to review all reimbursement submittals, seek justification from the Operator and once accepted by the City, issue a reimbursement.
- 10.2. Salary reimbursement requests must be separated by golf course and include by employee: name, total hours, pay rate, total cost, and cost for each benefit (taxes,

health insurance, etc.). The request must include a report from the Operator's payroll system that includes the above information.

- 10.3. At year-end, if requested by the City, reimbursement requests must be separated by calendar year; any single request that includes expenses from two calendar years will not be reimbursed and returned to the Operator for resubmission as separate requests by year.
- 10.4. Reimbursement Summary. Each request shall include a summary that includes sub-totals by golf course and list each vendor, date paid, check number, and amount. Attached to the summary shall be the original invoice that was paid. Upon request by the City, a copy of the check must be attached to each invoice(s). Vendor invoices shall include detail itemization and be on the vendor's letterhead or invoice with the vendor's name, address, etc., or if on an invoice form provided by the Operator, shall include identifying information and the vendor's signature.

The City and Operator shall agree to work diligently toward an electronic submission system acceptable to state auditors that increases efficiency and combined cost of submission to City.

- 10.5. Payment Approval and Certification. At least once annually, the Operator shall provide a letter signed by an authorized Operator representative including all employees who are authorized to sign reimbursement requests. Prior to submission of any requests for reimbursement, the Operator shall provide a letter signed by the CEO that identifies all employees authorized to sign and approve reimbursement requests (on the summary page). Each summary invoice shall include a certification statement as follows:

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, services rendered, or labor performed as described herein and the claim is a just, due, and unpaid obligation against the City by the Operator, and I am authorized to authenticate and certify to said claim." The certification shall be signed and dated.

## 11. FINANCIAL AND ACCOUNTING PROCEDURES.

- 11.1. Bank Account. The City has established a bank account ("City's Bank Account") for the purposes of accepting deposits of revenues under this Agreement. The funds in this account are the property of the City. Payments by Operator from this account are prohibited.
- 11.2. Revenue Requirements for Program Expenses. Operator shall, to the extent reasonably and commercially practicable, ensure Gross Revenue are sufficient to cover all golf related expenses related to operation of the Golf Courses as outlined in the Annual Budget, including the required 3.5% contribution to the Park Fund to cover department overhead costs. Notwithstanding anything contained in this

Agreement to the contrary, the parties acknowledge that: (a) the Approved Annual Budget, and anticipated Gross Revenue associated therewith, are estimates only, and (b) unforeseen circumstances during the course of the applicable Fiscal Year may make adherence to the applicable Annual Budget, or achieving Gross Revenues targets, impractical or impossible. In addition to the above, Operator will make commercially reasonable efforts to ensure Gross Revenue are sufficient to cover remaining annual debt service on capital improvements completed at the Golf Courses as of the Effective Date (“Current Debt Service”). The City shall disclose its Current Debt Service obligations to Operator at least thirty (30) days prior to the Effective Date. If Gross Revenue are not sufficient to cover the City’s Current Debt Service on the Golf Courses or related equipment and assets, Operator shall not under any circumstances be responsible for paying the shortfall to the City or the Current Debt Service lender(s). The Current Debt Service, and any future debt service, are the sole obligations of the City. In addition to the above, remaining earned revenues net of the above expenses is typically invested by the City in Capital Improvements to City-owned golf facilities (i.e., buildings, grounds, equipment, etc.).

- 11.3. Revenue Deposit. All revenues from sales and rentals at Interbay, Jackson, Bill Wright, and West Seattle Golf Courses are the property of the City and not part of the fees or consideration paid to the Operator and shall be deposited into the City’s Bank Account daily. No deposits of the four golf courses’ revenue may be made into any other bank account for any purpose or under any circumstances.
- 11.4. Accounting Procedures. For expenditure process, please refer to Section 9.
  - 11.4.1. Each business day, the City will reconcile all daily sales and other revenue transactions by using data from the Operator’s point of sale system that can then be uploaded by the City into the City’s financial system (PeopleSoft 9.2).
  - 11.4.2. If the Operator makes an adjustment after submission, it should notify Department Accounting on the same business day.
  - 11.4.3. If the Operator proposes any new business revenue, it must be approved by the City and incorporated into the sales and revenue reconciliations and reporting.
  - 11.4.4. The Operator will provide the City with a monthly sales and revenue report that separates the revenue by category and source approved by the City.
  - 11.4.5. With Department approval, Operator has the right to choose preferred credit card payment, payment processing and golf operating systems as long as Operator’s chosen provider is acceptable by the City’s Level 1 PCI compliance assessor. Department’s approval shall not be

unreasonably withheld.

11.4.6. Fixed Assets and Inventory: All assets belong to the City.

11.4.7. The Operator shall employ a method of accounting for all the revenues and expenses in connection with the operation of the Golf Courses that is consistent with the City's modified cost basis reporting, and that correctly and accurately reflect the gross receipts and disbursements received or made by the Operator from the operation of the Golf Courses. The Operator shall establish and implement adequate internal controls for this operation and all cashiering and cash handling that comply with GAAP, and with the City's cash handling policies, more particularly described in Exhibit B, which is attached and incorporated herein. The method of accounting, including bank accounts, established for the operation shall be separate from the accounting system used for any other business operated by the Operator.

11.5. Monthly Reports and Transactions. The Operator shall provide to the City a Monthly Report of the previous month's transactions and financial status of the Golf Courses.

11.5.1. Monthly Report. Within Twenty (20) days of the end of each month, the Operator shall provide the City with a Monthly Report that includes the current month and year-to-date inventory levels, a monthly and year-to-date balance sheet, cash flow report, and income statement.

11.5.2. On a weekly basis and schedule provided by the City, the Operator will provide a copy of every bank deposit slip and a copy of every credit card batch settlement for the previous week.

11.5.3. After review of the above items, the City may request additional reports that detail previous transactions.

## 12. BUSINESS RECORDS.

12.1. Types of Records. The Operator shall keep the following records and documents:

12.1.1. Regular books of account such as general ledgers;

12.1.2. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;

12.1.3. Sales tax returns and checks and other documents proving payment of sums shown;

12.1.4. Cash register tapes or computerized records for the identification of day-

to- day sales;

12.1.5. Logs showing the dates and times of Driving Range and greens usage and Golf Lessons at the Golf Courses; and

12.1.6. Any other accounting records that the City, in its sole discretion, deems necessary for proper reporting of receipts.

12.2. All books and records will be retained and turned over to the City in accordance with the City's retention schedule for the Department for retention in City archives, in City-authorized storage boxes with a completed City archival form attached to each box as required by the City Archivist. These records may be in electronic or digital format.

12.3. Audit of Records. All documents, books, and accounting records kept by the Operator pursuant to this Agreement shall be open for inspection by representatives of the City during usual business hours and at a location within the Seattle City limits during the term of this Agreement and for at least 6 (six) years thereafter. In addition, the City or its authorized representative may, from time to time, conduct an audit of the books of the operation of the Golf Courses and observe the operation of the business. The City will use its best efforts to minimize the interruption with the normal operation of the Golf Courses during any inspection or audit performed pursuant to the provisions of this section. The City and Operator will independently conduct and jointly conduct "surprise" cash and inventory audits as each deems appropriate. The results of the audits will be documented in a written report, a copy of which will be given to both parties.

12.4. Annual Financial Statements. The City may request and the Operator shall provide to the satisfaction of the City audits of financial statements and golf course operations. The audit shall be performed by independent certified public accountants or other persons designated by the City, and the cost of the audit shall be included as a Direct Cost of operation.

12.5. Public Records. All information obtained in connection with the City's inspections of the records or audits and all information submitted to the City may be or become subject to public inspection and/or reproduction as public records.

### 13. INSURANCE AND INDEMNITY.

13.1. The Operator's Insurance Requirements.

13.1.1. Worker's Compensation Insurance. The Operator shall keep in full force and effect at all times during the term of this Agreement worker's compensation insurance for all workers employed pursuant to this Agreement in compliance with RCW 51 and any applicable federal statute. If any work is sublet, the Operator shall require its sub-

operator(s) similarly to provide worker's compensation insurance for all of the latter's employees unless all the employees are covered by the Operator.

- 13.1.2. **Liability Insurance.** The Operator shall keep in full force and effect, at all times during the term of this Agreement, Commercial General Liability ("CGL") insurance (including Premises/Operations, Products/Completed Operations, Personal Injury/Advertising Injury, Contractual Liability, Independent Contractors, Stop Gap/Employers Liability, Commercial Liquor Liability, and Sexual Misconduct and Molestation Liability), Business Auto Liability, and, if necessary, Umbrella/Excess Liability insurance so as to provide total limits of liability of not less than \$6,000,000 per occurrence Combined Single Limit Bodily Injury and Property Damage, except \$1,000,000 each offense as respects Personal Injury/Advertising Injury and \$1,000,000 each Accident/Employee Stop Gap/Employers Liability. Operator shall be permitted to procure the insurance through Troon Golf, L.L.C.'s insurance program.
- 13.1.3. **Commercial Crime Insurance.** The Operator shall keep in full force and effect at all times during the term of this Agreement a Commercial Crime insurance policy with a minimum of \$250,000 per occurrence for employee dishonesty and coverage for theft, disappearance, and destruction of or to monies or funds of, in, or at the Golf Courses in an amount as dictated by the exposure at any given time, but in no event less than \$50,000. All amounts set forth in herein shall be per occurrence and in the aggregate. The City may require the Operator to purchase a fidelity bond on behalf of the City whereby in the event any officer, employee, agent, or subcontractor of Operator embezzles, steals, or otherwise fraudulently or improperly takes or obtains City funds, money, or property, the City shall be reimbursed for the total amount of funds taken. This cost shall be a direct insurance cost.
- 13.1.4. **Information Technology.** The Operator shall keep in full force and effect at all times during the term of this Agreement Network Security (Cyber) Liability insurance with a minimum of \$1,000,000 per occurrence and annual aggregate. This shall include, but not be limited to, coverage for any actual or alleged breach of duty, neglect, error, act, mistake, omission, or failure arising out of Service Provider's Internet and Network Activities including coverage for, but not limited to, the following:
  - 13.1.4.1. An attack that has the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access or unauthorized use of Service Provider's or Vendor's computer system;

- 13.1.4.2. Computer Crime or Information Theft;
- 13.1.4.3. Denial of Service;
- 13.1.4.4. Extortion;
- 13.1.4.5. Introduction, implantation, or spread of a Computer Virus;
- 13.1.4.6. Loss of Service;
- 13.1.4.7. Identity Theft;
- 13.1.4.8. Infringement;
- 13.1.4.9. Electronic data loss and restoration;
- 13.1.4.10. Unauthorized Access or Use, including the gaining of access to Service Provider's or participating cities computer systems by an unauthorized person or persons or an authorized person in an unauthorized manner; and
- 13.1.4.11. Credit monitoring

13.2. The City's Insurance Requirements.

- 13.2.1. Property Insurance. The City shall insure or self-insure real property and personal property, including new buildings and additions under construction on City premises (but excluding land such as greens, fairways, trees, and landscaping, and Operator's personal property), inventory, and mobile equipment (including leased mobile equipment) for the current replacement value thereof subject to various deductibles for the benefit of both the City and Operator. The City shall obtain from its property insurer a waiver of subrogation in favor of the Operator to the extent that property insurance applies to any loss. In addition, the City agrees to waive its rights of recovery for claims involving damage to City property in excess of \$1,000 for any loss within the applicable deductible amount up to the attachment point of property insurance coverage.

13.3. Additional Insurance Requirements.

- 13.3.1. Cost of Insurance. The Operator is responsible for the cost of any insurance on Operator's personal property kept on-site at the Golf Courses, and such amount will not be a Direct Cost. The Operator hereby releases the City from any claim arising in any way from loss or damage to Operator's personal property.
- 13.3.2. City as Additional Insured; Products-Completed Operations. The Operator shall include "The City of Seattle" as an additional insured to all of the applicable liability insurance coverage listed in Section 13.1; which must also be as primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording, and in any other manner further required by the



Operator's insurance coverage to provide the City additional insured coverage as set forth herein.

- 13.3.3. **No Limitation of Liability.** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Nothing in the Operator's requirements for minimum insurance coverage under Section 13.1 shall be interpreted to limit or release liability of the Operator or any the Operator's insurers. The City shall be an additional insured as required in Section 13.3.2. regarding the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.
- 13.3.4. **Required Separation of Insured Provision; Cross-Liability Exclusion and Other Endorsements Prohibited.** The Operator's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. The Operator's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City from coverage or asserting a claim under the Operator's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. The Operator's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. The Operator's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement; or if applicable, and at the discretion of the City, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by the Operator or reduced and/or offset against the Agreement.
- 13.3.5. **Substitution of Sub-Operator's Insurance.** If portions of the scope of work are subcontracted, the sub-operator or subcontractor may provide the evidence of insurance for the subcontracted body of work provided all the requirements specified in Section 13.1 are satisfied.
- 13.3.6. **Notice of Cancellation.** The insurance coverages in Section 13.1 shall not be canceled by the Operator or Insurer without at least forty-five (45) days written notice to the City, except ten (10) days' notice for non-

payment of premium.

- 13.3.7. Claims Made Form. If any insurance policy is issued on a “claims made” basis, the retroactive date shall be prior to or coincident with the effective date of the Agreement. The Operator shall either maintain “claims made” forms coverage for a minimum of three years following the expiration or earlier termination of the Agreement, providing the City with a Renewal Certificate of Insurance annually; purchase an extended reporting period ("tail") for the same period; or execute another form of guarantee acceptable to the City to assure the Operator’s financial responsibility for liability for services performed.
- 13.3.8. Insurer’s A.M. Best’s Rating. Each insurance policy shall be issued by an insurer rated A-: V or higher in the A.M. Best's Key Rating Guide, unless a surplus lines placement by an licensed Washington State surplus lines broker, or as may otherwise be approved by the City.
- 13.3.9. Self-Insurance. The City acknowledges that the Operator may employ self-insured and/or alternative risk financing and/or capital market risk financing programs for some or all of its coverages. The term “insurance” wherever used herein shall include any such self-insured and/or alternative risk financing and/or capital market risk financing programs. The Operator shall be liable for any self-insured retention or deductible portion of any claim for which insurance is required.
- 13.3.10. Evidence Of Insurance (Not Applicable To Washington State Workers Compensation). The Operator must provide the following list of evidence of insurance:
  - 13.3.10.1. A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
  - 13.3.10.2. An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL or other additional insurances required (and if required the Operator’s Pollution Liability insurance policy).
  - 13.3.10.3. A copy of all other amendatory policy endorsements or exclusions of the Operator’s insurance CGL/MGL policy that evidences the coverage required.

At any time upon the City’s request, the Operator shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit

for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, the Operator shall also cause a complete and certified copy of the requested policy to be timely furnished to the City.

Each insurance policy required hereunder shall provide that cancellation shall not be made without 30 days (10 days with respect to cancellation for non-payment of premium) prior written notice to the City. Insurance Certification shall be issued to, and notice of cancellation/reinstatement may be mailed to:

The City of Seattle  
Attn: Seattle Parks and Recreation  
100 Dexter Ave N  
Seattle, WA 98109-5119

Insurance certification shall not be mailed, but shall be delivered electronically (as may notice of cancellation/reinstatement) by facsimile transmission to (206) 615-1813 or as an email attachment in PDF or XLS format to pks\_info@seattle.gov

- 13.3.11. Changes In Insurance Requirements. The City shall have the right to periodically review the adequacy of coverage and/or limits of liability in view of inflation and/or a change in loss of exposure and shall have the right to require an increase in such coverage and/or limits upon ninety (90) days prior written notice to the Operator. Should the Operator, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, availability and or cost associated with any request, the Operator may upon thirty (30) days prior written notice request a waiver of any insurance requirements, which request shall not be unreasonably denied.

#### 13.4. Indemnity.

- 13.4.1. The Operator shall defend, protect, indemnify, and hold the City, its officers, elected officials, volunteers, agents, and employees from and against any and all suits, judgments, causes of action, claims, losses, demands, damages, liabilities, and expenses, including, but not limited to, attorney's fees and costs of litigation, resulting from death or injury to any person or damage or destruction of any property or property rights arising out of or relating to any act or omission of the Operator, its agents, subcontractors, or employees, or arising out of or relating to the work to be performed under this Agreement, including any breach of Operator's obligations herein. In the event a claim or legal action is covered by RCW 4.24.115, Operator's indemnification obligation shall

not extend to damages resulting from the City's sole negligence, and in the case of concurrent negligence, Operator's indemnification obligation shall apply to the extent of the negligence attributed to the Consultant, its employees, subcontractors, and agents.

- 13.4.2. The Operator shall defend, indemnify, and hold harmless the City for any fines imposed by administrative regulatory bodies and all credit card brands, except for fines resulting from and directly related to action for which the City is solely and completely responsible. In the event the City is only partially responsible for said action or inaction, the Operator shall defend, indemnify, and hold harmless the City for the full amount of such fines.
- 13.4.3. The City does not and shall not waive any rights against the Operator which it may have by reason of the indemnity clause of Section 13.4 because of the acceptance by the City of any of the insurance policies described in Section 13.1.
- 13.4.4. The indemnity clause of Section 13.4 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the operations of this Agreement, regardless of whether or not the insurance policies referred to herein shall have been determined to be applicable to any of such damages or claims for damages.
- 13.4.5. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Operator's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete indemnity from claims made by Operator's employees.
- 13.4.6. THE OBLIGATIONS UNDER THIS SECTION 13.4 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. OPERATOR AND THE CITY EACH REPRESENT THAT THIS SECTION WAS MUTUALLY NEGOTIATED AND AGREED UPON.
- 13.4.7. In addition to all other indemnities, Operator shall defend, indemnify and hold the City harmless from any damages, claims, liabilities, costs and expenses resulting from Contractor's failure to be and to remain PCI-DSS compliant.

#### 14. REPRESENTATIONS AND WARRANTIES.

- 14.1. Organization and Authority. As of the date of this Agreement and thereafter, the Operator hereby represents and warrants that (a) it is a Limited Liability

Company (type of organization) duly organized, validly existing, and in good standing under the laws of the State of Name the State (state) and is qualified to do business in all other states where necessary in light of its business or properties and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery, and performance by the Operator under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by the Operator, and (d) this Agreement constitutes the legal, valid, and binding obligation of the Operator and is enforceable against the Operator in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or moratorium or other similar laws relating to the rights of creditors generally.

- 14.2. No Conflict. As of the Effective Date and thereafter for the term of this Agreement, the Operator hereby represents and warrants that the execution, delivery and performance by the Operator of this Agreement does not and will not a) conflict with or violate any provision of its articles of incorporation or bylaws, b) result in a material breach or violation of any term or provision of, or constitute a material default under, any material agreement or instrument to which the Operator is a party or by which the Operator or any of its assets are bound, or c) contravene or constitute a material default under any provision of applicable law or regulation.
- 14.3. Accuracy of Representations and Warranties. The representations and warranties contained in this Agreement do not contain any untrue statement of a material fact or omit any material fact necessary in order to make the statements contained herein not misleading or incomplete.
- 14.4. Survival of Representations and Warranties. The representations and warranties set forth by the Operator in this Section 14 shall survive the date of this Agreement and shall terminate only upon the sixth anniversary of the date of termination of this Agreement.

## 15. DEFAULT AND TERMINATION.

- 15.1. Default. If Operator violates, breaches, or fails to keep or perform any term, provision, covenant, or obligation under this Agreement, the City may provide the Operator with written notice specifying the failure or breach and providing a period of time determined by the City as reasonably necessary to cure the failure or breach. If Operator's breach relates to a monetary obligation, a reasonable time to cure will not exceed ten (10) days. If the Operator does not cure the breach or failure within the time required by the City's notice, Operator's breach will be a "Default". If the cure cannot reasonably be completed in the time provided by the City, Operator will not be in Default if a cure is commenced within the notice

period and thereafter diligently pursued to timely completion. No waiver by the City of any Operator breach or Default hereunder shall be construed to be or act as a waiver of any subsequent breach or Default by the Operator.

- 15.2. City Remedies. If the Operator fails to cure any Default, the City shall have the following nonexclusive rights and remedies at its option: (1) to cure such Default on Operator's behalf and at Operator's sole expense and to charge Operator for all actual and reasonable costs and expenses incurred by City in effecting such cure; (2) to terminate this Agreement upon written notice to Operator.
- 15.3. If there is an Operator Default, the City shall not be liable for damages by reason of termination or City entry onto the Golf Courses. The City may also avail itself of any other remedy provided by law.
- 15.4. Upon termination of this Contract, Operator will provide PCI compliant protection to cardholder data until data is destroyed or returned to the City. A statement of Work will be developed and mutually agreed upon by the City and the Operator for this protection. Hours will be billed at agreed upon hourly rates.
- 15.5. Operator shall return all City data to the City in a useable electronic form, and erase, destroy, and render unreadable all City data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 5 business days of the request of the City's CISO, whichever shall come first.

## 16. MISCELLANEOUS.

- 16.1. Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede any prior agreement or understanding among the parties with respect to such subject matter.
- 16.2. Severability. If any provision of this Agreement or the application of such provision to any party or circumstance shall be invalid, the remainder of this Agreement or the application of such provision to other parties or circumstances shall not be affected thereby.
- 16.3. Notices. All notices, requests, demands, consents, and other communications required or permitted to be given by this Agreement shall be in writing and personally delivered or placed in the United States mail, properly addressed and with full postage prepaid, certified, and return receipt requested. Such notices shall be deemed received at the earlier of (a) the date actually received, or (b) 5 (Five) business days after such mailing. Such notices shall be sent to the parties at the following addresses, unless other addresses are furnished by appropriate notice:

If to the City, to:  
The City of Seattle Department of Parks and Recreation  
Attention: Golf Manager  
100 Dexter Avenue North Seattle, Washington 98109-5119

If to the Operator, to:  
Premier Golf Centers, L.L.C.  
c/o Troon Golf, L.L.C.  
Attn: Legal Department  
15044 N. Scottsdale Rd., Suite 300  
Scottsdale, AZ 85254  
Email: [jhansen@troon.com](mailto:jhansen@troon.com) and [akaufman@troon.com](mailto:akaufman@troon.com)

- 16.4. Assignment; Subcontract; Sale or Transfer of Assets. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors, and assigns. The City's willingness to enter into this Agreement with Operator is conditioned, in part, on City's confidence in Operator's management structure. Operator shall not subcontract or assign any of its rights or delegate any of its duties under this Agreement to an unaffiliated third party unless a) the Superintendent gives his/her prior approval, in writing, of the third-party contract prior to execution, and b) the third party contract is consistent and complies with all the terms and conditions of this Agreement. If Operator's management structure is changed by a sale or transfer of company ownership or assets that results in a change in the voting or decision making control of the limited liability company or change in corporate structure ("Sale or Transfer of Assets"), but does not otherwise change the responsibilities of, or available remedies to, the Parties under this Agreement, Operator shall provide written notice to the City when reasonably practicable, but no less than 30 days after the Sale or Transfer of Assets. Any other Sale or Transfer of Assets shall constitute an assignment subject to the approval of the Superintendent and the agreement of any new ownership to comply with all terms and conditions of this Agreement. No assignment, subcontract, or Sale or Transfer of Assets shall release Operator from any of the obligations under this Agreement and Operator shall remain jointly liable for performance of this Agreement unless expressly released by the Superintendent in writing.
- 16.5. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one in the same instrument.
- 16.6. Headings. The article and section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.
- 16.7. Governing Law and Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington without regard to any otherwise

governing principals of conflicts of laws. Venue for any action relating to or arising from this Agreement will be in the Superior Court of King County. This Agreement shall be construed neutrally and not in favor of or against any party.

16.8. Amendment. This Agreement shall not be modified or amended except by a written agreement executed by both of the parties.

16.9. Further Actions. Each party shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be required to carry out the provisions or the intent of this Agreement.

IN WITNESS THEREOF, The City of Seattle Department of Parks and Recreation and \_\_\_\_\_(Operator Name) caused this Agreement to be executed by its proper officers on the dates shown below.

By the Operator

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

By the Department of Parks and Recreation

\_\_\_\_\_  
Anthony-Paul Diaz, Superintendent

\_\_\_\_\_  
Date

Attachments:

ATT 1 EX A - Real Property Description

ATT 1 EX B - SPR Golf Finance Cash Handling Model

ATT 1 EX C - City of Seattle Travel Policies and Procedures

ATT 1 EX D - Public Benefits