

**CITY OF BROKEN ARROW  
GOLF COURSE PROFESSIONAL MANAGEMENT SERVICES AGREEMENT**

This Golf Course Professional Management Services Agreement is made and entered into by and between the City of Broken Arrow, a municipal corporation, operating a golf course known as the Battle Creek Golf Course (the "Course"), in Broken Arrow, Oklahoma, consisting of approximately one hundred eighty (180) acres of land owned by the City of Broken Arrow (the "City"); and Greenway Golf Associates, Inc., a California corporation, with its principal place of business located at 9311 N FM620, #123, Austin, TX 78726 (the "Company").

**RECITALS:**

WHEREAS, the City needs a professional manager to assume responsibility for the complete operation of the Course including, but not limited to, general administration, facility and equipment operation and maintenance, and pro shop and food service management; and

WHEREAS, the professional manager is needed to provide the maintenance and operation of this course at a service level equal to or better than that being provided to competitive courses in the Tulsa Metropolitan area with restaurants, meeting rooms and beverage lounges; and

WHEREAS, Company represents that it is familiar with the revenue needs of the City from the Course and the uses of which the Course lands are committed; and

WHEREAS, Company has the expertise with respect to successful and efficient management and operation of golf course facilities on comparable sites and has effectively and efficiently managed the Course since September 1, 2006;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:



## **AGREEMENTS:**

### **1.0 RECITALS**

1.1. The above Recitals are incorporated herein by reference as if set forth in full.

### **2.0 DEFINITIONS, INTERPRETATIONS AND HEADINGS**

2.1. This Agreement shall be interpreted according to the laws of Oklahoma.

2.2. The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.

2.3. The singular includes the plural, and words importing one gender include the other gender.

2.4. The following words shall be construed to have the following meaning, unless otherwise specified:

**Agreement:** This Agreement, as amended from time to time by written instrument, executed by the City Council, by the Mayor or other official designated by the City to execute this Agreement, and Company.

**Management Fee:** The compensation payable to the Company pursuant to Section 7.1.1 hereinafter.

**Beverage:** Any potable liquid, including both low point beer and intoxicating beverages as defined in the Oklahoma Alcoholic Beverage Control Act.

**Capital Improvement:** Any construction project or equipment, which extends the useful life or increases the capacity of the Course facilities. For the purposes of this Agreement, weeding, replacement or renovation of sod or grass shall not be considered a Capital Improvement; however, Capital Improvements may include all 'public improvements' as defined in the Public Competitive Bid act (61 O.S. §101 *et seq.*), which occurs on the real property of the Course.

**City:** City of Broken Arrow, Oklahoma

**City Council:** The governing body of the City of Broken Arrow.

**City Manager:** The City Manager of Broken Arrow or his designee(s).



**Company Facility Employee:** Any employee of the Company working at the Course on a part-time or full-time basis with the exception of Ken Campbell, George Kelley, and Marc Logan, or any other Greenway Employee.

**Contract Manager:** The Contract Manager of this Agreement shall be the City Manager or a duly appointed representative, whose appointment is conveyed to Company in writing.

**Contract Year:** The period beginning on July 1st and ending on the following June 30, 2017.

**Cost of Goods Sold:** Shall be determined by generally accepted accounting principles consistently applied.

**Evaluation Report:** A report developed by Company to document Company's standard of performance in the overall condition and playability of the Course, the quality of service provided by Company, and the condition of the buildings of the Course.

**Fiscal Year:** The fiscal year of City, beginning on July 1st and ending on the following June 30th.

**General Manager of the Course:** Dee Roadman.

**Golf Course or Course:** The City owned Battle Creek Golf Course located generally north of the Broken Arrow Expressway and east of Aspen, Broken Arrow, Oklahoma, on property depicted on the site plan which is a part of **Exhibit A**, including but not limited to the banquet facility, restaurant, clubhouse, driving range, maintenance facilities, cart barn, all associated improvements, all business operations, and the activities authorized herein on the designated public property.

**Greenway Employee:** George Kelley, Ken Campbell, and Marc Logan or any other employee of Greenway Golf Management, LLC, a California limited liability company.

**Gross Revenues:** All money, cash receipts, assets, property or other things of value, including but not limited to: gross charges, sales, rentals, fees, trade-out,



bartering, and commissions made or earned by Company and/or all the assignees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted, or performed in whole or in part, on the Course and the premises; this includes but is not limited to green fees, rentals, the sale of merchandise, and sale of food and beverages. Gross Revenues shall include the amount of any manufacturer's or importer's excise tax included in the prices of any merchandise or products sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. However, Gross Revenues shall not include any transferred support from the City. Gross Revenues shall not include fees collected for golf lessons if the fees are paid directly to the professional for providing such lessons.

**Incentive Management Fee:** The compensation payable to the Company pursuant to Sections 7.1.1 hereinafter.

**Net Operating Income or NOI:** Gross Revenues less Operating Expenses.

**Operating Account:** The bank account established for the purposes of depositing Course Revenues and paying Operating Expenses. The Operating Account shall be in the name of the City, with the Company as an authorized signatory.

**Operating Budget:** The line item budget prepared by the Company for the Course operations for each Fiscal Year during the term of this Agreement as approved by the City.

**Operating Expenses:** All costs and expenses necessary for the operation of the Course in the ordinary course of business as approved by City and Company, including, but not limited to, the following: Management Fee, professional organization dues, Company Facility Employee costs and expenses, subscriptions, travel, supplies, equipment, furniture, fixtures, maintenance, advertising and promotion, taxes, the cost and fees of the Auditor; the cost of goods sold; insurance premiums; utilities including but not limited to electricity, gas, water, sewer and



telephone; use of irrigation water and other budgeted and approved costs and expenses incurred in the operation of the Course. Operating Expenses do not include depreciation and amortization or Incentive Management Fees. Operating Expenses shall be determined in accordance with governmental generally accepted accounting principles consistently applied, and applicable Oklahoma Law concerning the budgets and expenses of Municipalities.

**Operations:** The business and commercial operations and affairs in the ordinary course of business of the Course.

**Payroll Account:** The bank account established by the Company for the payment of Company Facility Employee payroll, benefits, and other costs and expenses directly resulting from the employment of Company Facility Employees.

**Property Taxes:** All special assessments levied in connection with the Course and its personal and real property, whether such tax is levied against City or Company, or otherwise; but is not such an exaction imposed on any concessionaire or lessee of City who is not a party to this Agreement.

**Revenues:** See Gross Revenues.

**2.5.** In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule said conflict or inconsistency shall be resolved as follows:

**2.5.1.** By the terms of this Agreement;

**2.5.2.** The Golf Course site plan (**Exhibit A**, which is attached hereto and incorporated by reference for all purposes);



### **3.0 CITY GOLF COURSE PREMISES**

**3.1. Course Ownership and Name.** The Course consists of lands owned in fee by the City. The name, Battle Creek Golf Course, shall remain the same unless changed by City.

**3.2. Use of Course.** The Course, as shown on the site plan (**Exhibit A**), shall be used only and exclusively for Course operations and for such other, related purposes for which express approval is granted by the City Manager or the City and for no other purpose whatsoever.

**3.3. Company's Acceptance of Physical Condition.** Company acknowledges personal inspection of the Course and the surrounding area and has evaluated the extent to which the physical condition thereof will affect the operation of the Course.

**3.4. Approval required for Alterations.** Any improvements, additions, alterations or changes to the Course shall be subject to prior written approval by the City Manager or the City Council, securing of applicable permits, and compliance with such terms and conditions as may be imposed by City and by any level of government which is functioning in a governmental capacity.

**3.5. No Property Interest.** Company hereby acknowledges the title of City in and to the Course and all improvements located thereon; Company agrees never to assail, contest or oppose City's interest in said title, nor to assert with respect thereto any interest of Company.

**3.6. Ownership of Improvements.** Ownership of all structures, buildings and improvements, existing or constructed by City or Company upon the Course and all alterations, additions, or betterments thereto, shall immediately vest and be vested in City at all times during and after the term hereof. City shall retain at all times the right to possession of such structures, buildings and/or improvements. Company agrees to follow Oklahoma's Public Competitive Building Act (61 O.S. § 101, *et seq.*) when plicable.



## **4.0 SCOPE OF SERVICES**

**4.1. General Management of Golf Course.** The General Manager of the Course shall:

**4.1.1.** Manage the day-to-day operations of the Course including, but not limited to, overall Course management, starter services, range operations, cart operations, food and beverage service, and maintenance of the buildings and grounds (including agronomic practices).

**4.1.2.** Collect and account for all Gross Revenues including daily deposits of Gross Revenues into the Operating Account.

**4.1.3.** Operate the banquet facility, restaurant and bar. Company shall implement an alcohol server-training program for all persons who serve alcohol. All servers shall successfully complete training in: CPR, basic first aid, courtesy, City rules and a recognized alcohol server training course prior to serving any alcoholic beverages at the Course.

**4.1.4.** Formulate and implement operating programs.

**4.1.5.** Employ, train, supervise and terminate (if and/or when necessary). Company Facility Employees.

**4.1.6.** Maintain the Course and all appurtenances in conformity with City's specifications.

**4.1.7.** Plan and implement an advertising and marketing program.

**4.1.8.** Provide, manage and supervise food service, golf professional, maintenance, marshalling, and pro shop personnel at the Course during normal working hours as determined by City. All such personnel shall be neat and clean, and wear suitable uniforms.

**4.1.9.** Attend to all other matters necessary or expedient for the efficient performance of the Course operations and maintenance.



**4.1.10.** Attend all City Council meetings and Planning Commission meetings that have agenda items that involve the Course.

## **4.2. Financial and Accounting Services**

**4.2.1. Accounting Services.** Company, in cooperation with City, shall provide accounting services to account for all Gross Revenues, including daily deposits of Revenue into the Operating Account solely for the Course and account for all expenses of Company regarding the management and operation of Course. The Company's accounting services personnel will pay all bills in a timely manner from the Operating Account. Any employee or third party expense incurred by the Company in providing the financial and accounting services contemplated hereunder shall be an Operating Expense to be paid from Gross Revenues.

**4.2.2. Report Preparation.** Company shall cooperate with the City Manager in providing all necessary financial and accounting information to an employee of the City designated by the City Manager, and to help facilitate and assist the designated employee in the preparation of the following accounting services:

**4.2.2.1.** Preparation of reports with respect to all financial aspects of the Course, such as cash receipts, accounts receivable, budget reports and detailed profit center information.

**4.2.2.2.** Maintenance of accounting records and preparation of annual financial statements for the Course in accordance with governmental generally accepted accounting principles, consistently applied, including all required footnotes and disclosure. Such records shall conform to the Municipal Budget Act (11 O.S. §17-201, *et seq.*).

**4.2.3. Accounting Records.** Company shall cooperate with the City Manager or his designee in providing requested records of accounting, to the City, which correctly and accurately reflect the Gross Revenues and expenses in connection with the authorized operations. The method of accounting, including the Operating



Account and Payroll Account established by Company for the operations and maintenance of the Course shall be separate from the accounting system(s) used for any other business operated by Company or for recording Company's personal financial affairs. Complying with such requests for providing records shall include the keeping of the following records:

**4.2.3.1.** Maintenance of regular books of accounting, such as general ledgers.

**4.2.3.2.** Maintenance of journals, including but not limited to any supporting and underlying documents such as vouchers, checks, tickets, and bank statements.

**4.2.3.3.** Preparation of sales tax returns, checks, and documents proving payment of the sums shown, which Company shall keep in confidence.

**4.2.3.4.** Preparation and maintenance of cash register tapes (daily tapes may be separate but shall be retained so that from day to day the sales can be identified), golf starter sheets and golf cart rental forms.

**4.2.4. Cash Registers.** Company shall record all sales by means of cash registers, which publicly display the amount of sale and automatically issue a customer's pre-numbered receipt to verify the amount recorded on a slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which continuously accumulate and which cannot, in any manner whatsoever be reset and, in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash register(s), Company shall record, by hand, all collections and issue a sequentially pre-numbered customer's receipt in like manner. Under no circumstances shall Company conduct sales, which are not recorded and for which no customer receipts or other proper documentation are issued. Should any sale be conducted in such a manner, which is not recorded and no customer receipt or other proper documentation is issued, it shall be considered a material breach of this Agreement, and shall be cause for the City's immediate termination of this Agreement.



**4.2.5. Deposit of Gross Revenues.** Company shall deposit all Gross Revenues each business day into the Operating Account. Course Revenues shall not be commingled with other money or accounts. Revenues shall not be taken from the Operating Account except to operate and maintain the Course, to transfer into the Payroll Account for the payment of Company Facility Employee payroll and related expenses, and as otherwise provided herein.

**4.2.6. Capital Improvements Budget:** Company shall cooperate with the City Manager and shall submit the Course's proposed Capital Improvement budget to the City Manager no later than the first working day of February before the end of the Contract Year.

**4.2.7. Additional Financial Reports.** The Company shall furnish a monthly Gross Revenues report to City Manager. In addition thereto, the Company shall furnish City Manager monthly profit-and-loss statements regarding the operation and maintenance of the Course, an annual profit-and-loss statement regarding the operation and maintenance of the Course, and a balance sheet prepared in a form acceptable to the City Manager. The monthly reports shall be furnished by the 20<sup>th</sup> day of the following month. The annual un-audited financial statement regarding the operation and maintenance of the Course shall be submitted no later than September 1 of each year during the term of this Agreement.

#### **4.3. Audit**

**4.3.1.** All documents, book and accounting records regarding the operation and maintenance of the Course shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement and for five (5) years thereafter, or longer if required by law.

**4.3.2.** Company shall cooperate with the City Manager and provide the City's Auditor customary assistance in conducting any necessary audits regarding the operation and maintenance of the Course, including but not limited to analysis of accounts, pulling documents, clerical support and preparation of working papers,



and shall be sufficiently prepared to ensure that the audit will be completed at lowest cost and within one hundred twenty (120) calendar days following the end of the Fiscal Year.

#### **4.4. Golf Course Services**

**4.4.1. General.** Company shall provide all Course management and operations, including, but not limited to, the following: personnel management, sale, rental, storage and/or repair of golf equipment, sale of golf clothing and supplies, provide instructional services in the playing of golf, rent golf carts, and operate a driving range all in accordance with the Operating Budget and the provisions of this Agreement.

**4.4.2. Merchandise.** Company shall keep on hand in an amount contemplated in the Operating Budget such inventory of golf merchandise as it deems necessary. Inventory shall include, at a minimum, the following: clothing with course logos for men and women; golf shoes; golf clubs and bags; and golf accessories such as balls, gloves, and tees. Merchandise received in consideration for the volume of purchases made, or purchase incentives, are the property of Company.

**4.4.3. Golf Professional.** A PGA professional shall be on site full time and shall a) provide lessons, b) conduct City's group recreation lessons in cooperation with the City's Department of Parks and Recreation and c) perform all other, similar services set forth as directed by City. Qualified instructors shall teach the game of golf. Golf instructors shall comply with all applicable rules and regulations for the play of golf, during their use of the golf course for instructional purposes.

**4.4.4. Golf Carts.** Company shall keep on hand at least sixty (60) golf carts to meet the public demand therefore. All of the required golf carts shall have shade tops. Company may prohibit the use of golf carts on the golf course whenever weather conditions expose the user to danger or the golf course to damage arising from operation thereof. All golf carts and golf cart maintenance shall comply with the specifications and maintenance requirements as necessary to establish the image



of a first class Course. Private golf carts shall not be allowed on the golf course.

#### **4.5. Food and Beverage Services**

**4.5.1. Sale of Food and Beverages.** Company is hereby authorized to sell food and beverages, including alcoholic beverages and low-point beer, at the Course, within the restaurant, banquet/meeting rooms and beverage lounge, and to schedule the use of the banquet/meeting rooms. Company shall obtain and maintain, as a Course expense, any necessary state and local licenses and permits. The supply of beverages at the Course will be done only in conformity with federal, state and local law, with particular reference to adjacent church property.

**4.5.2. Health Certificates.** Company shall keep on file and make available, upon request, to the City Manager, certificates for each member of its food and beverage staff showing full compliance with all requirements of the Tulsa County Health Department and local laws.

#### **4.5.3. Days and Hours of Operation**

**4.5.3.1.** Company shall open the restaurant for business each and every day, and shall post and maintain such hours of operations as required to serve customers in the facility. Company shall consult with the City in the establishment of hours of operations.

**4.5.3.2.** Company shall keep the beverage lounge open for such daily period of time, as Company deems practical to satisfy public demand for such service.

**4.5.3.3.** The beverage lounge and the banquet/meeting rooms may, at the discretion of Company, be available for catered events at times when the golf course is not open and it is not necessary to give first priority service to golfers.

**4.5.4. Food and Beverage Products.** Company shall keep on hand the necessary inventory of food and beverage products to satisfy the public demand thereof. All such products sold or kept for sale by Company shall be first-class in quality, wholesome and pure, and shall conform to the federal, state, county and local food laws, ordinances and regulations in all respects. No adulterated, misbranded or



impure articles shall be sold or kept for sale by Company, and all food and beverage products kept on hand by Company shall be stored and handled with due regard for sanitation.

#### **4.6. Golf Course Starter Services**

**4.6.1. Use Granted.** Company is hereby required to render and provide Course starter services. Said services shall include, but shall not be limited to: open and close the Course; collect greens fees; collect golf tournament fees; collect golf cart fees; record reservations from the telephone, internet and from patrons at the Course and record same on starter sheets; place golfer's names on a call sheet as necessary; send golfers to the tee and start them off at proper intervals in groups of four, three and two, as applicable; receive requests from groups for tournaments, book tournaments, and collect appropriate fees and deposits; take all actions as necessary to speed play on course; enter all golfers names on the starter's sheet and issue a cash register receipt to each golfer upon the payment of the greens fees; total the golf starter sheets at end of each day's play and reconcile with fee category totals on cash register detail tape; and point of sale system. Totals from the daily point of sale system reflecting on the number of rounds of play by fee categories shall be submitted to the City Manager's office on a monthly basis by the 20<sup>th</sup> of the following month.

**4.6.2. Pace of Play.** Company shall implement a pace of play program developed to speed up play. Course monitoring shall be performed as necessary to maintain the pace of play established by Company. Company shall determine how to best perform the specified pace of play duties under the direction of the Golf Professional.

**4.6.3. Days and Hours of Golf Shop Operation.** Company shall keep the golf shop open every day, including Sundays and holidays with the exception of Christmas Day, and New Year's Day. The minimum hours of operation shall be from dawn to dusk, with the exception of closures required by weather conditions.



#### **4.7. Building and Equipment Maintenance**

**4.7.1.** Company shall, using Revenues or funds obtained from operation of the Course, maintain the premises and all buildings for normal wear and tear, and maintain improvements, fixtures, trade fixtures, equipment and utility systems which may now or hereafter exist in good, operable, useable and sanitary order, damage by casualty excepted. Company shall, using Revenues or funds from operation of the Course, maintain all equipment and facilities in a good, safe and first-class condition throughout the term of this Agreement, normal wear and tear and damage by casualty excepted, and provide for such repairs, replacements, rebuilding and restoration as may be required by City to comply with the requirements hereof. Any Capital Improvement repairs and/or any modifications or additions to the facilities shall have the approval of the City prior to implementation by Company, provided that repairs of twenty-five thousand dollars and no cents (\$25,000.00) or less may be authorized by the City Manager.

#### **4.8. Grounds and Maintenance Service**

**4.8.1.** Company shall provide grounds maintenance services, including but not limited to the obligations to mow, edge, trim, over-seed, fertilize, aerate, irrigate, sod, change cups, change service tees, top-dress, raise divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas, as well as provide weed, disease and pest control, tree maintenance, pond/aquatic maintenance, maintenance of irrigation systems including mainlines, pumps, boosters and controllers, keep swales in good repair and provide the necessary maintenance of appurtenant structures and equipment.

**4.8.2.** In regard to the level of maintenance, all work shall be performed in accordance with the highest regional and competitive golf course industry-wide maintenance standards at established frequencies so as to maintain the aesthetic level and proper playing condition of the Course. Standards and frequencies may be modified from time to time as deemed necessary by the City for the proper



maintenance of the Course.

**4.8.2.1.** Regularly scheduled inspections of the premises and Company's operations authorized herein shall be made by City or the City Manager. The written report of such inspections shall be recorded, retained for reference, and forwarded to Company upon request.

**4.8.2.2.** Company shall provide, maintain and supervise a Golf Course superintendent and maintenance crew at the premises daily during normal working hours, as determined by City.

**4.8.2.3.** Company shall provide City with the names and telephone numbers of at least two (2) qualified persons who can be called by the City Manager when emergency maintenance conditions occur during hours when Company's normal work force is not present.

**4.8.2.4.** In regard to the Course being out of operation, whenever play must be suspended on the Course due to inclement weather conditions, the decision on when to allow play to resume, and when to allow golf carts to go out on the Course, will be made by Company. Company shall provide information on such closures on the monthly report.

**4.8.2.5.** Company shall furnish with funds from Course Revenues all necessary non-capital equipment, supplies and material of good quality and in sufficient number to fulfill the requirements of this Agreement and to accomplish an acceptable and professional level of maintenance. The timing of the acquisition of such items shall be based upon sound cash flow management principles. The list of items of equipment, supplies and materials shall include, but not be limited to:

**4.8.2.5.1.** All necessary gas, oil and spare parts for all equipment;

**4.8.2.5.2.** All necessary seed, fertilizers, fungicides, insecticides, herbicides, and pesticides;

**4.8.2.5.3.** Parts necessary for the repair and maintenance of all irrigation



systems and appurtenant equipment;

**4.8.2.5.4.** Tee towels, soap, ball washers, putting green cups, flags, benches, trap rakes, tee markers, tee mats, trash receptacles, trash receptacle liners, cleat brushers, and all other pertinent Course equipment;

**4.8.2.5.5.** Materials for the installation and maintenance of drains;

**4.8.2.5.6.** Appropriate sand for all greens and fairway traps.

**4.9. Driving Range Operations.** Company shall keep the driving range open daily, including weekends and holidays, except during days of inclement weather. The hours of operation shall be established by Company with the approval of City.

**4.10 Annual Operating Budget.** Company will develop an annual budget of expenses and revenues for the Course consistent with comparable golf course facilities (capital, operating and other) (the "Operating Budget"), which will be available for review by City no later than March 1<sup>st</sup> of each Fiscal Year. The Operating Budget shall contain: (a) profit and loss statement (by month) and cash flow statement (by month) for the following Fiscal Year, (b) a written summary of business strategy and goals for the following Fiscal Year, (c) itemized list of capital expenditures for the following Fiscal Year, and (d) itemized list of Operating Expenses for the following Fiscal Year. The Operating Budget shall be subject to the approval of City. Any reference to the Operating Budget in any other section of this Agreement shall mean the Operating Budget as approved in writing by City. Contingent upon City's approval of each such Operating Budget, City will make available or there shall be available, in a timely fashion, funds sufficient to cover all expenses provided in such Operating Budget during the period to which such Operating Budget applies, including, without limitation, expenses of operation and maintenance of the golf course, golf shop, food and beverage operation and clubhouse complex. Expenses of operation and maintenance include all required equipment, supplies and inventory.

**4.11 Operating Contracts.** Company shall, subject to the Operating Budget, provide to the City all Operating Contracts necessary or appropriate for the Course during the



term in accordance with this Agreement for execution by the appropriate authority. All such Operating Contracts shall be executed in the name of Battle Creek Golf Course or the City. Company shall promptly notify City of any Operating Contract and promptly shall deliver to City a true, correct and complete copy thereof for approval and execution. All Operating Contracts shall be subject to City's prior written approval as to form and content. If Company is then managing other golf courses similar to the Course, Company shall use its best efforts to utilize the same individuals or entities under the Operating Contracts as are performing similar services or providing similar supplies for Company in connection with such other golf courses, if such a procedure would result in cost savings to City and City concurs with Company that cost savings are likely to result.

## **5.0 CITY'S RESPONSIBILITIES**

**5.1.** City, through the City Manager shall administer all terms and condition of this Agreement and shall monitor standards and specifications.

**5.2.** City shall review and approve the annual Operating Budget and the Course Capital Improvement Budget.

**5.3.** City shall review and approve or disapprove, in advance, any and all alterations to existing facilities.

**5.4.** City shall determine, fund and implement Capital Improvements. City shall provide or make provisions for all Capital Improvements needed to operate Course. City agrees to fund (independent from Course Revenues) capital improvements to the Course on an annual basis, as is agreed to by the parties and approved and allowed by the City Council in formulating its annual budget.

**5.5.** City and Company shall jointly set all fees by resolution. City shall have final determination.

## **6.0 TERM, RENEWAL AND TERMINATION**

**6.1.** The term of this Agreement shall be for a period commencing on July 1, 2016, through June 30, 2017, and may be renewed each year for a one (1) year term



beginning on July 1 of each year for four (4) consecutive years unless sooner terminated in accordance with the terms and conditions of Sections 6.2 or 19.0 hereinafter.

**6.2** Provided the Agreement has been renewed annually pursuant to Section 6.1 hereinabove and subject to the allocation of funds and annual appropriations through the City's budgeting process, this Agreement may be renewed on July 1, 2017 if NOI for the Fiscal Year ending June 30, 2017 is equal to or greater than Breakeven (\$0). If this Agreement is renewed as of July 1, 2017, it shall be renewable each year for a one (1) year term for four (4) consecutive years (through June 30, 2021) if NOI for each Fiscal Year thereafter is equal to or greater than Breakeven (\$0) and subject to the allocation of funds and annual appropriations through the City's budgeting process and unless sooner terminated in accordance with the terms and conditions of Section 19.0 hereinafter.

## **7.0 MANAGEMENT FEE**

**7.1.** Company shall be compensated for services satisfactorily performed as follows:

**7.1.1.** Company will be paid an Annual Management Fee, based upon 4.0% of Gross Revenues (this will be paid on a monthly basis) for each Fiscal Year during the term, plus an Incentive Fee calculated as follows:

**7.1.1.2.** 50% of NOI.

Preliminary Annual Management Fee payments shall be based on the unaudited reports with the year-end amount determined by the yearly final audit.

**7.2.** Upon the condition that this Agreement is renewed as set out in Section 6.1., the Management Fee set out in Section 7.1. above may be reviewed, reassessed and amended as agreed to by the parties.

**7.2.1.** Upon the condition that the Management Fee is amended upon the Agreement renewal, an Amendment to this Agreement shall be required setting out the terms and conditions that are amended.

**7.3** Company shall be reimbursed for all reasonable travel expenses incurred by



Greenway Employees traveling to the Course (including but not limited to air fare, rental car, lodging and meals) either expressly covered by the Operating Budget or approved in advance by City.

## **8.0 CONFLICT OF INTEREST**

**8.1.** Company represents that neither it nor any of its officers, partners or employees has a financial interest, in the subject matter of this Agreement, other than the right to receive payment for the Management Fee as set out in this Agreement for the services performed within scope of this Agreement.

**8.2.** No director or officer of Company shall have any business or proprietary interest in any concession or in any contract involving the Course, without prior written approval of the City, except that golf professionals may provide golf lessons. Profit to Company, if any, is included solely within the Management Fee. Operating Expenses, Costs of Goods Sold, Property Taxes and other expenses related to the Course, accrued during term of this Agreement shall be deemed to be for the account of City to be paid from Course Revenues as an Operating Expense. Company shall indemnify and hold City harmless from any claims, demands and/or litigation in connection with commitments in excess of Company's authorization.

## **9.0 TAXES AND ASSESSMENTS**

**9.1.** Company shall make sure that all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, local or any other tax-assessing or levying body upon the premises and any improvements thereon are paid when due. Payments for such taxes, assessment, fees or charges shall be made from Course Revenues as an Operating Expense, and shall be paid before any delinquencies are assessed.

**9.2.** Company shall pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used in connection with the operation of the Course from Revenues as an Operating Expense.

## **10.0 OPERATING RESPONSIBILITIES**



**10.1. Compliance with laws.** Company shall conform to and abide by all federal, state and local laws regarding the Course and its operation.

**10.2. Compliance with Rules and Regulations.** Company shall conform to and abide by all applicable rules and regulations of the City. Company shall establish a program similar to the City's Drug Free Workplace Policy. Failure to establish a program, notify employees or inform City of a drug related workplace conviction shall constitute a material breach of this Agreement upon which City may immediately terminate this Agreement, without further notice.

**10.3. Disorderly Persons.** Company shall not allow any loud, boisterous or disorderly person to loiter on or about the Course.

**10.4. Illegal Activities.** Company shall not knowingly permit any illegal activities to be conducted upon the Course.

**10.5. Signs.** Company shall remove any unauthorized signs posted on or upon the Course.

**10.6. Public Use.** Company shall use its best efforts to maximize the public use of the Course and the facilities thereon.

**10.7. Staff and Employment Practices**

**10.7.1. Public Relations.** Company shall establish and maintain appropriate, friendly, public relations with Course neighbors, guests, media representatives and other persons. Company shall summarize, in written form, all material or significant complaints received and the resolution of each in a monthly report to the City Manager.

**10.7.2. Company Facility Employees.** All employees of the Course shall be employees of Company. Company has no authority to hire any person as an employee of City and agrees not to purport to do so. Company shall use established procedures, techniques and programs to hire and evaluate qualified employees. Subject to the obligation of Company to observe applicable laws regarding such matters, and other terms of this Agreement including without limitation fixing



compensation and benefits in strict compliance with the Operating Budget, Company shall have the authority to hire, establish compensation and benefits for (within Operating budget limitations), promote, discharge, and supervise all employees in accordance with guidelines and employment policies (which shall include, without limitation, policies regarding safety in the workplace, equal employment opportunities and job discrimination) proposed by Company. All costs and expenses incurred in connection with or relating to Company's employment of Company Facility Employees, including but not limited to the actual cost of employee payroll, employee benefits, direct employee expenses, and for any claims asserted by Company Facility Employees arising out of their status as an employee (excluding any claims arising out of Company's negligence, breach of this Agreement, willful misconduct, or acts covered by liability insurance maintained by Company hereunder) shall be paid to Company from Course Revenues as an Operating Expense.

**10.7.3 Payroll Account.** Company shall establish a bank account for the payment of all employee payroll and for the payment of all employee benefits and direct costs for the employees hired by Company for the Course pursuant to this Agreement (the "Payroll Account"). Contemporaneous with the execution of this Agreement, City shall deposit to the Payroll Account from the Operating Account or otherwise, the estimated direct and indirects costs of the employee payroll for the first month in which this Agreement becomes effective, which amount is to be provided by Company to City and based upon Company's calculations to cover such costs. Company shall transfer from the Operating Account to the Payroll Account the amount paid by Company on a monthly basis in order for there to be ample funds in the Company's Payroll Account to pay all of its employee expenses monthly, in advance, throughout the term of this Agreement. Employees of the Company are solely the employees of the Company and shall not be, in any way whatsoever, considered employees of the City. Therefore, the City shall have no



liability whatsoever to Company's employees for the payment or non-payment of any direct or indirect costs of its payroll expenses. However, the transfer of funds from the Operating Account to Company's Payroll Account shall be subject to the City's ability to audit such Payroll Account in accordance with and only to such extent that may be allowed or required by state statutes.

**10.7.4. Management.** Company, or a representative authorized by Company, in writing, by City, shall be on-site at the Course full time. Such individual shall be represented at requested meetings of the City and shall be responsive to concerns expressed and suggestions offered by the City.

**10.7.5. Miscellaneous Job Descriptions.** Company shall be responsible for the performance of all duties and services as set forth in the following job descriptions, including but not limited to: superintendents, lead workers, maintenance workers, cart attendants, marshals, golf professionals, starters and food concessionaires.

**10.7.6. Discipline of Designated Employees.** The City Manager may at anytime give Company written notice that the conduct or action of any employee of Company is, in the reasonable belief of the City Manager, detrimental to the interest of the public who are patronizing the Course. In such case Company may consider the appropriate course of action with respect to such matter, which may include termination of such employee's work assignment at the Course. Company shall take reasonable measures under the circumstances to assure that the conduct and activities of Company's employee will not continue to be detrimental to the interest of the public who are patronizing the Course.

**10.7.7. Identification of Personnel.** Company shall establish an identification system for personnel assigned to the Course starter service, which clearly indicates to the Course patrons the name of the person(s) on duty and responsible for collecting the greens fees. The identification system may include appropriate attire, name badges and/or nameplates as specified by the City.

**10.7.8. Oklahoma Sex Offenders Registration Act and Mary Rippy Violent**



**Crime Registration Act.** Company shall comply with State Title 57 Section 589 of the Sex Offenders Registration Act. In part, it is unlawful for any person registered pursuant to the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act to work with or provide services to children, or for any person or business to knowingly and willfully allow any employee to work with children who is registered pursuant to the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Offenders Registration Act.

#### **10.8. Utilities**

**10.8.1.** All applicable utility accounts shall be created and remain in the name of the Course; however, Company shall be responsible for paying any necessary utilities at the Course as Operating Expenses. Water will be charged to the course at the current residential rate.

**10.8.2.** Any telephone numbers that identify the Course to the public shall not be changed or be transferable to any other location.

**10.8.3.** Company waives any and all claims against City for compensation for loss or damage caused by a defect, deficiency or impairment of any utilities system, water system, heating or gas system, electrical apparatus, or wires serving the Course.

**10.9. Sanitation.** Company shall not permit any offensive matter, refuse or substance constituting unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health to remain on the premises, and shall prevent accumulations thereof.

**10.10. Safety.** Company shall immediately correct any unsafe condition of the Course, as well as any unsafe practices occurring thereon. Company shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring while on the premises. Company shall cooperate fully with City in the investigation of any death or injury occurring on the premises, and shall submit a prompt report thereof to the City Manager.



**10.11. Prices:** Company shall at all times display the prices charged for all goods offered for sale on or from the Course. The prices recommended by Company shall be fair and reasonable, based on the considerations that said operation is intended to serve the needs of the public for goods and services supplied at a fair and reasonable cost; comparable with prices charged for similar goods and/or services supplied in the Tulsa County area; and a reasonable profit margin in view of compliance with the obligations assumed in this Agreement.

**10.12. Quality of Goods and Services.** Services to the public with goods and merchandise of the best quality and at reasonable charges, is considered a prime concern to City and is considered a part of the consideration for this Agreement. Therefore, Company agrees to operate and manage the Course in a first-class manner, and comparable to other first-class golf courses providing similar facilities and services. Following receipt of written notification therefore, Company shall immediately withdraw or remove from sale any goods or services which may be found objectionable by the City Manager based upon a determination that the provision of such goods or services is harmful to the public welfare.

**10.13. Use of Facilities: Restriction.** Company shall obtain the City's written approval of (1) any events or activities not otherwise specifically provided for and authorized herein, or (2) any events or activities requiring the exclusive use of the Course or any portion thereof for a period of three days or more including, but not limited to, exclusive-use golf tournaments and use of the facilities by special groups.

**10.14. Reporting.** Company shall meet with the City Manager or his representative once quarterly and at such other earlier times as may be required by City to review Company's performance under this Agreement and to discuss any problems or other matters as determined by City.

**10.14.1 Golf Course Evaluation Report.** City and Company agree that the overall condition and playability of the Course, the quality of service provided by Company, and the condition of the buildings of the Course is of primary



importance to both parties. Company will develop a Course Evaluation Report to document Company's performance to those standards.

**10.14.1.1.** The Course Evaluation Report will be completed by the City Manager, after an inspection of the Course is made. The City Manager shall make every reasonable effort to conduct such inspections on a regular basis, and Company or its authorized representative shall be invited to participate in the inspection tour of the premises.

**10.14.1.2.** On or before the end of each contract year of this Agreement, the City Manager will present a Course Evaluation Report to Company based on the inspections conducted of the Course for the preceding contract year. Company may provide comments to the City Manager on the Course Evaluation Reports prior to City consideration of such report. The Course Evaluation Report may be accepted or modified by City based on the information received. City may consider the Course Evaluation Report in determining whether to extend the term of this Agreement.

**10.14.1.3.** The City Manager reserves the right to modify, update, and/or amend the general content and format of the Course Evaluation Report forms in order to provide for a suitable instrument for the documentation of Company's performance.

**10.15. Trade Fixtures.** Upon taking over the Course operations, Company shall take possession of the existing appliances, furniture, fixtures, equipment, door locks and padlocks in place at the Course and shall use them to the maximum extent feasible. Company shall maintain, repair and replace such items as necessary for proper operation. All such existing appliances, furniture, fixtures, equipment, door locks and padlocks, and all additions and alterations to, and replacements of, those items shall remain the property of City, and Company shall surrender possession thereof to City upon termination of this Agreement. Company shall provide and install any and all additional appliances, furniture, equipment, fixtures, door locks and



padlocks that are required for the operation of the Course. Title to all such items shall, upon installation, immediately vest and be vested in City at all items during and after the term hereof.

**10.16. Habitation.** The Course shall not be used for human habitation.

**10.17 Junior and High School and Recreation Golf.** Company shall conduct and administer intermediate and high school golf programs in cooperation with the Broken Arrow and Union School Districts and shall conduct group golf lessons.

**10.18. Complimentary Golf Passes.** Company shall have the right to extend complimentary golf passes to Professional Golf Association of America (PGA) members, Golf Course Superintendents Association of America (GCSAA) members. All other complimentary golf passes issued in the interest of promoting the facility shall be at the discretion of Company. A list of complimentary rounds shall be maintained, and forwarded to City monthly.

## **11.0 ADVERTISING AND PROMOTIONAL MATERIALS**

**11.1. Advertising Plan.** Company shall prepare an advertising plan. Such materials include, but are not limited to, advertising in newspapers, magazines, trade journals and radio and/or television commercials.

**11.2.** No private industry advertisement shall be included in promotional materials along with City logos, unless prior written approval has been given by the City Manager.

## **12.0 DESTRUCTION OF PREMISES**

### **12.1. Restoration/Reconstruction or Termination**

**12.1.1.** In the event the Course is totally or partially destroyed, City shall either restore and/or reconstruct the Course or terminate the Agreement. The City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of the insurance.

**12.1.2.** Company agrees that City may have on-site, at any time during any reconstruction period, an inspector or other representative who shall have the right



of access to the Course and the work occurring thereon.

**12.2.** Company shall cooperate in any restoration and/or reconstruction of the Course by vacating and removing therefrom all items of inventory, trade fixtures, equipment and/or furnishings for such periods as are required for the restoration and/or reconstruction thereof.

### **13.0 INDEPENDENT CONTRACTORS**

**13.1.** This Agreement is by and between City and Company and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and Company nor between City and any officer, employee or representative of Company.

**13.2.** Company understands and agrees that all persons employed by Company are, for purposes of Worker's Compensation liability, employees solely of Company and not of City nor of any City agency.

### **14.0 INDEMNIFICATION**

**14.1.** For the specific purposes of indemnification and risk allocation, the parties agree that the City property (including, but not limited to, the course, parking areas, grounds, structures, structure contents, improvements, equipment, or products) is made available "as is" to the Company for Company to operate and maintain as set forth in this Agreement. As partial consideration for entering into this Agreement, Company agrees to indemnify, defend (at City's option), and hold harmless City and, its employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees (whether incurred in third party actions or actions between the parties, if City is the prevailing party), and actual damages of any kind or nature, arising out of or in connection with (a) any aspect of the acts, omissions, negligence or willful misconduct of Company, its employees, agents, officers, contractors or subcontractors, (b) any aspects of the acts, omissions, negligence or willful misconduct



of any Greenway Employee, (c) the failure of a Greenway Employee to properly supervise Company Facility Employees or administer employment practices in accordance with the Course employment manual, or employment claims based on the acts of a Greenway Employee, or (d) Company's performance or failure to perform under the terms and conditions of this Agreement.

**14.2.** Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of City, or the negligence of independent third parties not under Company's control, provided, however, that such exclusion shall not apply to any physical condition of the Course. Employment claims made by Company Facility Employees not subject to the indemnification obligations of the Company provided for in Section 14.1 above, shall be an Operational Expense covered by the employment practices coverage required under Section 15.1.2. hereinafter with any deductible or other payments from Course Revenues.

**14.3.** The indemnification and defense obligations set forth herein shall survive the termination of this Agreement.

**14.4.** Company shall provide a fidelity bond for itself and all its employees and representatives who may be expected to handle cash and/or checks, to protect City and Company in the event of loss or theft of such property. The amount of such bond shall be not less than Ten Thousand Dollars (\$10,000.00) and shall be an Operating Expense.

**14.5.** Company shall provide the City Manager with prompt written notice of any serious injuries (serious injuries include all injuries which require medical treatment), written or oral complaints received about the Golf Course or its operation, and actual or anticipated disputes with or claims by any individual.

## **15.0 INSURANCE**

**15.1. Company's Required Insurance Coverage.** Without limiting City's right to indemnification, it is agreed that Company shall obtain and maintain the following



insurance shall not contain a co-insurance provision and shall be written on a replacement cost basis.

**15.5. Business Interruption Insurance:** Company shall obtain Business Interruption and Extra Expense Insurance to protect City and Company, covering the loss of revenues and/or extra expenses incurred by reason of the total or partial suspension of delay of, or interruption in, the normal operation of the Course caused by loss or damage to or destruction of any part of the insurable real property, structures, equipment, or contents as a result of the perils insured against above, covering a period of suspension, delay or interruption of at least twelve (12) calendar months, in an amount no less than the amount required to cover such business interruption loss during any such period. Premiums are to be paid as an Operating Expense.

**15.6. Additional Insured.** Company shall include the following (and their respective officials, representatives, agents and employees) as Additional Insured or, as appropriate, loss payee, on all required insurance policies other than Worker's Compensation Insurance Coverage and Employer's Liability Coverage: the City, and any other parties for whom City is legally or contractually required to have named additional insured as to the Course. Company shall require all subcontractors to list City, and any other parties for whom City is legally or contractually required to have named additional insured as to the Course as Additional Insured, and shall submit a certificate of insurance to City and the City's Risk Manager prior to allowing any subcontractor to commence work.

**15.6.1.** Company shall demonstrate compliance with the Oklahoma Worker's Compensation Law by supplying a Worker's Compensation Certificate and an Employer's Liability Policy in an amount of not less than One Million Dollars (\$1,000,000.00) as prescribed for proof of compliance with the Oklahoma Worker's Compensation Laws.

#### **15.7. Waiver of Subrogation**

**15.7.1.** With respect to any possible subrogation rights of any Insurance Coverage



maintained by and for Company, Company hereby waives, on its own behalf, on behalf of its employees and its insurers, those subrogation rights for each and every claim for recovery from City and its property coverage or any other Insurance Coverage for any and all loss or damage resulting from the performance or lack of performance of City, to the extent that the damages are covered by valid and collectible Insurance policies. Company agrees to give to each insurance company which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver and to have said insurance policies endorsed as necessary by reason of this waiver.

#### **15.8. Copies of Policies**

**15.8.1.** Company shall promptly provide copies of all required insurance policies, amendments, or updates to City through the City's Risk Manager.

**15.9. Insurance Confirmation.** Prior to commencing any activities under this Agreement, Company shall deliver to City, insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of the execution date of this Agreement, Company shall provide to City endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by City, it shall be Company's responsibility to see that City receives documentation reasonably acceptable to City, which evidences that the individual signing said endorsements, is indeed authorized to do so by the insurance company. Insurance required hereunder shall be placed with insurers reasonably acceptable to City.

### **16.0 TRANSFERS**

#### **16.1. Restrictions on Transfer; Exceptions**

**16.1.1.** Company shall not, without the prior written consent of City, assign, pledge or allow a lien against any right under this Agreement. Any attempted assignment,



pledge or lien without the consent of City shall be a material breach of this Agreement and is not binding on City.

**16.1.2.** Neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Company or in voluntary or involuntary proceedings in bankruptcy or, insolvency, or receivership taken by or against Company, or by any process of law including proceedings under Chapters VII and/or XI of the Bankruptcy Act.

**16.1.3.** If any shareholders and/or partners of Company attempt to transfer, sell, exchange, assign or divest themselves of corporate control in such a way as to give majority control of Company to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, without the prior written approval of City, City may terminate this Agreement without notice. Consent to any such transfer shall be refused if the City Council finds that the transferee is lacking in experience and/or financial ability to render and provide services for the operation of the Course, or if in the sole judgment of City the quality of service may be reduced or be subject to uncertainty.

## **16.2. Conditions on Transfer**

**16.2.1.** In the event Company shall request the prior written consent of the City to give, assign, transfer or grant control of Company's interest in this Agreement, a transfer fee equal to one percent (1%) of the gross sales price shall be paid to City. Said sum shall be payable to City in full either within thirty (30) days after said consent is given or prior to the close of any escrow, whichever occurs first.

**16.2.2.** Prior to City's consent to such assignment, the assignor shall deliver, (1) to the proposed assignee, a written schedule of all sums due and owing to City from the assignor, such schedule being in form and content subject to the approval of City in all respects, and (2) to the City Manager, as part of the acceptance of the assignment, a written acknowledgment by the proposed assignee that the assignee affirms the sums due and owing to City, and (3) to the City Manager, a written



statement executed by the proposed assignee acknowledging that each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Company shall be binding upon the assignee.

**16.3. Effect of Transfer with Consent of the City.** Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Company shall be binding upon both transferor and any transferee of any interest in this Agreement.

## **17.0 NON-DISCRIMINATION AND CIVIL RIGHTS COMPLIANCE**

**17.1.** Company hereby certifies and agrees that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans With Disabilities Act of 1990, Title IX of the Education Amendments of 1972, where applicable, and Title 43, part 17 of the Code of Federal Regulations Subparts A and B, to the end that no person shall, on the grounds of race, creed, color, national origin, political affiliation, sex, age or disability, be subjected to discrimination under the privileges and use granted by this Agreement or under a project, program or activity supported by this Agreement. Company agrees to fully comply with all laws regarding employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Company shall obtain from all employees documentation and verification of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Company shall retain such documentation for all covered employees for the period prescribed by law. Company shall indemnify, defend, and hold harmless City and its officers and employees from employer sanctions and any other liability, which may be assessed against Company or City or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this



Agreement.

**17.2.** Company certifies that all persons employed by Company, or used as subcontractor or vendors, are and shall be treated equally, without regard to or because of race, creed, color, national origin, political affiliation, sex, age or disability.

**17.3.** All employment records shall be open for inspection and re-inspection, upon written notification, at any reasonable time during the term of this Agreement for the purpose of verifying the practice of non-discrimination of Company in the areas heretofore described.

**17.4.** A court or agency determination that Company has violated State or Federal non-discrimination laws or regulations shall constitute a finding by City that Company has violated the non-discrimination provisions of this Agreement.

## **18.0 EASEMENTS**

**18.1.** City reserves the right to establish, grant or utilize easements or rights-of-way over, under, along, or across the Course premises for utilities and/or public access to the premises.

## **19.0 DEFAULT**

**19.1.** Upon the occurrence of any one or more of the events of default or breach herein described, this Agreement shall be subject to termination. As a condition precedent thereto, the City Manager shall give Company ten days notice by personal delivery or by registered or certified mail of the date set for cancellation, the grounds therefore, and that an opportunity to be heard will be afforded before said date upon receipt by the City Manager of a timely written request from Company.

**19.2.** Upon termination City shall take control of the premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

**19.3.** The occurrence of any of the following shall constitute an event of default under this Agreement:



**19.3.1.** The abandonment, vacation or discontinuance of Course operations at the Course for more than twenty-four (24) consecutive hours by Company. Casualty damages and acts of God, which cause the Course to close, are excepted, if and only if Course operations are resumed in a reasonable time, determined by the safety of the customers, Company employees, and the protection of the Course assets.

**19.3.2.** The failure of Company to punctually pay Operating Expenses or make payments for Course operations and maintenance when due.

**19.3.3.** Any failure of Company to operate as required by this Agreement, including but not limited to the failure of Dee Roadman, or a replacement acceptable to City, to provide his personal services on-site full-time.

**19.3.4.** The failure to maintain the Course and improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe and satisfactory condition; provided that time limits may be extended in the manner and to the extent allowed by the City Manager, where fulfillment of such obligation requires activity over a period of time and Company shall have commenced to perform whatever may be required to cure the particular default immediately following receipt of such notice, and continues such performance diligently.

**19.3.5.** The failure of Company to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, provided that time limits may be extended in the manner and to the extent allowed by the City Manager, where fulfillment of such obligation requires activity over a period of time and Company has commenced to perform whatever may be required to cure the default and continues such performance diligently.

**19.3.6.** The filing of a voluntary petition in bankruptcy by Company; the adjudication of Company as a bankrupt; the appointment of any receiver of Company's assets; making a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of Company under



any Federal Reorganization Act, including petitions or answers under Chapter VII or Chapter XI of the Bankruptcy Act which operates to deprive Company permanently of the rights, powers and privileges necessary for the proper conduct and operations of the Course; the levy of any attachment or execution which substantially interferes with Company's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of one hundred twenty (120) days.

**19.3.7.** Determination by the Federal Equal Employment Opportunity Commission or the Oklahoma Human Rights Commission that Company has practiced discrimination in violation of state and/or federal laws thereon.

**19.3.8.** The voluntary or involuntary transfer of a majority interest in the Company to persons other than those who are in control at the time of the execution of this Agreement without prior approval thereof by the City.

**19.3.9.** Company's material misrepresentation in any document which was required to be submitted in response to the Request for Proposals used in the solicitation process for this Agreement.

**19.3.10.** Company shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts in the ordinary course of business or cannot pay its debts as they come due, whether it has committed an act of bankruptcy or not, and whether insolvent within the meaning of Federal Bankruptcy Law or not.

## **20.0 MISCELLANEOUS**

**20.1.** The rights and remedies of City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**20.2.** Any waiver by City of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant,



condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping City from enforcing the full provisions thereof.

**20.3.** No delay, failure, or omission of City to re-enter the Course or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

**20.4.** No option, right, power, remedy or privilege of City shall be construed as being exhausted by the exercise thereof on one or more instances. The rights, powers, options, privileges and remedies given City by this Agreement shall be cumulative.

**20.5.** This Agreement shall be construed under the laws of the State of Oklahoma.

## **21.0 RIGHT OF ENTRY BY CITY AND VACATION BY COMPANY**

**21.1.** In the event of abandonment, vacation, or discontinuance of operations for a period in excess of twenty-four (24) hours except for casualty and acts of God which cause closure, City shall have the right to immediately terminate this Agreement without written notification and shall have the right to enter the Course and continue the operation of the Course, and in connection therewith, City shall authorize the officers and employees of the City to (1) take possession of the Course, including all improvements, equipment and inventory thereon; and (2) apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Company's breach of this Agreement. Entry by the officers and employees of the City upon the Course for the purpose of exercising the authority conferred upon City shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

**21.2.** Upon expiration of the term of this Agreement or upon termination as herein provided, Company shall peaceably vacate the Course and any and all improvements



located thereon shall be delivered to City in reasonably good condition, ordinary wear and tear and damages by casualty excepted, subject to the right of City to demand the removal thereof.

**21.3.** Upon expiration of the term of this Agreement, or upon the prior termination or as herein provided, and in any period prior to such expiration or termination Company agrees and covenants to cooperate fully with City or the designated successor manager in the smooth and businesslike transfer of the operations of Course including, but not limited to, assignment of accounts, contracts, policies, licenses, permits and improvements in connection with the Course to City or City's designees. Company agrees and covenants to execute all documents required or convenient to accomplish any such transfer in a timely, effective and efficient manner.

**21.4.** On the expiration or termination of this Agreement for any reason, Company shall promptly surrender possession to City of all the Course property and interests therein, which may include, but not be limited to, cash, accounts, books, records, contracts, policies, licenses, permits and improvements in the Course. Company shall not leave Company's own property, other than software and data necessary for the operation of the Course. Company shall execute and deliver all documents necessary to legally effectuate each of the transactions. Unless otherwise agreed in writing by the parties hereto, Company shall remit to City all cash and other assets of the Course.

**21.5.** In the event of any expiration, termination, or cancellation of this Agreement, any expenses of Company in connection with its relinquishment of professional management services of the Course, inclusive of all costs of removal, termination or relocation of executive personnel and possessions, shall not be an Operating Expense and no claim for payment therefore shall be made against City, and Company hereby releases City, and shall hold City harmless therefrom.

## **22.0 FORCE MAJEURE/TIME EXTENSIONS**

**22.1.** Except as otherwise specifically provided for, and in the event either party shall be delayed or prevented from performance of any act required hereunder by reason of



Acts of God, litigation to which Company is not a plaintiff, or other cause without fault and beyond the control of the party obligated, performance of such act shall be excused for the period of time of the delay as determined by the City Manager. An extension of time for any such cause shall be only for a period of time equivalent to the enforced delay. Company's inability to obtain financing shall not be grounds for an extension of time. The City Manager shall prepare and execute, and Company shall execute, the appropriate document acknowledging any extension of time granted pursuant to this section.

### **23.0 COMPANY'S NON-COMPLIANCE AND DAMAGES**

**23.1.** If the City Manager reasonably determines that there are deficiencies in Company's performance of the Course operation and maintenance authorized and required herein, the City Manager will provide, as specified herein, a written notice to the Company to correct said deficiencies within specified time frames, except for the repair of leaking valves or water main lines which must be corrected within twenty-four (24) hours following notification.

**23.2.** In the event that Company fails to correct the deficiencies within the prescribed time frames the City Manager may exercise a right of entry, and/or pursue the recovery of damages from Company.

### **24.0 NOTICES**

**24.1.** Any notice or demand required or permitted to be given by the terms of this Agreement, or by law or statute, shall be in writing and may be given by either party by depositing said notice or demand in the U.S. Mail, certified mail with return receipt requested, postage prepaid, addressed to the other at that party's address. Service of said notice or demand shall be complete upon receipt of said notice or demand.

**24.2.** Notices and communication shall be sent to the following addresses: (a) City, c/o City Manager, P. O. Box 610, Broken Arrow, OK 74013; (b) Company, c/o Ken Campbell, 9311 N FM620, #123, Austin, TX 78726.

**24.3.** Either party may, by notice to the other party, change the address specified



above. Service of notice of change of address shall be complete when received at the designated address.

## **25.0 CONTRACT ENFORCEMENT AND AMENDMENT**

**25.1.** The City Manager shall be Manager of this Agreement and shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of the City and its agencies having duties in connection with the administration thereof.

**25.2.** Any officers and/or authorized employees of the City may enter the Course at any and all reasonable times for the purpose of determining whether or not Company is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of City under this Agreement. Should any officers and/or authorized employees of the City discover that Company is in noncompliance with the terms and conditions of hereof, that officer and/or authorized employee shall make a written report to the City Manager regarding their findings.

**25.3.** Time is of the essence in this Agreement.

**25.4.** This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by Company and, in the case of City, until formally approved by City and executed by the Mayor or such other official as the City may designate.

## **26.0 ATTORNEYS FEES**

**26.1.** In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees at the prevailing market rates and court costs incurred in the action brought thereon.

## **27.0 ENTIRE AGREEMENT**

**27.1.** This Agreement and the exhibits attached hereto, constitute the entire agreement and understanding between the parties hereto, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject



matter of this Agreement.

## 28.0 PARTIAL INVALIDITY

28.1. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions, which are equivalent from an economic point of view to replace any provision, which is determined to be invalid.

## 29.0 AUTHORITY

29.1. Company represents that the signatories hold the positions set forth below and are authorized to execute this Agreement on behalf of Company and to bind Company hereto.

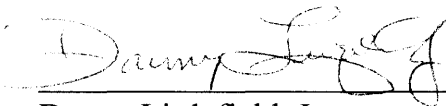
## 30.0 EFFECTIVE DATE

30.1. The effective date of this Agreement shall be July 1, 2016.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

Approved as to Form:

CITY OF BROKEN ARROW



Danny Littlefield, Jr.  
Assistant City Attorney

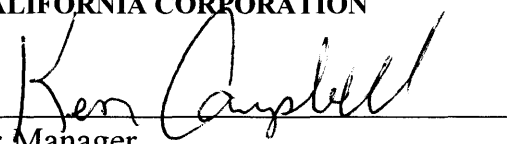
By:   
Michael Spurgeon, City Manager

Date of Execution: June 30, 2016

GREENWAY GOLF ASSOCIATES, INC.  
A CALIFORNIA CORPORATION

ATTEST:

  
(Seal) CITY CLERK

By:   
Title: Manager  
Printed Name: Ken Campbell






**Verification**

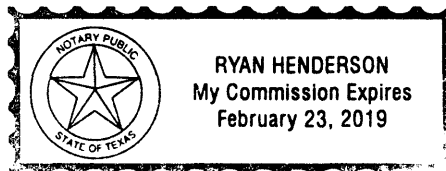
State of Texas            )  
                                  ) ss.  
County of Travis        )

Before me, a Notary Public, on this 26 day of May, 2016, personally appeared Ken Campbell as Manager of **Greenway Golf Associates, Inc**, an California Corporation, known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

February 23, 2019

  
\_\_\_\_\_  
Notary Public





# EXHIBIT A - SITE PLAN

