

**GOLF COURSE
CONCESSION MANAGEMENT AGREEMENT
FOR ENGER PARK GOLF COURSE
AND LESTER PARK GOLF COURSE**

21045

THIS AGREEMENT, made and entered into by and between the **CITY OF DULUTH**, a municipal corporation of the County of St. Louis, State of Minnesota, hereinafter referred to as "**City**", and Professional Golf Management, Inc. hereinafter referred to as "**CONCESSIONAIRE.**" This Agreement replaces and supersedes any earlier agreement between the parties.

The parties acknowledge the following:

- A. The City is a Minnesota municipal corporation located in St. Louis County and with its address at 411 West First Street and is the owner of public parks which contain public municipal golf courses known as Enger Park Golf Course and Lester Park Golf Course ("Golf Courses"); and
- B. The Golf Courses have, as part of the City recreation program, long provided excellent public recreation and benefits to the community, its citizens, residents and area visitors, and have long been of outstanding physical condition and quality; and the City wishes and needs to continue to provide such outstanding public facilities, recreation, and services to the public; and
- C. The City desires to retain the services of the Concessionaire pursuant to Minnesota Statutes including, Section 471.191 Subd. 4, to operate and manage the Golf Courses and appurtenant facilities for the purpose of obtaining qualified expert management and maintenance of the Golf Courses on behalf of the City and the public.
- D. Concessionaire wishes to provide services needed to continue the operation of the Golf Courses for a fee.

In consideration of their mutual promises, the parties agree as follows:

ARTICLE 1. PREMISES

1.1 This Agreement pertains to Golf Courses situated in the City of Duluth, County of St. Louis, State of Minnesota, shown on attached Exhibits A-1 and A-2, and all equipment listed on Exhibit A-3 and inventory listed on Exhibit B-1.

1.2 As used herein, the term "Golf Courses" or "Premises" refers to the real property of the Golf Courses and to any and all structures and improvements located thereon, as well as any easements appurtenant thereto, and any equipment, tools and parts located on the Golf Courses

at the time of execution of this Agreement and acquired and/or added to or replaced from time to time during the term of this Agreement.

ARTICLE 2. TERM.

The term of this Agreement shall begin on January 1, 2010, and end at midnight, December 31, 2012, unless earlier terminated by either party, as set out herein.

ARTICLE 3. TERMINATION OF AGREEMENT

3.1 City may terminate this Agreement without cause by giving to Concessionaire at least sixty (60) days written notice prior to December 31, 2012. City may terminate this Agreement for cause pursuant to Article 3.1 hereof. City may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, April 1, 2011 through October 1, 2011 and April 1, 2012 through October 1, 2012. The City may, at any time within 60 days notice, terminate this Agreement in the event it sells all or part of one or more of the Golf Courses.

3.2 Concessionaire may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, and April 1, 2011 through October 1, 2011 and April 1, 2012 through October 1, 2012. Otherwise, Concessionaire may terminate this Agreement without cause by giving the City at least sixty days written notice.

3.3 Concessionaire shall, within two weeks after the termination of this Agreement, remove from the Golf Courses all personal Concessionaire property, goods and effects, and on failure to do so, City may cause such removal to be made and Concessionaire shall be liable to City for the cost of removal and storage. All remaining property, goods, and effects shall become the property of the City.

3.4 If this Agreement is terminated, then Concessionaire is entitled to periodic fixed fee payments prorated to the date of termination.

ARTICLE 4. SCOPE OF SERVICES.

4.1 Concessionaire at its cost and expense subject to reimbursement by City pursuant to Article 16, shall operate and manage all aspects of the operation of the Golf Courses as public golf courses, including operations that are incidental or related thereto, including course operation and maintenance, food and beverage service, driving range, golf cart rental, special events, pro-shop, promotion, golf lessons, golf club repair, golf club rental, attaining efficiency designed to make the operation financially self-sustaining, managing the Concessionaire's workforce.

4.2 Concessionaire shall be diligent in the operation of the Golf Courses and shall do those things necessary to give the public adequate and proper service, and at a price that shall be just and reasonable, as determined by the City, under the circumstances, and to maintain the Golf Courses operated by Concessionaire open to all persons upon equal terms. It is understood and agreed that such charges and prices shall be similar to prices charged for the same goods and services sold and provided under similar circumstances in the community.

4.3 The parties intend by this Concession Management Agreement to continue the public recreational purpose of the Golf Courses. This Agreement shall be performed, applied and interpreted to attain that objective. The City retains regulatory power and control sufficient to assure that such public recreational purpose will be achieved.

ARTICLE 5. COMPLIANCE WITH LAWS.

5.1 The Golf Courses shall be managed to always be in compliance with all applicable laws, including life safety codes, State and Federal civil rights, or human rights laws, health regulations, drug and alcohol controls. Should Concessionaire become aware of any aspect of the operation that may not be in compliance with an applicable law or regulation, then Concessionaire shall so inform City and remedy the matter to achieve compliance, or, if Concessionaire cannot do so, request City to do so. Concessionaire shall not commit or allow its employees or agents to commit any criminal offenses upon the Golf Courses.

ARTICLE 6. INDEPENDENT CONTRACTOR-THIRD PARTY BENEFICIARY.

6.1 The parties intend that Concessionaire shall exercise independent judgment and control the manner and means of Concessionaire's performance, and function as an independent contractor. The parties do not intend to create a principal/agent relationship or any joint venture or partnership. The parties do not intend to create any third party beneficiary of this Agreement.

ARTICLE 7. SALE OF INTOXICATING LIQUOR (Enger Park).

7.1 Enger Park

7.1.1 Concessionaire may apply to the City for a liquor and beer license or for a non-intoxicating malt liquor license (3.2 beer) for sale of on sale beverages at the Enger Park Golf Course incidental to the use of the park by the public. Concessionaire shall apply for such alcohol licenses(s) in the normal and customary manner required of all alcohol license applicants. The City will promptly process such license application in the customary manner required by law and will grant the application in a timely manner if such application and renewals are approved by the appropriate City bodies, and if Concessionaire complies with all requirements of the law in the obtaining, holding and operation of Enger Park Golf Course so the

Concessionaire may at all times lawfully sell alcoholic beverages. Concessionaire must comply with all qualifications and other alcohol law requirements.

7.1.2 Any and all alcoholic beverage and other licenses and permits issued by the City to the Concessionaire shall be held by the Concessionaire in the Concessionaire's name.

7.1.3 No alcoholic beverage or other license or permit issued by the City to the Concessionaire shall be transferable or transferred.

7.1.4 The Concessionaire shall, at all times, comply with all federal, state, and local laws governing alcohol beverages and their sale and consumption.

7.1.5 The issuance of an alcohol beverage license(s) is discretionary, and by entering into this Agreement, the City in NO manner guarantees, warrants or represents that the Concessionaire will be granted or issued any alcohol beverage license and hereby expressly notifies and informs the Concessionaire of the discretionary nature and non-guarantee of such grant or issuance.

7.1.6 Upon the expiration or termination of this Agreement or the expiration of the alcohol beverage license year, whichever occurs first, in the event that the Concessionaire no longer operates Enger Park Golf Course on behalf of the City, the Concessionaire's alcohol beverage license for the Enger Park Golf Course shall terminate.

7.2 Lester Park

7.2.1 Concessionaire may apply to the City for a 3.2 percent malt liquor license for sale of on sale beverages at the Lester Park Golf Course incidental to the use of the park by the public. Concessionaire shall apply for such alcohol license(s) in the normal and customary manner required of all alcohol license applicants. The City will promptly process such license application in the customary manner required by law and will grant the application in a timely manner if such application and renewals are approved by the appropriate City bodies, and if Concessionaire complies with all requirements of the law in the obtaining, holding and operation of the Lester Park Golf Course so the Concessionaire may at all times lawfully sell alcoholic beverages. Concessionaire must comply with all qualifications and other alcohol law requirements.

7.2.2 Any and all alcohol beverage and other licenses and permits issued by the City to the Concessionaire shall be held by the Concessionaire in the Concessionaire's name.

7.2.3 No alcohol beverage or other license or permit issued by the City to the Concessionaire shall be transferable or transferred.

7.2.4 The Concessionaire shall, at all times, comply with all federal, state and local laws governing alcohol beverages and their sale and consumption.

7.2.5 The issuance of an alcohol beverage license(s) is discretionary and by entering into this Agreement, the City in NO manner guarantees, warrants or represents that the Concessionaire will be granted or issued any alcohol beverage license and hereby expressly notifies and informs the Concessionaire of the discretionary nature and non-guarantee of such grant or issuance.

7.2.6 Upon the expiration or termination of this Agreement or the expiration of the alcohol beverage license year, whichever occurs first, in the event that the Concessionaire no longer operates Lester Park Golf Course on behalf of the City, the Concessionaire's alcohol beverage license for Lester Park Golf Course shall terminate, be relinquished and surrendered back to the City and cease to be of any further force or effect.

ARTICLE 8. TURF CONSULTANT, DAMAGE OR DESTRUCTION AND MODIFICATIONS

8.1 City has the right, at any and all times, solely at its own expense and without cause, to retain or employ one or more turf consultant(s), other expert(s) and/or other person(s) to inspect, examine and report to the City pertaining to the condition, nature and/or quality of the Golf Courses. Concessionaire hereby expressly authorizes such inspection(s) and examination(s) and grants the City and its employees, agents, and representatives, at all times, access to the Golf Courses, facilities, improvements, structures and equipment.

If, as a result of such inspection the City makes a recommendation concerning the care or protection of the turf in the Golf Courses, Concessionaire shall as soon as reasonably possible substantially initiate full implementation of the recommendation and shall complete such full implementation within a reasonable period of time, as specified by the turf consultant.

8.2 Should any part or whole of the Golf Courses be damaged or destroyed so as to render the entire Golf Courses or one of them untenable or unfit for the purposes of this Agreement, the parties shall negotiate reasonably and in good faith regarding what, if any, provision(s) of the Agreement may be modified, suspended or amended so as to effectuate the intent of this Agreement to provide ongoing superior quality public golf course services to the general public.

8.3 Concessionaire shall not make any material modifications to the Golf Courses, or material changes to facilities, or to services, without prior written consent of City.

ARTICLE 9. USE AND CARE OF CITY GOLF FURNITURE,
EQUIPMENT, TOOLS AND PARTS

9.1 During the term of this Agreement, Concessionaire shall have the exclusive right to use and operate the furniture, equipment, tools and parts listed on Exhibit A-3 and owned by City and located on the Golf Courses on the date of this agreement.

9.1.1 In the event that any City furniture, equipment, tools and parts needs to be replaced during the term of this Agreement, Concessionaire shall replace item.

9.1.2 The Concessionaire may, from time to time, rent City equipment from the City maintenance operation, provided that the City has such machinery or equipment then available for the Concessionaire's use. The City, however, may require that the machinery or equipment be operated by a City employee and that the employee's compensation be added to the rental cost.

9.2 The City is a party to two leases for golf carts and course maintenance equipment, which are attached hereto as Exhibits C-1 and C-2. During the term of this Agreement, Concessionaire shall have the exclusive right to use and operate the golf carts and equipment leased by City. Concessionaire shall perform all duties and obligations of the City pursuant to said leases, except for the payment of the lease payments. Concessionaire may contract with third-party vendors any repair and maintenance obligations, but the selection of any such third-party vendor must first be approved in writing by the Director of Parks and Recreation. If any lease terminates during the term of this Agreement, the Concessionaire shall cause all equipment subject to such lease to be delivered as provided by the lease. In the event that any City leased equipment needs to be replaced during the term of this Agreement, Concessionaire may, with prior written authorization from the City, replace the requested item.

ARTICLE 10. RETAIL ACTIVITIES.

10.1 Retail activities shall be complementary to the public's use of the Golf Courses. The City hereby grants to Concessionaire, subject to all provisions of this Agreement, the right to sell beverages, 3.2 beer, intoxicating liquor if authorized by law, cigars, cigarettes, tobacco and similar items, and food items, but at no time shall there be sold on the Golf Courses by Concessionaire, or with its knowledge, acquiescence, or consent, any articles, the sale of which may be prohibited by law.

10.2 Concessionaire will sell for the City all golf tickets, golf season passes; any other golf passes; and self-propelled golf cart tickets at the rates established by the City. Concessionaire may also sell golf lessons, club storage lockers, club rentals, pull cart rentals, driving range tokens, pro shop merchandise, and golf club repair services at rates to be established by the Concessionaire.

10.3 Concessionaire shall turn over all monies received in the operation of the Golf Courses to the City in conformance with policies or instructions established by the City's Chief Financial Officer. A daily report of the number of each kind of ticket sold will be maintained by Concessionaire and provided to the City Auditor in conformance with policies established by the City's Chief Financial Officer.

10.4 In the operation of the driving range Concessionaire may utilize driving range golf balls currently utilized on the Golf Courses. Concessionaire shall have the right to remove and salvage golf balls from any ponds on the Golf Courses but only for use in the operation of the driving range or for golf shop sales.

10.5 Concessionaire shall operate a pro shop stocked with quality merchandise and offering club repair service. All golf course logos shall be approved by the Director of Parks and Recreation, but such approval shall not be unreasonably withheld. Concessionaire may utilize fixtures currently located on the Golf Courses and shall repair or replace any such fixtures.

10.6 Concessionaire shall provide an adequate season's supply of score cards, pencils, and driving range balls for use on the Golf Courses

ARTICLE 11. CONCESSIONAIRE'S DUTIES.

11.1 Concessionaire shall employ at least one person at each of Enger Park Golf Course and Lester Park Golf Course who shall be competent to supervise golf operations and give lessons at Golf Courses and is certified by the PGA as a Class A professional, or have had at least five years experience as an assistant golf professional.

11.2 Concessionaire's operational duties and responsibilities include, but are not limited to, the following:

11.2.1 All items set out above in this Agreement.

11.2.2 Clubhouse - Concessionaire shall operate and maintain the kitchen, toilets, public areas, and main lobby of clubhouse in a neat, safe, and presentable condition and according to the Health Department standards for eating establishments, whether Concessionaire acquires an eating establishment license or not. Concessionaire shall inspect for compliance and remedy any deficiencies.

11.2.3 Junior Golf - Concessionaire shall continue and further develop the Junior Golf program at the Golf Courses, which shall be approved, in writing, by the City.

11.2.4 USGA Handicap Service - Concessionaire supervise and assist in the operation of a handicap system and to develop, interpret, update, and enforce policies, rules, and regulations pertinent to play at the Golf Courses.

11.2.5 Local Media - Concessionaire shall work with the local media to report scores, promote events, and inform the community about Golf Courses.

11.2.6 Advertising and Promotion - Concessionaire shall promote and market the Golf Courses and create a positive, customer-friendly facility. No more than 50 percent of advertising budget may be generated through trade. All advertising trades shall be recorded. The Concessionaire may use up to 75 additional golf round passes for trade and promotion which shall be accounted for at retail value.

11.2.7 Legal Compliance - As further described in Section 5.1, Concessionaire shall conduct all operations under this Agreement in strict compliance with the laws of the United States, the State of Minnesota, and the City of Duluth, and with the rules and regulations of all City, State, and Federal bureaus and departments. Concessionaire agrees to procure all licenses and official permits necessary for the carrying out of the provisions of this Agreement. Concessionaire shall retain business records for the state auditor and city auditor for a minimum of six years from the end of this Agreement.

11.2.8 Code of Conduct - Concessionaire shall, at its own expense, but subject to reimbursement provided in Article 16 hereof, at all times insure that its employees conduct themselves in accordance with the standards accepted for golf professionals and established by the professional Golfer's Association of America and attached hereto as Exhibit D, and further agrees to keep abreast of new developments and trends in the golfing industry in order to present the Golf Courses in a professional and innovative way.

11.2.9 Planning - Upon request, Concessionaire shall assist in planning and presentation of short and long range capital improvements needed at the Golf Courses, to assist the City in preparing an annual budget for the Golf Courses, and to recommend ticket prices and other strategies that will enhance revenues and assist in presenting them to the City Council.

11.2.10 Scheduling - Concessionaire shall schedule all tournaments, leagues, and special events at the Golf Courses. Concessionaire shall advise and work closely with the various clubs, leagues, and tournament sponsors who hold such events.

11.2.11 Golf Cart Storage Building - Concessionaire shall manage the golf course storage building, including the rental of the units per a rate structure set by the Duluth City Council. Included in the management of the golf cart storage building is the timely payment of all real estate taxes due and payable related to the golf course storage building.

11.2.12 Building Maintenance - Concessionaire shall be responsible for all Golf Course buildings maintenance. In the event City crews do Golf Course building maintenance, the City's cost and expenses for such work shall be invoiced and paid pursuant to Article 16.

11.2.13 Point of Sale Improvements - Within three months hereof, Concessionaire shall report to the City on the need for upgrading of the point of sale system, and shall, upon the approval by the City of said report, upgrade the point of sale system.

11.2.14 Best Effort - Concessionaire will devote its best efforts to performing this Agreement.

11.2.15 Business Practices - Concessionaire shall take commercially reasonable steps to prevent waste, theft or pilferage of City assets under its control, including inventory, cash, and golf rounds. Concessionaire shall diligently work to increase revenue and reduce expenses.

11.2.16 Concessionaire shall maintain an inventory of all hazardous items, including pesticides, fungicides, herbicides, fertilizers and other chemicals for the operation of the Golf Courses.

11.2.17 Pursuant to Minnesota Statutes Section 471.425, Concessionaire shall promptly pay any subcontractor.

11.2.18 Maintenance Standards - The Golf Courses shall be maintained at least to the standards set forth in Attachment E-1.

11.3 At the termination of this Agreement Concessionaire shall surrender and return the Golf Courses and items listed on Exhibit A-3 and Exhibit B-1 to the City in the same or better condition than it was on the date hereof.

ARTICLE 12. CONCESSIONAIRE'S EMPLOYEES.

12.1 Concessionaire shall be responsible for all of its employee compensation. These workers shall be agents or employees solely of Concessionaire and not agents or employees of the City.

12.2 Concessionaire shall not pay, any employee, agent, or contractor, for work done at the Golf Courses any person who is related to the Concessionaire or its management members, through family or business activities, at a rate that is the highest paid anyone nor at a rate that is higher than paid any other employee of Concessionaire for comparable work.

12.3 Concessionaire shall use all reasonable means to assure that the cost of any contracted service for which Concessionaire may seek reimbursement from the City is as reasonably low as possible by getting comparable wage rate information from golf courses within 100 miles of the Golf Courses.

ARTICLE 13. INDEMNITY AND INSURANCE.

13.1 Concessionaire may obtain, if it so elects, at its expense, fire, casualty and extended coverage on all Concessionaire personal property located on the Premises and fire, casualty and extended coverage on all buildings, facilities, structures and improvements and City owned personal property whatsoever kind as natural upon the Golf Courses and contractual liability insurance to cover its obligations under Section 13.5 hereof.

13.2 Concessionaire shall obtain and at all times maintain, the following coverage:

Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit Bodily Injury, **\$500,000/\$1,500,000** Property Damage or **\$1,500,000** Combined Single Limit as an alternate coverage,

13.2.1 **City of Duluth shall be named as Additional Insured** under the Public Liability, or as alternate, Concessionaire may provide Owners-Contractors Protective policy, naming Concessionaire and City. The City does not intend to waive any immunities or liability limits. Concessionaire shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.

13.2.2 Concessionaire shall provide a Certificate of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Concessionaire's interests and liabilities.

13.2.3 When using the "Acord" Certificate form cancellation provisions, the words "endeavor to" on Line 2 must be deleted. As an additional insured under the contract, the City has contractual rights exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: This policy insures the name insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage. The City of Duluth is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City of Duluth.

13.2.4 The 2004 edition of ISO Additional Insured Endorsement CG 20 10 is not acceptable. If the CG 20 10 is used, it must be a pre-2004 edition.

13.3 The City shall not be liable to Concessionaire for any injury or damage resulting from any defect in the construction or condition of the Golf Courses, nor for any damage that may result from the negligence of any third party whatsoever.

13.4 Concessionaire agrees to indemnify, save harmless, and defend the City from any and all claims, including contribution or subrogation claims,, suits, loss, costs, damage, or expenses on account of injuries to or death of any and all persons whomsoever, including employees of Concessionaire, and on account of any and all damages to property to whomsoever belonging, including property owned by Concessionaire or in the care, custody, and control of

Concessionaire, or any other claim for damages, including any claim for environmental damage or environmental response, arising or growing out of the concessions and golf operations conducted by Concessionaire pursuant to this Agreement. The obligations of Concessionaire hereunder shall be satisfied by Concessionaire obtaining insurance as required hereunder and naming City as an additional insured on such insurance hereunder.

13.5 Each party waives any subrogation rights it has against the other for property damage or injury or death to the other caused by its agents or employees for losses not covered by insurance.

ARTICLE 14. CITY SERVICES.

14.1 Concessionaire and one member of its staff at each Golf Course will be accorded playing privileges at the Golf Courses for the purpose of gaining familiarity with the current condition of operations as deemed necessary by Concessionaire. Concessionaire may create an employee benefit for its employees that includes playing privileges. Any such benefit must account for playing privileges at fair market value.

ARTICLE 15. INVENTORY.

15.1 Concessionaire shall have the right to sell all retail inventory on the Golf Courses on the first day of the term of this Agreement. Concessionaire shall prepare and provide to City list a of all such retail inventory.

15.2 City will reimburse Concessionaire for inventory purchased for the golf shop and food and beverage operations in accordance with Article 16 of this Agreement.

15.3 Concessionaire may make use of the fixtures and display materials currently located at the Golf Courses, which are included on Exhibit A-3.

15.4 Discounts and Program Rewards - All early pay discounts and buying program rewards for merchandise or food and beverage programs shall be used towards golf shop or food and beverage revenues through lowering the cost of goods sold or through straight payments through the appropriate point of sale system, or else become property of City.

15.5 Postage and Delivery - Concessionaire shall be responsible for most efficient and appropriate form of transportation, delivery, and receipt of inventory. City will pay for appropriate postage and delivery as a cost of goods sold through reimbursement procedures found in Article 16.

15.6 Loss Prevention - Concessionaire shall have a written loss prevention program in place to control both customer and employee theft. Any theft shall be immediately reported to the City and the Duluth Police Department

15.7 Inventory Levels and Reduction - Concessionaire shall provide adequate levels of golf shop and food and beverage inventory to provide for standard customer service and sales opportunities, without undue excess. Concessionaire will take measures to annually reduce inventory through applicable returns, sales, and all other applicable inventory reduction methods.

15.8 Inventory Records - Concessionaire shall keep accurate records, which, in the reasonable judgment of the City, shall be suitable for audit, and shall utilize the point of sale system.

ARTICLE 16. REIMBURSEMENT.

16.1 Payment - On the date hereof, City shall provide a working fund in an amount determined by the City Auditor. Reimbursements to the Concessionaire for actual expenses incurred will be made periodically upon submission of a reimbursement request. Each reimbursement request submitted by the Concessionaire shall include a check register sorted by expense category with copies of invoices or other supporting documentation as evidence of payment. The expenses eligible for reimbursement shall exclude any compensation of any management or supervisory personnel of Concessionaire as defined in Section 17.2 hereof.

16.2 Concessionaire shall maintain an exclusive account for the purpose of recording, payment, organizing, and report generation of the expense account. All aspects of the expense account will be recorded in the exclusive account and will be available for review at all times.

16.3 The Concessionaire will pay to the City the outstanding balance of the working fund upon the termination of this Agreement if a balance remains.

16.4 City shall reimburse Concessionaire for the costs of contracted services, salary, workers' compensation insurance, unemployment insurance, federally mandated health insurance, and FICA actually paid during the calendar year for work satisfactorily performed at the Golf Courses by Concessionaire's employees or agents and in accordance with the payment provision of this Article.

16.5 Concessionaire shall deposit all funds generated by the operation of the Golf Courses in a manner and frequency set forth by the City Auditor, including the use of a larger safe with changing codes.

ARTICLE 17. MANAGEMENT COMPENSATION

17.1 For satisfactory performance of this Agreement, Concessionaire shall be entitled to the following compensation payable from City fund 503.

17.1.1 Periodic fixed fee payments to be determined by the City Auditor after consultation with Concessionaire based on an annual fee of \$400,000 for the first year (2010), \$408,000 for the second year (2011), and \$416,160 for the third year (2012).

17.2 The compensation to the management personnel of Concessionaire shall not be eligible for reimbursement under Article 16 hereof. The management personnel of Concessionaire for purposes of this Section shall include two head pros, two assistant pros, a Golf Course, superintendent and two assistant superintendents.

ARTICLE 18. BOND FINANCING - PROPERTY TAX - LICENSE FOR USE

18.1 This Agreement is intended to preserve the tax free nature of the Golf Courses and the bonds that have been used to finance improvements to the Golf Courses. If any provision of this Agreement has, or will have, in the opinion of the trustee for the bondholders or independent bond counsel, the effect of endangering or destroying the tax free nature of the income to bondholders, or, in the case of a provision that has the effect of endangering the tax exempt nature of the Golf Courses then the City Finance Director, upon notice to the parties, that provision will become void, and the parties, upon request of either, shall, in good faith, negotiate a new contract provision acceptable to bond counsel or trustee. If a new contract provision is not agreed to, either party may terminate this Agreement as provided in Article 3.

18.2 Concessionaire is granted a license to go on the Premises and reasonably use it for the purpose of carrying out this Concession Agreement. The use is non-exclusive. There will be no other golf concessions granted during the term of this Agreement. However, the City reserves its right to use the park in ways that do not unreasonably conflict with or degrade operation of the golf concession. Such activities include, but are not limited to, the annual highschool cross country races and City storage needs.

ARTICLE 19. DISPUTES.

19.1 This provision does not, however, preclude nor does it in any manner constitute nor act as any waiver of any legal or equitable right or privilege of either the City or Concessionaire to enforce the performance or remedy any breach of any part, portion, provision, obligation, covenant, section or whole of this Agreement against the other in any Minnesota court of competent jurisdiction.

19.2 It is the intent of the parties hereto that each section, part, portion, provision, covenant, term and obligation of this Agreement is severable. If any is held unlawful or

unconstitutional for any reason, such decision shall not affect the remainder of this Agreement nor any of the remaining obligations of the parties hereto.

ARTICLE 20. DEFAULTS; BREACH.

20.1 Any or all of the following shall be considered events of default or breach of this Agreement:

20.1.1 By Concessionaire:

20.1.1.1 If the Concessionaire fails to pay any of the amounts due or fails to pay any such amount(s) when due, or fails to provide any monthly, annual or other financial report, statistic or information to the City, when, how and as required in this Agreement, and any such default continues unremedied for a period of ten (10) days after written notice of such default or failure to perform has been mailed to the Concessionaire;

20.1.1.2 If Concessionaire fails to perform or observe any other covenant, obligation, promise, agreement, commitment or condition contained in this Agreement, and any such default continues unremedied for a period of thirty (30) days after written notice of such default or failure to perform has been mailed to the Concessionaire;

20.1.1.3. If the Concessionaire makes an assignment of its property for the benefit of creditors;

20.1.1.4. If the Concessionaire petitions any court to be adjudged a bankrupt or seeks any other debtor judicial relief;

20.1.1.5. If a petition in bankruptcy is filed in any court against the Concessionaire;

20.1.1.6. If the Concessionaire is judicially determined to be insolvent;

20.1.1.7. If the Concessionaire is adjudged a bankrupt;

20.1.1.8. If a receiver or other officer is appointed to take charge of the whole or any part of Concessionaire's property or to wind up or liquidate its affairs;

20.1.1.9. If the Concessionaire seeks a reorganization under any of the terms of the Federal Bankruptcy Code, as amended, or under any other federal or state debtor or insolvency laws;

20.1.1.10. If the Concessionaire admits in writing its inability to pay its debts as they become due;

20.1.1.11. If any final judgment of \$10,000 or more is rendered against the Concessionaire and remains unsatisfied or unbounded against for a period of sixty (60) days from the date on which it shall become;

20.1.1.12. If the Concessionaire abandons any material, part, portion or whole of the Premises or the golfing facilities;

20.1.1.13. If the Concessionaire breaches any provision of this Agreement which carries an additional, specific, immediate or without prior notice remedy to the City.

20.1.1.14. Concessionaire is convicted or any criminal offense committed on the Premises or allows any of its employees to commit and criminal offense of which the employee is convicted on the premises.

20.2 By the City:

20.2.1. If the City fails to perform or defaults with regard to the observance or performance of any of the covenants, obligations, promises, agreements, commitments or conditions contained in this Agreement, and if such default continues unremedied for a period of sixty (60) days after written notice of such default or failure to perform has been mailed to the City, such failure shall be considered a default or breach of this Agreement.

20.2.2. If the City fails to pay any of the amounts due or fails to pay any such amount(s) when due, or fails to provide any monthly, annual or other financial report, statistic or information to the Concessionaire, when, how and as required in this Agreement, and any such default continues unremedied for a period of ten (10) days after written notice of such default or failure to perform has been mailed to the City;

20.3 By either party:

20.3.1. In the event of any or all such defaults or breaches by Concessionaire or City the non-defaulting party may, at its option and in addition to any and all other rights and remedies it may have at law, in equity or elsewhere under this Agreement against the defaulting party including, but not limited to, expressly the specific enforcement hereof, have the cumulative right to terminate this Agreement and any and all rights, titles and interests of whatsoever kind or nature of the defaults hereunder. The cancellation of this Agreement shall not constitute nor shall it be constructed to constitute either a cancellation or waiver by the non-defaulting party.

ARTICLE 21. WAIVER OF BREACH

The waiver by the City or by Concessionaire of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained.

ARTICLE 22. FORCE MAJEURE

22.1 Under the terms of the Agreement, neither party shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of a third party, fire, floods, epidemics, strikes or embargoes.

22.2 Under the terms of the Agreement, the City shall not be considered in default or in breach of any of the terms with respect to the performance of its obligations under this Agreement in the event of any judgment or order enjoining the City's performance of its obligations under the terms of this Agreement or finding the City in violation of any law, rule or regulation, as a result of this Agreement. In such case, such judgment or order shall constitute cause for immediate termination by the City which shall have the absolute right, and at its sole discretion, to terminate this Agreement immediately.

ARTICLE 23. NOTICES

City's agent for administration of this contract is Kathleen Bergen, Central Hillside Community Center, 12 E. Fourth Street, Duluth, Minnesota, 55805-3895, (218) 730-4309, kbergen@duluthmn.gov. Any notice required by law or this agreement is sufficient if delivered to Concessionaire personally, or mailed, sufficient postage prepaid, to Concessionaire at 4611 Gladstone Street, Duluth, Minnesota 55804, (218) 590-2948, paulschintz@aol.com.

ARTICLE 24. ENTIRE AGREEMENT.

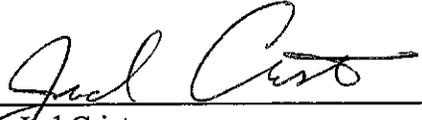
This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter thereof.

CITY OF DULUTH

CONCESSIONAIRE



Mayor

By 

Jud Crist

Attest: 

City Clerk

Its: P6M Inc, VP

Tax I.D. 8985067

By 

Paul ~~Schmitz~~ Schintz

Its: VICE PRESIDENT, P6M INC.

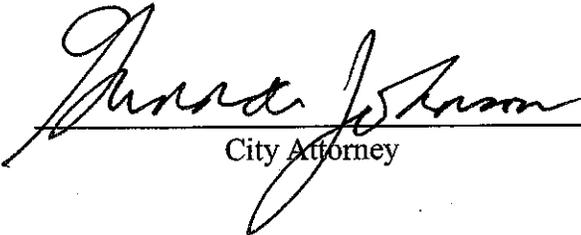
Tax I.D. 8985067

Countersigned:



City Auditor

Approved as to form:



City Attorney

ATTACHMENT E1

GOLF COURSE MAINTENANCE STANDARDS FAIRWAYS, SURROUNDS AND ROUGH

| PROGRAM | FREQUENCY | DETAILS |
|--------------------------------------|---|-----------------------------|
| Fairway mowing | 3-4 times per week during growing season | Height of cut ½" to ¾" |
| Green & Tee Surround Mowing | 3 times per week during growing season | Height of cut 1 ½" to 2" |
| Rough mowing | 2 times per week or as needed. May be more or less depending on growing conditions | Height of cut 2" |
| Fertilization Fairway & Surrounds | May and July @ 1 lb. of nitrogen/1000 sq. ft. each application | |
| Pest control Fairways & Surrounds | Curative | |
| Weed Control Fairways & Surrounds | | Pre/Post emergent as needed |
| Aeration Fairways | September/October core tine and drag to break up cores | |

GOLF COURSE MAINTENANCE STANDARDS-GREENS

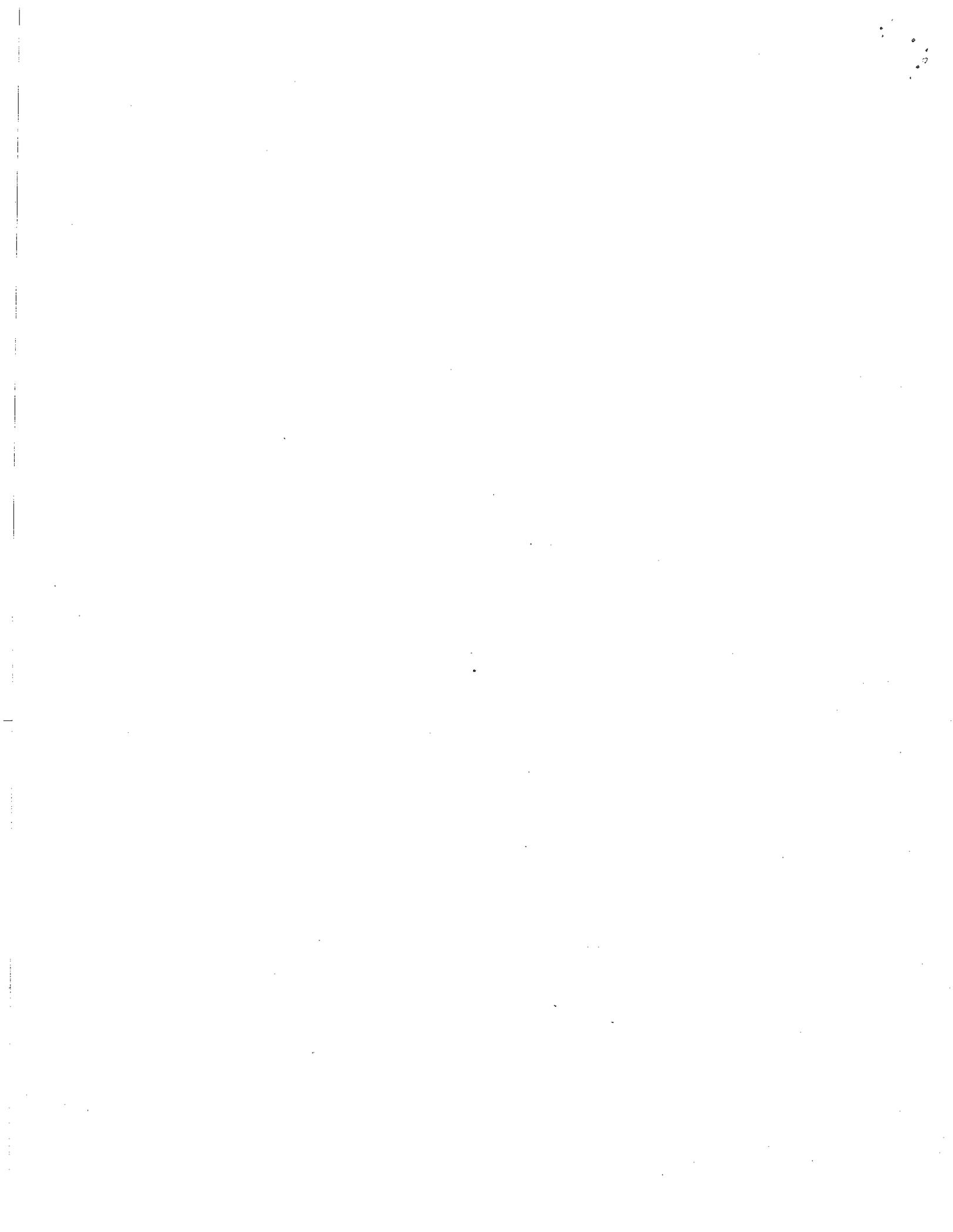
| PROGRAM | FREQUENCY | DETAIL |
|-------------------|---|--|
| Mowing | April-October 6-7 times per week while turf is actively growing | Height of cut 1/8" to 5/32" |
| Fertilization | Monthly or bi-monthly May-September Apply trace elements as soil tests indicate | Apply .5 to 1 lb of Nitrogen/1000 sq. ft. monthly during May-September for a total of 3 to 3.5 lbs of Nitrogen/1000 sq. ft. annually |
| Pest Control | As needed on a preventative basis | Curative when disease or Insects become a major problem |
| Aeration | 1 X per year Late August/September | Deep drill aeration or 1/2" to 5/8" core aerification |
| Verticut | Every 2-3 weeks May-September | During hot weather over 80 degrees substitute spiking |
| Cup rotation | Daily | Every other day during non peak times of the year |
| Weed control | As needed | Chemical spot control or mechanical control |
| Topdressing | 3-4 week intervals May-September | Use USGA specifications sand, 2-4 cubic feet per 1000 sq. ft. |
| Apron mowing | 3-4 X per week | Height of cut 3/8" to 3/4" |
| Apron maintenance | Treat as green | |
| Irrigation | 1" per week | Rate may vary with weather conditions |

GOLF COURSE MAINTENANCE STANDARDS-SAND TRAPS

| PROGRAM | FREQUENCY | DETAIL |
|----------------|---|-----------------------------|
| Raking | Daily | |
| Edging | Monthly | |
| Weeding | Edging as needed to keep perimeter grass from encroaching into trap | Use non-selective herbicide |

GOLF COURSE MAINTENANCE STANDARDS-TEES

| PROGRAM | FREQUENCY | DETAIL |
|----------------|--|--|
| Mowing | 3-4 times per week | Height of cut 3/8" to 3/4" |
| Fertilization | May-September 1 lb. Nitrogen/month | Base fertilizer program around soil tests |
| Pest control | Curative | |
| Aeration | 1 time per year August/September 5/8" core tines | Verticut existing material and drag in. Over seed with approved rye/bluegrass/fescue grass seed blends |
| Weed control | Pre/Post emergent weed control. As needed in spring and fall | |
| Irrigation | Same as greens | |



CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 09-0762

ADOPTED: DECEMBER 21, 2009

RESOLVED, that the proper city officials are authorized to execute and a concession management agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-27, between the city and Professional Golf Management, Inc., for operation and management of the Lester Park and Enger Park golf courses for a term ending December 31, 2012, for annual costs of \$400,000 in 2010, \$408,00 in 2011 and \$416,160 in 2012, payable from Fund 503.

Resolution 09-0762 was unanimously adopted.

Approved December 21, 2009

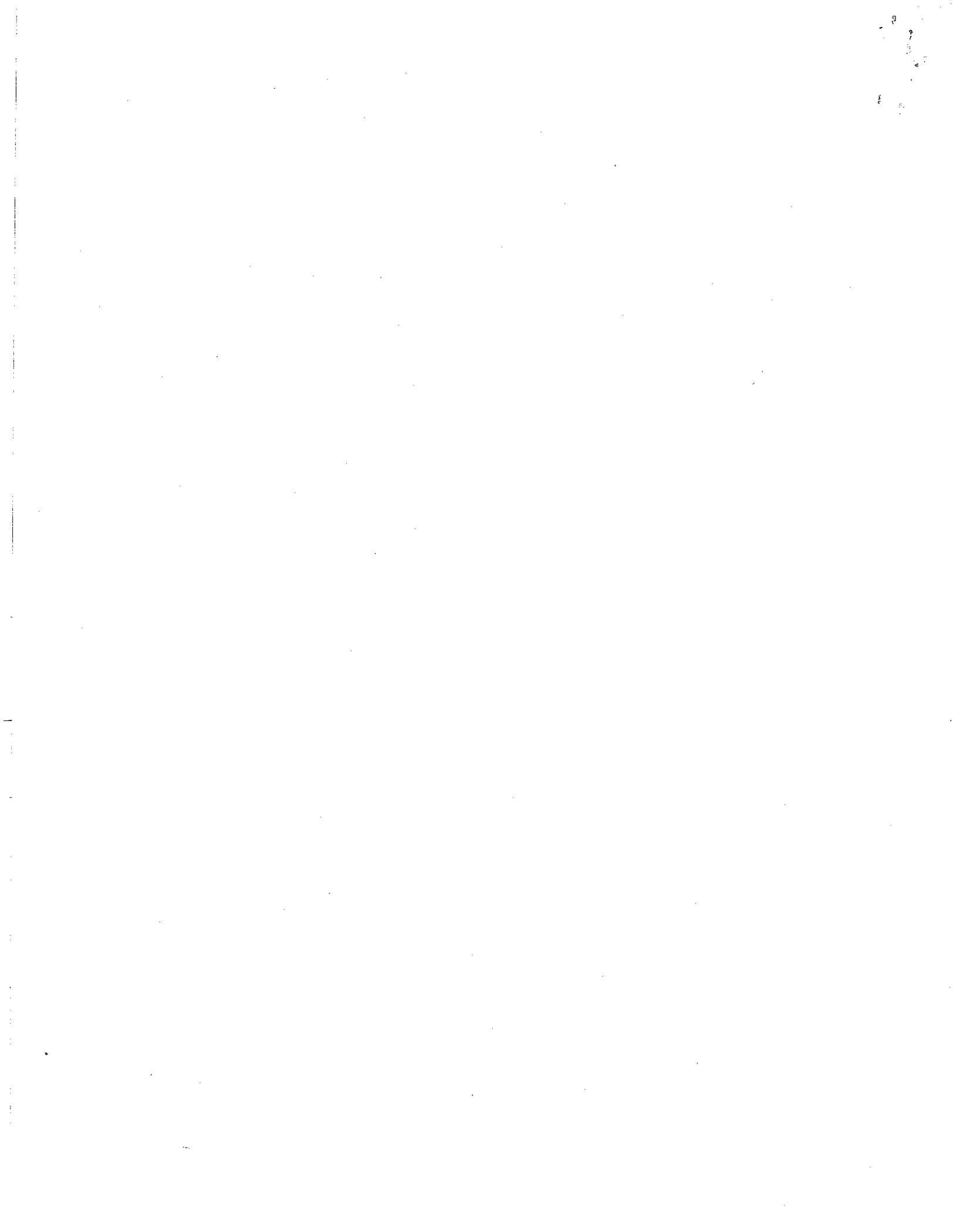
DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 21st day of December, 2009, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 12th day of January, 2010.

JEFFREY J. COX
City Clerk

by *Heather Osinski*
Assistant
CITY OF DULUTH, MINNESOTA



**AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF DULUTH
AND**

PROFESSIONAL GOLF MANAGEMENT, INC.

The Agreement #21045 (the "Agreement") between City of Duluth ("City") and Professional Golf Management, Inc. ("Concessionaire") relating to Concessionaire's management of the Golf Courses is amended as set forth below. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, the City and Concessionaire wish to amend the Agreement to extend the Term of the agreement.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the parties agree as follows:

1. Article 2 (TERM) of the Agreement is amended as follows

The term of this Agreement shall begin on January 1, 2010, and end at midnight, ~~December 31, 2012~~ December 31, 2013, unless earlier terminated by either party, as set out herein.

2. Article 3 of the Agreement is amended as follows (deleting the strike through language and adding the underlined language):

3.1 City may terminate this Agreement without cause by giving Concessionaire at least sixty (60) days written notice prior to December 31, ~~2012~~ 2013. City may terminate this Agreement for cause pursuant to Article 3.1 hereof. City may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, April 1, 2011 through October 1, 2011, ~~and April 1, 2012 through October 1, 2012,~~ and April 1, 2013 through October 1, 2013. The City may, at any time within 60 days notice, terminate this Agreement in the event it sells all or part of one or more of the Golf Courses.

3.2 Concessionaire may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, and April 1, 2011 through October 1, 2011, ~~and April 1, 2012 through October 1, 2012,~~ and April 1, 2013 through October 1, 2013. Otherwise, Concessionaire may terminate this Agreement without cause by giving the City at least sixty days written notice.

3. Article 17 of the Agreement is amended as follows (deleting the strike through language and adding the underlined language):

17.1.1 Periodic fixed payments to be determined by City Auditor after consultation with Concessionaire based on an annual fee of \$400,000 for the first year (2010), \$408,000 for the second year (2011), ~~and \$416,160 for the third year (2012)~~ and \$416,160 for the fourth year (2013).

4. The following paragraph will be added to Article 5 of the Agreement:

5.2 Concessionaire represents and warrants that for the life of the contract, the software and services used for processing transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). Concessionaire agrees to indemnify and hold the City, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of City customer and or user of the Golf Course credit card or identity information managed, retained or maintained by Concessionaire, including but not limited to fraudulent or unapproved use of such credit card or identity information.

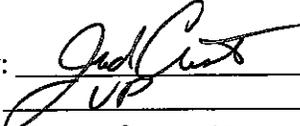
5. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

CITY OF DULUTH

**PROFESSIONAL GOLF
MANAGEMENT, INC.**

By: 
Its Mayor

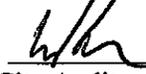
By: 
Its VP

Attest: 
Its City Clerk

Tax I.D. 8985067

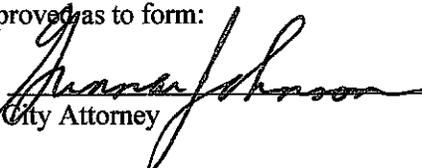
Countersigned:

By: PAUL SCHWITZ
Its VICE PRESIDENT

By: 
Its City Auditor

Tax I.D. 8985067

Approved as to form:

By: 
Its City Attorney

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 12-0622

ADOPTED: DECEMBER 17, 2012

RESOLVED, the proper city officials authorize amendment to Concession Management Agreement 21045, substantially the same as that on file in the office of the city clerk as Public Document No. 12-1217-31, between the city and Professional Golf Management, Inc. The amendment extends operation and management of the Lester Park and Enger Park golf courses for an additional year, ending December 31, 2013. The annual cost in 2013 will be \$416,160, payable from Fund 503 (golf), 400 (parks and recreation), ENGR and LSTR (Enger and Lester Golf Course).

Resolution 12-0622 was unanimously adopted.

Approved December 17, 2012

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 17th day of December, 2012, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 28th day of December, 2012.

JEFFREY J. COX
City Clerk

by Janina Oswald
Assistant
CITY OF DULUTH, MINNESOTA

SECOND AMENDMENT TO AGREEMENT

BETWEEN THE CITY OF DULUTH

AND

PROFESSIONAL GOLF MANAGEMENT, INC.

The Agreement #21045 (the "Agreement") and Amendment (the Amendment) between City of Duluth ("City") and Professional Golf Management, Inc. ("Concessionaire") relating to Concessionaire's management of the Golf Courses are amended as set forth below. (The Agreement and the Amendment are collectively referred to as the "Agreement") Capitalized terms used in this Second Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, the City and Concessionaire wish to amend the Agreement to extend the Term of the agreement.

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the parties agree as follows:

1. Article 2 (TERM) of the Agreement is amended as follows

The term of this Agreement shall begin on January 1, 2010, and end at midnight, ~~December 31, 2013~~ December 31, 2014, unless earlier terminated by either party, as set out herein.

2. Article 3 of the Agreement is amended as follows (deleting the strike through language and adding the underlined language):

3.1 City may terminate this Agreement without cause by giving Concessionaire at least sixty (60) days written notice prior to December 31, ~~2013~~ 2014. City may terminate this Agreement for cause pursuant to Article 3.1 hereof. City may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, April 1, 2011 through October 1, 2011, and April 1, 2012 through October 1, 2012, and April 1, 2013 through October 1, 2013 and April 1, 2014 through October 1, 2014. The City may, at any time within 60 days notice, terminate this Agreement in the event it sells all or part of one or more of the Golf Courses.

3.2 Concessionaire may not terminate this Agreement without cause during the period April 1, 2010 through October 1, 2010, and April 1, 2011 through October 1, 2011, and April 1, 2012 through October 1, 2012, and April 1, 2013 through October 1, 2013 and April 1, 2014 through October 1, 2014. Otherwise, Concessionaire may terminate this Agreement without cause by giving the City at least sixty days written notice.

3. Article 17 of the Agreement is amended as follows (deleting the strike through language and adding the underlined language):

17.1.1 Periodic fixed payments to be determined by City Auditor after consultation with Concessionaire based on an annual fee of \$400,000 for the first year (2010), \$408,000 for the second year (2011), and \$416,160 for the third year (2012), and \$416,160 for the fourth year (2013) and \$416,160 for the fourth year (2014).

4. The following paragraph will be added to Article 5 of the Agreement:

5.3 Concessionaire must attest that it is complying with the Data Security Standard annually. This involves delivering a package attached as Schedule A of three items due on or before February 1st of each year to the City Treasurer's office located at 411 W 1st St, Room 107, Duluth, MN 55802:

- a. Self-Assessment Questionnaire (PCI-DSS SAO C)
- b. Regular network or web site scanning by an Approved Scanning Vendor
- c. Signed Attestation of Compliance

The City may request a Report on Compliance by a Qualified Security Assessor or similar PCI Security Audit performed by either City staff or a contractor selected by the City. If the aforementioned package has not been delivered by the expected due date or if the audit results in a non-compliant security status, the processing of credit cards online, over the counter and over the phone may be terminated at the discretion of the City.

5. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

CITY OF DULUTH

**PROFESSIONAL GOLF
MANAGEMENT, INC.**

By: [Signature]
Its Mayor

Attest: [Signature]
Its City Clerk

Countersigned:

By: [Signature]
Its City Auditor

Approved as to form:

By: [Signature]
Its City Attorney

By: [Signature]
Its MANAGEMENT TEAM

Tax I.D. 26-0481595

By: [Signature]
Its MANAGEMENT TEAM

Tax I.D. 26-0481595

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 13-0539

ADOPTED: DECEMBER 9, 2013

RESOLVED, the proper city officials authorize amendment to Concession Management Agreement 21045, substantially the same as that on file in the office of the city clerk as Public Document No. 13-1209-12, between the city and Professional Golf Management, Inc. The amendment extends operation and management of the Lester Park and Enger Park golf courses for an additional year, ending December 31, 2014. The annual cost in 2014 will be \$416,160, payable from Fund 503 (golf), 400 (parks and recreation), ENGR and LSTR (Enger and Lester golf course).

Resolution 13-0539 was unanimously adopted.

Approved December 9, 2013

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the ninth day of December, 2013, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 30th day of December, 2013.

JEFFREY J. COX
City Clerk

by Dennis Boudreau
Assistant
CITY OF DULUTH, MINNESOTA

21045-02