

MANAGEMENT AGREEMENT BETWEEN THE CITY OF SAINT PAUL AND
PROM MANAGEMENT GROUP, INC.

This Management Agreement is entered into this ____ day of January, 2014 between the City of Saint Paul, a municipal corporation, through its Department of Parks and Recreation, 400 City Hall Annex, 25 W. Fourth Street, St. Paul, Minnesota, 55102 (“City”) and Prom Management Group, Inc., 484 Inwood Avenue Oakdale, MN 55128 (“Manager”).

WHEREAS, the City is the owner of four golf courses, two of which it has determined should be managed and operated by an outside vendor; and

WHEREAS, the City issued a Request for Proposals (“RFP”) for the management and operation of the Como Golf Course and Clubhouse and the Phalen Golf Course and Clubhouse; and

WHEREAS, Manager and City have negotiated this Management Agreement (“Agreement”) based upon the Request for Proposals and the Manager’s response;

Now, therefore, Manager and City enter into this Agreement under the terms and conditions listed below:

1. **Term of Agreement.** This Agreement will begin on the date of final execution and will continue for a period of five (5) years.
2. **Scope of Services.**
 - A. The City grants to Manager the exclusive right to manage and operate the Como Regional Park Golf Course and Clubhouse, 1431 N. Lexington Parkway, Saint Paul, MN, 55103, (“Como Site”) and the Lake Phalen Golf Course and Clubhouse, 1615 Phalen Drive, Saint Paul, MN, 55106, (“Phalen Site”) as further described in Attachment A. Collectively the Como Site and the Phalen Site are hereinafter referred to as “Golf Courses”.
 - B. Manager shall be solely responsible for the hiring, training, employment, performance, review and compensation of adequate personnel to meet the operation needs of the Golf Courses. Consistent with Saint Paul Administrative Code §85.07(e)(3), Manager shall offer any available employee positions at the Golf Courses to city employees who are subject to layoff due to the elimination of city positions caused by the entry into this Management Agreement and who satisfy the hiring criteria of the contractor. Except for the requirement of a full-time superintendent at each Site, and a robust player development program for both Sites, the Manager is responsible for determining appropriate staffing needed to efficiently and effectively manage the Golf Courses.
 - i. All individuals performing work for Manager pursuant to this Agreement will be employees or agents of the Manager, and not of the City. Manager shall be responsible for payment of all applicable social security, unemployment, workers compensation or other employment taxes or contributions of insurance and

benefits, and shall comply with all federal and state laws relating to employment. Wages paid must be in conformance with Saint Paul Administrative Code § 85.09(1).

- ii. Manager shall not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.
- iii. Manager shall ensure that all employees or agents working at the Golf Courses are neatly dressed and groomed and conduct themselves courteously and professionally in their interactions with the public.

C. Como and Phalen Clubhouses:

- i. Manager shall provide food and beverage concession operations at the Como and Phalen Clubhouses, providing a menu at a minimum equal to the standard of concession operations at other metropolitan area public golf courses. All concession operations must meet all State and local health and safety requirements, and must be maintained in a clean, sanitary manner. Manager is responsible for obtaining any licenses required for the operation of food service at the Clubhouses.
- ii. Manager is responsible for providing adequate staffing and for setting hours of operation that meet the needs of users of the concession operations.
- iii. Manager will research and develop recommendations for fees charged for golf-related services, food and beverage operations and banquet room functions.
- iv. Manager will be permitted to use the City's liquor license privileges by requesting use of such license, and paying for it, provided the use by Manager of the City's license is approved by the City Council. Use of the liquor license requires the Manager to comply with all state and local laws relating to the service of alcohol, and to obtain the appropriate amount of Liquor Liability insurance naming the City as an additional insured. Parks and Recreation policy requires the use of an off duty police officer for security at any event of 100 or more attendees, unless waived by the Director of Parks.

- v. Manager acknowledges that the City has entered into an exclusive beverage agreement with Coca Cola which includes the Como and Phalen Sites and agrees to order only the beverages permitted under that agreement.
- vi. Manager shall make available for sale hats, shirts, towels, golf balls, golf tees, gloves and such other merchandise as it may deem profitable to provide for sale to users of the golf course. Manager must sell merchandise using the City's course logo. Merchandise should be of good quality, attractively displayed and priced consistently with other comparable golf course pro shops.
- vii. Manager shall market and promote the use of the Clubhouses for meetings and events, and will create and maintain a positive and customer-friendly atmosphere. Manager may operate the Clubhouses year-round.
- viii. The Clubhouses must be maintained in a neat and orderly condition at all times.
- ix. Manager shall complete a daily report of all Clubhouse transactions, including food, merchandise, room rentals and any other activity, and ensure that all funds collected are deposit daily.
- x. Manager shall have the exclusive right to provide catering services at the Clubhouses. Catering services include the sales and service of food and beverages, including alcoholic beverages, provided to a group for an identified event, as well as provision for associated services and items such as linens, silverware and glassware, flowers, and decorations.
- xi. Manager shall market and promote the Clubhouses for banquets, private parties, receptions, luncheons and any other such event.
- xii. Manager will have in plain view at all times in the Clubhouses a price list or printed schedule of prices of all available commodities and services. All prices will be competitively priced with establishments within the service area which have similar functions.
- xiii. During the normal golf season, Manager shall keep the clubhouses open from sunrise to sunset, except when the golf courses are closed to public use. The clubhouses may open earlier or remain open later for special events, but must comply with Parks and Recreation policies on closing times.
- xiv. City may elect to maintain existing safety and security offices in the lower level of Phalen Clubhouse. Manager agrees to make access available to City staff assigned.

D. Como and Phalen Golf Courses.

- i. Manager shall maintain the golf course and grounds in a manner which ensures proper playing conditions which meet or exceed the turf standards at other metropolitan public golf courses, as more completely set forth in Attachment B (maintenance standards from RFP).
- ii. Manager will control play, direct rangers, and provide golf rules interpretation for customers.
- iii. Manager shall make an adequate quantity of golf carts available for course users. Carts must be clean and undamaged.
- iv. Manager must manage tee times in a manner that will maximize use of the golf course.
- v. Manager must maintain accurate records of tickets sold for golf course, cart rentals and complete a daily report of all transactions and ensure funds collected are deposited daily.
- vi. Greens fees structure will remain consistent with the current City structure. Proposed rates must be approved prior to the golf season by the City.
- vii. Manager shall develop and distribute promotional marketing materials for activities on the golf courses. At a minimum, Manager will continue using existing GolfStPaul.org website, and will work with City on citywide marketing and branding efforts for all the courses.
- viii. Manager will control play, direct rangers, and provide golf rules interpretation for customers.
- ix. Manager will provide golf lessons to the public.
- x. Manager will develop, coordinate, and promote quality golf programs, leagues, and tournaments for men, women, seniors, juniors, and beginners.
- xi. Make food and beverages available to players on the golf course.
- xii. Manager will work closely with golf organizations, citizen groups, vendors, and industry representatives to ensure quality services are being provided.
- xiii. Manager will work with the City to identify and prioritize major course improvements and other capital maintenance needs.
- xiv. Manager will keep current on new developments in the golf business and implement positive innovations for improving course services.

- xv. Manager will work with the City to provide a Tee reservation/POS system, which integrates all the City Golf courses and Parks Administrative officers.
- xvi. All Season pass holders will have golfing privileges at Como, Phalen, Highland National, and Highland 9 hole courses. The Manager will keep records of actual rounds played by season pass holders and shall account for rounds played by season pass holders separate from other types of rounds played. At the end of the golf season, revenue generated from the sale of season passes at all City golf courses will be split according to the percentage of total season pass rounds played at each golf course.
- xvii. Manager will honor Loyalty programs that the City has opted to participate in, and revenue will be shared in the same manner as season passes.
- xviii. Gift cards issued prior to 2014 season, which are redeemed, are the financial responsibility of the City. Manager will keep records of redeemed gift cards and submit records to City for reimbursement.
- xix. Manager shall manage and operate the practice range at Phalen golf course, including washing, dispensing and picking of practice range balls.
- xx. Manager shall provide at its own expense an adequate supply of golf balls and baskets for the Phalen golf course driving range. Manager may use the existing inventory without charge.
- xxi. The Phalen golf course driving range hitting surfaces must be well maintained, and balls should be cleaned and picked regularly throughout the peak times of the day. Adequate rental clubs should be made available. The driving range should be marked for 100, 150, 200, and 250 yards, and adequate safety features in the hitting area should be assured.

3. Payment.

A. Manager shall pay the City 4% of the gross revenues (excluding sales tax) earned by Manager from the Management of the Golf Courses. Gross Revenue includes: green fees, League fees, revenues from tournaments, rental of golf carts, driving range balls, pull carts, golf clubs or equipment from Manager, sale of Pro shop merchandise, food and beverages, vending machines, rental of rooms, banquet and catering revenue, revenue from private and group golf lessons, sponsorships, advertising, film-making, photography, pond ball retrievals, and any other related income derived from management of the Golf Courses.

B. Manager shall pay the City the sum of \$65,000 annually (\$35,000 for Phalen site and \$30,000 for Como site) as a guaranteed minimum payment, regardless of the gross revenue earned.

C. Payment shall be made to the City by the 20th of each month,

based on revenue collected from the previous month. Along with payment each month, the City shall receive a financial statement in Microsoft Excel or convertible to Excel showing gross receipts and expenses. Manager will retain in an orderly fashion, all cash register receipts and invoices to be made available to the City upon request.

- D. By March 31st of each year, the Manager shall deliver to the City a financial report prepared and compiled by a Certified Public Accountant (CPA) and sworn to by the Manager which sets forth an income statement, balance sheet and gross sales made on or from the Golf Courses during the previous fiscal year. Said report shall present fairly the financial position of the Manager and its operations and cash flows for the fiscal year and be in conformance with generally accepted accounting principles. If total payments made to the City are below the minimum guaranteed payment, Manager must make a lump sum payment with this report to satisfy any shortfall.
- E. The Manager shall invest \$10,000 per course in 2014, 2015 and 2016 and \$20,000 per course in 2017 and 2018 for Capital Investment. The City shall make a Capital Investment of \$30,000 per year and per course during the five year term.
- F. Manager shall maintain books and records for the operations of the Golf Courses and such books and records must be kept in accordance with generally accepted accounting principles as uniformly applied and modified for the operation of facilities such as the Golf Courses. All books and records will be available for inspection and copying during normal business hours by the City upon request, within 48 hours.
- G. The City has the right to audit and inspect Manager's books, or to have an audit performed by a third party. Any such audit will be at the City's expense. Manager must retain for six (6) years after the expiration or termination of this Agreement all books, records, and reports relating to the operation of the Golf Courses.

4. **Furnishings and Equipment.**

- A. All existing kitchen equipment, Clubhouse furniture and fixtures, golf course maintenance equipment and other such items remain the property of the City but may be used by Manager during the term of this Agreement. Manager will be responsible for reasonable care and maintenance of these items. In the event that Manager wishes to upgrade, update, redecorate or add furnishings and equipment to the Como or Phalen Clubhouses, it will be at the Manager's cost, and not part of the agreed upon capital investment or capital maintenance program, and those items purchased which are removable will remain the property of Manager. Any permanent fixtures will become the property of the City.

B. Capital equipment such as the irrigation system, wells, and any buildings or structures associated with the golf course remain the responsibility of the City in the event of major repairs or replacements.

C. Equipment use logs and repair records will be maintained by the Manager and submitted to the City for review monthly.

5. **Como Ski Operations:**

A. The ski operating season runs from the middle of November through February.

B. The City will continue to operate the Ski program at Como Golf along with the outside cross-country trail grooming at Phalen golf course. By September 1 of each year the Special Services Manager along with ski staff will coordinate with Manager of Como golf and provide a detailed timeline for the preparation of the golf course to be ready for the ski season.

C. City shall be responsible for all damages associated with the operations of the ski program. Manager and Special Services Manager or his/her agent will meet annually prior to the start of the golf season to inspect facilities.

D. The Manager will be responsible for providing concessions during the ski programmed days at Como.

6. **Maintenance & Repair:**

A. Manager shall be responsible for routine and preventative maintenance of the Golf Courses. Routine Maintenance includes:

- i. Daily sweeping, mopping, dusting, vacuuming, wiping of surfaces, and other janitorial services in the clubhouses
- ii. Daily cleaning and sanitizing of bathrooms and locker rooms, ensuring adequate supplies of soap, towels and toilet paper and other locker room supplies
- iii. Daily cleaning of kitchen, at a minimum to the level required by health and safety codes.
- iv. Routine maintenance of furniture, cleaning of upholstery, replacement or repair of any damaged furniture
- v. Routine painting, carpet cleaning, maintenance of exterior facade
- vi. Daily litter pickup in clubhouse and on grounds,
- vii. Routine maintenance of plumbing systems, electrical and lighting systems, mechanical systems or heating, ventilation or air conditioning systems, including periodic cleaning, lubrication and changing of filters or similar consumable components;
- viii. changing of light bulbs, fuses and circuit-breakers as they burn out;
- ix. washing of the interior and exterior of windows twice annually;
- x. proper annual spring start-up and end of season winterization of the irrigation systems at each facility to ensure integrity of these assets is maintained.
- xi. putting trash in the dumpster that will be provided by the City. The City will be responsible for emptying the dumpster on a routine schedule at the expense of the Manager.
- xii. Putting recyclables in the containers provided by the City and collected by the City vendor on a routine basis at the expense of the Manager.

- B. Maintenance facilities at both courses will be occupied in a shared capacity.
 - i. The Phalen maintenance facility, located at 995 Wheelock Parkway, will be shared with the City's Operations Division. No equipment from the two parties shall be shared.
 - ii. The Como maintenance facility will be shared with the winter operations for the months of November thru February.
 - iii. Separate billing for use of on-site Fuel dispensing system use at each course shall be the City's responsibility. Cost of fuel dispensed for Manager will be at the sole expense of the Manager.
- C. Snow removal services for parking lot areas and sidewalks at both courses will remain the responsibility of the City.
- D. All holding ponds located on grounds of both courses will continue to be maintained by current responsible entities. Future dredging responsibilities will be negotiated by both parties.
- E. If changes to the golf courses premises and/or buildings are necessary to comply with the Act for Disabled Americans (ADA) the City shall be responsible for making said changes.
- F. The City agrees to provide specialized equipment which the City owns for specialized maintenance projects required by Attachment B.
- G. City will be responsible for removal of damaged trees in the event of a major natural disaster, or which must be removed due to disease. Manager agrees to pay up to \$10,000 towards the costs of removal.
- H. City and Manager will cooperate in determining a plan for capital maintenance and capital improvement spending.
 - i. "Capital Maintenance" means:
 - (a) all capital modifications, repairs, or replacements to the Clubhouses or golf courses that are reasonably necessary to keep the Golf Courses in the condition required by this Agreement or to prevent the facilities and amenities from becoming materially outdated or obsolete;
 - (b) all work, the cost of which may properly be capitalized under GAAP, that is reasonably required to be performed in and about the Golf Courses to repair, restore or replace any elements of the golf courses or clubhouses necessitated by any damage, destruction, ordinary wear and tear or obsolescence, including repairs, the cost of which may properly be capitalized under GAAP or capital replacements, repairs, or modifications required by law
 - ii. Capital Investment means additions of upgrades or modifications to the Clubhouses or golf courses which add to the value of the properties, prolong their useful life or add new uses.

7. **Alterations.** Manager will not make any alterations to Golf Courses without the written consent of the City, such consent not to be unreasonably withheld. If Manager wishes to make any such alterations, an accurate description shall first be submitted to and approved by the City and such alterations shall be done by the Manager at its own expense. Manager agrees that all alterations will be done in a workmanlike manner and in conformance with applicable building codes, and that no liens will attach to the Golf Courses by reason thereof. If required by the City, performance and payment bonds equal to the total amount of the project will be posted by Manager. All such work will be performed under the City's supervision and any improvements will become the property of the City.

8. **Performance Standards.** Pursuant to Saint Paul Administrative Code §85.09 (2), the following service and performance standards are required of Manager in its operation of the Golf Courses:
 - A. Maintain the clubhouses and golf courses in accordance with the standards set forth in this Agreement.
 - B. Increased revenue generated from food and beverage sales, banquets and facility rentals sales from City performance.
 - C. Manager will meet customer service quality, course conditions, playable quality, food and beverage quality, cleanliness of clubhouse and overall value of course goals. Special Services Manager will meet with Manager monthly to discuss, review and potentially determine action steps. The Metrics set forth in Attachment C will be used to assess whether Manager as met these standards.

9. **Utilities.** Manager shall be responsible for payment of the utilities for the Golf Courses for the period from March 1 through October 31. City will reimburse Manager for the utilities from November 1 through February 28.

10. **Taxes and Assessments.** The City agrees that the Manager is not responsible for property taxes or assessments on the Golf Courses.

11. Hold Harmless. Manager shall defend and indemnify the City, its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property except to the extent that such claims arise out of the City's use of the Como golf course for ski operations or are due solely to the City's negligence or willful misconduct. Manager must submit notice of any injuries, claims or suits to the City within thirty (30) days of receipt of such notice.

12. **Modifications, amendments.** Amendment or Changes to Agreement. No alterations, amendments, or modifications to the provisions of this Agreement are valid unless reduced to writing and duly signed by the parties.

13. **Notices.** Any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

City of Saint Paul

Manager

Special Services Manager
Saint Paul Parks and Recreation
25 W. Fourth Street, Ste. 400
Saint Paul, MN 55102

President
Prom Management Group
484 Inwood Avenue
Oakdale, MN 55128

14. **Termination.**

A. If either party fails to carry out a material term of this Agreement, the other party may terminate this Agreement upon giving written notice of the breach and allowing thirty (30) days to cure.

B. The City may terminate this Agreement in the event of the occurrence of any of the following during the term of this Agreement:

- i. the filing of a petition to have Manager adjudicated bankrupt or a petition for reorganization or arrangement under any laws of the United States relating to bankruptcy filed by Manager, if such petition is not dismissed within 90 days of the date of such filing;
- ii. the assets of Manager or of the business conducted by Manager under this Agreement are assumed by any trustee or other person pursuant to any judicial proceedings;
- iii. Manager makes any assignment of rights under this Agreement for the benefit of creditors;
- iv. the failure by Manager to purchase or maintain the insurance coverage required under this Agreement;
- v. the failure by Manager to make any payments due under this Agreement or to timely produce the financial information required.

15. **Independent Contractor.** The parties hereto agree that they are acting as independent contractors and that nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating a partnership, joint venture, or any other such mutual relationship between the City and Manager except as expressly agreed to herein. Each party shall be responsible for its own separate debts, obligations and other liabilities.**16. Insurance.**

1. General or Business Liability Insurance
\$1,500,000 per occurrence

\$2,000,000 aggregate per project

\$2,000,000 products/completed operations total limit

\$1,500,000 personal injury and advertising

Policy must include an “all services, products, or completed operations” endorsement.

2. Automobile Insurance

a. Bodily Injury \$ 750,000 per person

\$ 1,000,000 per accident

b. Property damage not less than \$50,000 per accident

3. Workers Compensation and Employer’s Liability

a. Worker’s Compensation per Minnesota Statute

b. Employer’s Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.

c. If Manager has 10 or fewer employees and does not have Worker's Compensation coverage Manager is required to provide the City with a completed “Certificate of Compliance” (State of Minnesota form MN LIC 04) verifying its number of employees and the reason for its exemption.

4. Property Insurance. Manager is expected to carry property insurance for its own property and contents brought to the premises for all causes of loss.

5. General Insurance Requirements

a. The policy is to be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.

b. The Manager must not commence work until a Certificate of Insurance covering all of the insurance required for this project is approved and insurance must remain in place for the duration of the Agreement.

c. Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance, of “each occurrence” and “aggregate” limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

17. **Interpretation of Agreement, Venue.** This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. Any litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

18. **Compliance with Applicable Law.** Manager must comply with all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Provider's performance of the provisions of this Agreement. It shall be the obligation of the Provider to apply for, pay for, and obtain all permits and/or licenses required.

19. **Conflict of Interest.**

- A. Manager agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the City.
- B. Manager's acceptance of this Agreement indicates compliance with Chapter 24.03 of the Saint Paul Administrative Code: "Except as permitted by law, no City official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City."
- C. Manager agrees that, should any conflict or potential conflict of interest become known, Manager will advise the City of the situation so that a determination can be made about Manager's ability to continue performing services under the Agreement.

20. Destruction of Facilities by Fire or Casualty. If the Facilities, or any part thereof, shall be partially or totally destroyed by fire or other casualty, the City retains the exclusive right to determine whether it will repair or rebuild the Facilities. In the event that the City determines that it will not repair or rebuild the Facilities and the damage to the Facilities materially impairs the ability of the Manager to conduct the business contemplated hereunder, either party may terminate this agreement upon thirty (30) days advance written notice to the other party.

21. Entire Agreement. It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

For the City of Saint Paul:

For Prom Management

Mayors Office

By _____
Its

Director, Parks and Recreation

Finance Director

