

**SECOND AMENDMENT TO THE PROFESSIONAL
FULL GOLF SERVICES MANAGEMENT AGREEMENT**

This **SECOND AMENDMENT TO THE PROFESSIONAL FULL GOLF SERVICES MANAGEMENT AGREEMENT** (this "Second Amendment"), is made and entered into effective as of July 21, 2015 (the "Effective Date"), by and between **the CITY OF MCKINNEY**, a Texas Municipal corporation (hereinafter "City") and **DWW GOLF MANAGEMENT**, a Texas limited liability corporation (hereinafter "Manager").

- A. City and Manager entered into that certain Professional Full Golf Services Management Agreement (hereinafter "Management Agreement") dated as of April 1, 2009.
- B. City and Manager entered into that certain First Amendment to the Professional Full Golf Services Management Agreement, effective January 19, 2010.
- C. City and Manager desire to amend the Management Agreement as further set forth herein. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, City and Manager hereby agree to amend, modify and supplement the Management Agreement as follows:

- 1. Section 1.04 **Gross Receipts** shall be amended to read as follows:

"Gross Receipts" means Manager's gross revenue from all Manager's sales and services made or provided in connection with Manager's operations at the Oak Hollow Golf Course, including sales and services provided by Oak Hollow Beverage, as otherwise provided under the terms and conditions of this Agreement, whether made or provided upon the basis of cash payment or on credit (whether collected or not); provided, however, there shall be excluded or deducted, as the case may be, from Gross Receipts the following:

- A. All sales taxes, and retailers' excise taxes, paid or collected by or payable by Manager, but only if such taxes are added to the selling price and separately stated from the selling price of merchandise or services, and collected from customers.
- B. All bona fide credits or refunds made by Manager to customers in regard to merchandise sold or services provided by Manager.
- C. All sums or credits received in settlement of claims for loss or damage to merchandise and assets.

D. All fees generated through golf lessons which shall be paid directly to the professional.”

2. Section 1.06 **Operating Expenses** shall be amended to read as follows:

“Operating Expenses shall include all costs and expenses necessary for the operation of the golf course, including all golf course facilities, in the ordinary course of business, to include, but not be limited to, the following: the cost and fees of the Finance Director's services; insurance (100% if separate policy for City); utilities; any management fee(s); depreciation; amortization; golf rental fees and the cost of salaries, wages and benefits of the Manager. Manager shall obtain all utility accounts solely in Manager's name; however Manager's water/wastewater usage account will be charged at the City's governmental rate. Operating Expenses shall be the sole responsibility of the Manager and determined in accordance with generally accepted accounting principles consistently applied.”

3. Section 2.03.A **Term** shall be amended to read as follows:

“A. The initial term of this Agreement shall be for a period of five (5) years, which commenced on April 1, 2009 (the "Initial Term") and terminated on March 31, 2014. At the end of the Initial Term, the first of two (2) allowable five (5) year extensions was executed (referred to as the first "Renewal Term") beginning on April 1, 2014 and terminating on March 31, 2019, and so long as Manager's performance is acceptable to City and Manager is in full compliance hereunder, City shall have the option to renew for an additional five (5) year term (referred to as the second "Renewal Term") beginning April 1, 2019 and terminating on March 30, 2024, such renewal being on terms acceptable to the City.”

4. Section 2.04.A(4) **Cart Rental** shall be amended to read as follows:

“Manager shall maintain for rental an adequate number of power-driven golf carts and shall increase the number of carts provided if necessary to reasonably meet the demands of the public patronizing the golf course.

Manager shall continuously maintain not less than sixty (60) power-driven carts and shall increase the number of carts if necessary to reasonably meet the demands of the public patronizing the golf course. All required power-driven carts shall have shade tops. All golf carts shall be managed and maintained in high quality condition and reflective of a top-tier golf course. Any carts which are inoperable or which indicate excessive wear shall be immediately replaced at Manager's expense. Unless otherwise agreed in writing by the parties, all golf carts shall be replaced on a two (2) year replacement cycle. Manager shall provide City will a record of such replacement cycle, by model and serial number. At the annual meeting

held pursuant to Section 2.09 below, the parties shall consider any request by Manager to modify the replacement cycle described herein.”

5. Section 2.04.A.6(c) **Fees** shall be amended to read as follows:

“(c) Fees

Unless otherwise specifically contained in the City’s Fee Ordinance, Manager shall charge and collect golf course fees according to an agreed, written fee schedule to be formulated between the City Manager, or his designee, and Manager in January of each year of this Agreement, including each year of any extension term. Market rates shall be considered during the evaluation and formulation of new fees. The fee schedule attached as Exhibit C shall govern fees and charges until otherwise modified pursuant to this paragraph. The City Manager shall set fees and charges for any period in a manner that is consistent with the annual Park budget. Upon any modification to the fees and charges, the parties shall execute an acknowledgement of such fees. Save and except instances where Manager has obtained the prior written consent of the Director, Manager’s failure to properly assess fees to any golf course user shall constitute non-compliance under Section 2.21.”

6. Section 2.09 **Operating Budget** shall be amended to read as follows:

“Manager is solely responsible for the formulation and implementation of operating programs, business plans, and Operating Budgets for the Golf Course. It is the Manager’s responsibility to monitor its adherence to the Operating budget on an ongoing basis. Any expenditure included in the Operating Budget shall be considered an Operating Expense for which Manager assumes sole and full responsibility. In January of each year, Manager shall meet with the Director to review the Agreement terms, discuss conditions of the Facilities, and establish a list of priorities for enhancement of the Facilities as part of the City’s annual budget process. Manager is not required to attend all Park and Recreation Board meetings; however Manager may be required to meet with such board, upon request. Manager shall make an annual report to the Park and Recreation Board in January of each year. The Director will prescribe the contents of the annual report to the Manager prior to each annual report.”

7. Section 2.10 **Operating Payments** shall be amended to read as follows:

“Manager shall remit to the City a monthly payment of eight (8%) percent of the monthly Gross Receipts, as defined in Section 1.04, plus \$1.00 for every 9-hole and 18-hole round of golf played at the golf course, each month of the term. Payments will commence on the 15th of the month following the first month of operation, and thereafter not later than the 15th calendar day of each succeeding calendar month throughout the term of

this Agreement. Sums paid hereunder are subject to reconciliation and adjustment as provided in Section 2.14 hereto.

In the event of any extension of this Agreement pursuant to Section 2.03, Manager shall continue to pay City the operating payments pursuant to the terms of this Agreement for such extension period, unless otherwise agreed to by City and Manager.

Manager shall submit all such payments at the Office of the Director. Any payment made by check shall be payable to the order of the City of McKinney.”

8. Except to the extent the Agreement is modified by this Second Amendment, the remaining terms and conditions of the Management Agreement shall remain unmodified and in full force and effect. In the event of any conflict between the terms and conditions of the Management Agreement and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment shall prevail and control. The First Amendment is terminated and superseded hereby in its entirety.

9. The Management Agreement and this Second Amendment, embodies the entire understanding between the parties hereto with respect to its subject matter and can be changed only as set forth in the Management Agreement.

10. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same Second Amendment.

IN WITNESS WHEREOF, the undersigned have duly executed this Second Amendment to be effective as of the day and year first above written.

CITY:

CITY OF MCKINNEY
a Texas municipal corporation

By: _____
Tom Muehlenbeck
Interim City Manager

Date: _____

DWW GOLF MANAGEMENT,
a Texas limited liability corporation

By: _____
Name: _____
Title: _____
Date: _____

(Seal)

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit C

Oak Hollow Golf Course

2015 – 2016 OAK HOLLOW RATES

<u>GREEN FEE</u>	<u>WEEKDAY</u>	<u>WEEKEND</u>
Resident		
• 18 holes	\$21	\$31
• 9 holes	\$15	\$20
Non-Resident		
• 18 holes	\$23	\$34
• 9 holes	\$16	\$21
City Employee		
• 18 holes	\$16	\$16
• 9 holes	\$11	\$11
Senior (55+ years of age)		
• 18 holes	\$16	\$16
• 9 holes	\$11	\$11
Junior (15 years and under)		
• 18 holes	\$16	\$16
• 9 holes	\$11	\$11

GREEN FEE – TWILIGHT

After 3 pm	\$15	\$20
After 5 pm	\$10.50	\$15.50
Tournament	\$34.00	\$44

MISCELLANEOUS FEES

Cart Fee	
• 18 holes	\$13.00
• 9 holes	\$ 9.50
Range Balls	
• Large (120)	\$12.00
• Medium (80)	\$ 8.00
• Small (40)	\$ 4.00

MEMBERSHIP

Range only	\$34.99 per month
Annual Green Fees (includes range):	
• Resident	\$1000 plus \$500 cart option
• Non-Resident	\$1100 plus \$500 cart option