

AMENDMENT NO. 3 TO MANAGEMENT AGREEMENT BETWEEN
THE CITY OF PALO ALTO AND BRAD LOZARES GOLF SHOP FOR
PROFESSIONAL SERVICES AT 1875 EMBARCADERO ROAD,
PALO ALTO

THIS AMENDMENT NO. 3 to the Management Agreement between the City of Palo Alto and Brad Lozares Golf Shop for Professional Services at the Palo Alto Municipal Golf Course, ("Agreement,") is made and entered into this _____ day of OCTOBER 2008, by and between the City of Palo Alto, a municipal corporation ("CITY") and Brad Lozares Golf Shop, a sole proprietorship ("GOLF PROFESSIONAL").

RECITALS

- A. GOLF PROFESSIONAL has assumed responsibility for and continued the operation and management of course play for the Golf Course facility on behalf of the CITY on the terms and conditions set forth in the Management Agreement dated January 28, 2003.
- B. On May 15, 2006, the parties amended the Agreement to extend the term December 31, 2007, and to increase the fixed fee to \$27,660.25 per month and reimburse GOLF PROFESSIONAL for sixty percent (60%) of finance charges associated with the payment of service charges for golf carts by credit card.
- C. On May 15, 2007, the parties amended the Agreement to extend the term to December 31, 2008, and to increase the fixed fee to \$28,213.46 per month.
- D. The parties now wish to amend the Agreement to:
- (1) extend the term of the agreement to December 31, 2009;
 - (2) increase the fixed fee compensation by two percent (2%) Consumer Price Index ("CPI") to \$28,777.73;
 - (3) increase driving range fee revenue to the CITY by 2% and decrease the driving range fee revenue to GOLF PROFESIONAL by 2%; and
 - (4) decrease the baseline number of Productivity Reward Incentives for paid golf rounds from 87,000 to 77,500; increase the baseline number of Productivity Reward Incentives for power golf cart rentals from \$250,000 to \$300,000 and decrease the productivity reward for power golf cart rentals to \$100 per \$1,000.

NOW, THEREFORE, in consideration of the terms, conditions, and provisions of this Amendment, the parties agree as follows:

SECTION 1. Section III ("Term") is amended in its entirety to read as follows:

"III. TERM

The term of this Agreement shall commence on January 28, 2003 and end on December 31, 2009.

SECTION 2. (Section IV ("Compensation")), is amended in its entirety to read as follows:

"IV. COMPENSATION

During the term of the Agreement, GOLF PROFESSIONAL shall receive a fixed fee and percentage fees as defined below (collectively the Management Fee).

A. Fixed Fee

The GOLF PROFESSIONAL shall receive a fixed fee during the term of this Agreement for GOLF PROFESSIONAL's Golf Course and driving range management, Golf Course marshaling and starting and cart rental services. The fixed fee for the term of this agreement will be \$322,251 annually, based on a calendar year. The fixed fee shall be paid in 12 equal monthly installments.

During the eighteen month extension term from July 1, 2006 to December 31, 2007, the GOLF PROFESSIONAL shall receive a fixed fee payable monthly in the amount of \$27,660.25.

During the twelve month extension term from January 1, 2008 to December 31, 2008, the GOLF PROFESSIONAL shall receive a fixed fee in the amount of \$28,213.46, monthly.

During the twelve month extension term from January 1, 2009 to December 31, 2009, the GOLF PROFESSIONAL shall receive a fixed fee, in the amount of \$28,777.73, monthly.

CITY shall forward the fixed fee by the 5th working day of the CITY's working month for the amount due for that month to the GOLF PROFESSIONAL. If not received within ten calendar days after the fifth working day of the month, a late charge of one percent of monthly payment due and unpaid plus an administrative fee of \$45.00 shall be added to the payment due and unpaid, and the total monthly sum shall become immediately due and payable to GOLF PROFESSIONAL. The parties agree that such late charges represent a fair and reasonable estimate of the costs that GOLF PROFESSIONAL will incur by reason of City's late payments and that acceptance of such late charges in no event constitutes a waiver of CITY's default with respect to such overdue payment, nor prevents GOLF PROFESSIONAL from exercising any of the other rights and remedies granted hereunder or by any provision of law.

B. Percentage Fees

In addition to the fixed fee, GOLF PROFESSIONAL shall receive 38% percent of the gross revenues of the driving range and retain 40% of the gross revenue of the golf carts, golf club and pull cart rentals. Percentage fees for each month will be calculated and paid no later than the 10th day of the following month. In no event, however, shall the cumulative percentage fees paid to GOLF PROFESSIONAL for a single calendar year exceed the total fixed fee payments described in section IV-A herein for that same calendar year.

C. Golf Cart Fuel Reimbursement

GOLF PROFESSIONAL shall reimburse CITY quarterly for fuel supplied to gas golf carts. Reimbursement shall be at the current retail full service pump price on the date of billing for unleaded fuel, determined quarterly by CITY. GOLF PROFESSIONAL shall reimburse the City no later than the 20th of the month following the close of each quarter.

Productivity Reward (Incentives)

In order to enhance overall golf division business incomes, customer service & golf professional revenues, a productivity reward equal to a stated dollar amount based on increases of golf rounds, gross power golf cart rentals and driving range sales becomes effective with this agreement. (IRS section 1.141 revenue procedures). In addition to the fixed and percentage fees, the golf professional shall receive the following productivity rewards based on exceeding the following baseline golf rounds and gross sales:

PAID GOLF ROUNDS: (FEE, DISCOUNT CARD & REPLAY ROUNDS)

* Greater than 77,500 rounds \$3.00 PER ROUND

POWER GOLF CART RENTALS:

* Greater than \$300,000 INCREASE \$100 PER \$1,000

DRIVING RANGE SALES:

* Greater than \$440,000 \$200 PER \$1,000

INCREASE INCENTIVE DOLLAR DISTRIBUTION:

An unaudited statement of golf rounds and gross sales will be presented to the City in January of each calendar year. The City shall distribute to the golf professional such incentive payments for increased golf rounds, cart rentals and driving range sales as a direct city purchase of supplies related

to driving range and power carts.

When the fully audited statements become available, usually in April of each calendar year, a full reconciliation of actual productivity amounts will be completed, resulting in either additional direct third party reimbursements or a refund to the City from the Golf Professional for any overpayment.

- D. In addition to the foregoing, GOLF PROFESSIONAL shall receive a one-time payment of \$22,202 as full and complete compensation for any and all claims arising out of GOLF PROFESSIONAL's continued performance under the extended initial agreement during the period between May 1, 2001 and January 27, 2003."

SECTION 3. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment the day and year first written.

ATTEST:

CITY OF PALO ALTO

City Clerk

City Manager

APPROVED AS TO FORM:

BRAD LOZARES GOLF SHOP

Sr. Asst. City Attorney

By: _____

APPROVED:

Name: _____

Director, Administrative Services

Title: _____

Taxpayer Identification No.
