

Bill No. 451
2012

By-law No. A- _____

A By-law to authorize and approve an Agreement between London Golf Club Inc and The Corporation of the City of London.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law between London Golf Club Inc and The Corporation of the City of London is authorized and approved.
2. The Managing Director of Parks and Recreation, or written designate or other person authorized by the City Manager is delegated the authority to authorize and approve such further other documents, including agreements that may be required in furtherance of the agreement that are:
 - i) consistent with the requirements contained in the Agreement authorized and approved in 1 above;
 - ii) that do not require additional funding or are provided for in the City's current budget; and,
 - iii) that do not increase the indebtedness or liabilities of The Corporation of the City of London, subject to prior review and approval by the City Solicitor.
3. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law and any other agreements approved under section 2 of this by-law.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council November 20, 2012

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - November 20, 2012
Second Reading – November 20, 2012
Third Reading – November 20, 2012

SCHEDULE "A"

AGREEMENT

THIS AGREEMENT dated the 19th day of November, 2012, and effective as of the **1st** day of **January, 2013**

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the "City")

-and-

London Golf Club Inc
(hereinafter called the "Reseller")

WHEREAS the Reseller is a corporation duly incorporated pursuant to the laws of the Province of Ontario;

AND WHEREAS the Reseller purchases spots on tee-off times from various golf courses, and then resells the spots on tee-off times to the Reseller's members;

AND WHEREAS the Reseller allows the Reseller's members to reserve a golf club spot via its website, and to reserve a spot on the tee-off time directly with the golf course;

AND WHEREAS the City owns and operates 4 golf courses (Thames Valley Classic, Fanshawe Traditional, Fanshawe Quarry, and River Road ["City Golf Courses"]), offering various tee-off times with 4 spots per tee-off time;

AND WHEREAS the City wishes to maximize the usage of its City Golf Courses;

AND WHEREAS the Reseller has offered to: (i) pay the City a lump sum in exchange for up to 2750 unused spots on tee-off times at City Golf Courses which it can then resell to the Reseller's members; and (ii) for spots on tee-off times in excess of 2750, to pay the City \$55.00 including tax per spot on tee-off time booked by the Reseller's members;

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements herein, the parties hereto covenant and agree as follows:

1.0 DEFINITIONS:

1.1. In this agreement and any amendment to this Agreement, the following terms shall have the following meanings:

- (a) **"City Representative"** means the person delegated the authority to represent the City.
- (b) **"Spot"** means one of four spots in a tee-time at a City Golf Course, and "Spots" shall have a corresponding meaning.

2.0 TERM:

2.1 Length of Term

The term of this Agreement shall commence January 1, 2013 and shall terminate on November 30, 2013, subject to earlier termination as provided for in this Agreement.

2.2 TERMINATION

- 2.2.1 The City may terminate this Agreement for any reason and at any time without liability, cost or penalty, upon giving written notice to the Reseller at least thirty (30) calendar days before the desired termination date.
- 2.2.2 The City, without liability, cost or penalty may terminate this Agreement immediately upon giving notice to the Reseller if:
- (a) in the sole discretion of the City Representative, the Reseller has breached any term, warranty, representation, condition or provision of this Agreement;
 - (b) Bankruptcy:
 - (i) the Reseller is adjudged bankrupt or is insolvent according to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the regulations made thereunder; or,
 - (ii) a receiver or trustee of the Reseller's property and affairs is appointed; or,
 - (iii) the Reseller makes an assignment, proposal, compromise, or arrangement for the benefit of the creditors, is petitioned into bankruptcy, or files for the appointment of a receiver; or
 - (c) the City's Municipal Council ceases to own or operate the City's golf courses.
- 2.2.3 Where the City terminates this Agreement, the City shall return the lump sum paid by the Reseller for the term on a *pro rata* basis based on the number of unused Spots at \$45.45 including tax per Spot.
- 2.3 The parties agree that the Agreement between them dated and effective the 1st day of January 2012 is terminated as of the effective date of this Agreement.

3.0 OBLIGATIONS OF THE CITY:

3.1 Tee-times

- (a) The City shall reserve to the Reseller up to 88 Spots per day at City Golf Courses, from the start of the City's golf season to the end of the City's golf season, to a total maximum of 2750 Spots per golf season, as follows and subject to the listed restrictions:
- (i) Thames Valley Classic –
 - 16 Spots per day;
 - restriction: no Spots before 10:00 a.m.;
 - restriction: no Spots on Wednesday.
 - (ii) Fanshawe Traditional –
 - 24 Spots per day;
 - restriction: no Spots before 9:00 a.m.
 - (iii) Fanshawe Quarry –
 - 24 Spots per day;
 - restriction: no Spots before 9 a.m. on Saturday, Sunday or holidays.
 - (iv) River Road –
 - 24 Spots per day;
 - restriction: no Spots before 9 a.m.
- (b) The City's obligation to reserve the Spots to the Reseller is subject to the availability of such Spots at the time the Reseller member contacts the City to book the Spot.
- (c) The City may reserve to the Reseller Spots in excess of the 2750 Spots set out in (a) above, for a further fee of \$55.00 including tax per Spot, payable to the City by the Reseller monthly.
- (c) The City shall not charge any green fees to a Reseller member who has booked a Spot directly with the City and who provides the City with their membership card and photographic identification.
- (d) The City may charge the Reseller member for any other services the Reseller member

requests, including but not limited to golf cart rental, golf lessons, pull cart rentals, club storage, lockers, food and drink.

4.0 OBLIGATIONS OF THE RESELLER:

- 4.1 For the first term of the agreement, the Reseller shall pay the City \$125,000.00 including applicable taxes, in quarterly payments of \$31,250.00(including taxes) made on January 1, February 1, March 1, and April 1, 2013.
- 4.2 The Reseller shall pay the City a fee of \$55.00 (including taxes) per Spot that has been booked by a member of the Reseller directly with the City that is in excess of the 2750 Spots for a golf season. The Reseller shall pay the City this amount at month's end or within 30 days of the Reseller's members' use of the Spot.
- 4.3 The Reseller shall ensure it advises the Reseller's members to:
(a) book a spot in a tee-time directly with the City; and
(b) carry the Reseller's membership card and photo identification when attending at the City Golf Course;
otherwise the City's green fees as set out in its fees and charges by-law will be imposed on the Reseller member.
- 4.4 (a) The Reseller shall ensure the Reseller's members advise the Reseller that they will be reserving or have reserved a Spot at a City Golf Course.

(b) The Reseller shall be responsible for any reservation of a Spot by a Reseller's member, including but not limited to:
(i) in the event that the Reseller's member has not advised the Reseller of the reservation of a Spot at a City Golf Course; and
(ii) in the event that the Reseller's member has made a reservation of a Spot at a City Golf Course but cancels the reservation,
and such reservation of a Spot shall be used in calculating the number of Spots available to the Reseller
- 4.6 The Reseller shall ensure that any rate it advertises for its use of a City Golf Course is greater than the applicable golf course fees set out in the City's Fees and Charges By-law (e.g. the City's ½ price green fees as set out in the City's Fees and Charges by-law).
- 4.7 The Reseller shall ensure that it does not use the names of the City Golf Courses for its own search engine optimization (SEO) without the prior written consent of the City Representative.
- 4.8 The Reseller shall ensure that it obtains the City's prior written consent prior to using the City's logo or other intellectual property of the City. The City retains the right to approve any marketing materials that refer to the City or the City Golf Courses or any other City facility, and such approval can be sought through the City Representative.
- 4.9 The Reseller shall ensure that it discloses to the City, in writing and in advance, all proposed links to any other website. The City may terminate the Agreement upon 30 days notice, without penalty, if in its sole discretion it does not approve of some or all of the proposed links.
- 4.10 The Reseller shall fully disclose to the City any of the Reseller's programs that could leverage the City's golf course customers.
- 4.11 The Reseller shall not carry on any business or endeavour that would constitute an actionable nuisance.
- 4.12 (a) The Reseller agrees that it shall obey and observe all laws, by-laws and regulations of the City, the Province of Ontario and the Government of Canada.

(b) The Reseller represents that its purchase and resale of Spots at City Golf Courses complies with all laws, by-laws and regulations of the City, the Province of Ontario and the Government of Canada.

5.0 INSURANCE:

5.1 **Insurance.** The Reseller shall obtain and maintain during the term of this Agreement, at Reseller's sole expense:

- (a) general liability insurance on an occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000) and shall include the City as an additional insured with respect to Reseller's operations, acts and omissions relating to its obligations under this Agreement, such policy to include, personal injury, contractual liability, owners' and contractor's protective, contingent employers liability, cross liability and severability of interest clauses.
- (b) comprehensive (3D) Dishonesty, Disappearance and Destruction Blanket Position Insurance Policy, or equivalent Fidelity Bond, in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000). The City shall be shown on the Policy as a named Obligee with respect to incidents affecting payment to the City as a result of losses from perils insured thereunder.
- (c) Reseller shall furnish the City with evidence of the insurance described above on the City's standard Insurance Certificate (Form #0788) which provides for a minimum of thirty (30) days' notice in advance of cancellation of such insurance on or before execution of this Agreement, and upon reasonable request thereafter as the City deems necessary.

6.0 INDEMNITY:

6.1 The Reseller shall indemnify and hold the City harmless from and against any liability, loss, claims, demands, costs and expenses, of every nature and kind whatsoever, including reasonable legal fees, occasioned wholly or in part whether willful or otherwise arising out of any breach, violation or non-performance on the part of the Reseller of any covenant or provision in this agreement, whether arising from actions of the Reseller or by its employees, servants, agents, subcontractors or others the Reseller is responsible for at law. Such indemnification shall continue in effect after expiry of this Agreement.

6.2 The Reseller shall further indemnify and hold the City harmless from and against any and all claims, assessments, charges, taxes, or other penalties or demands which may be made by the Canada Revenue Agency, the Minister of National Revenue or other official of the Government of Canada, requiring the City to pay tax, charges or penalties in respect of any claims, demands and amounts payable in accordance with this agreement which may be made by, on behalf of, or related to any government agency under any applicable statute and regulation with respect to any amounts which may in the future be found to be payable by the City on the Reseller's behalf.

7.0 NOTICE:

7.1 All notices required by this agreement shall be in writing and shall be sent by facsimile transmission or delivered in person or by prepaid courier or mailed by certified or registered mail, return receipt requested, with postage prepaid.

7.2 Notice to the City shall be addressed to:

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

and to

Division Manager, Parks & Community Sports
Community Services Department
The Corporation of the City of London
151 Dundas Street
P.O. Box 5045
LONDON, ON N6A 4L6

7.3 Notice to the Reseller shall be addressed to:

London Golf Club Inc.
537 Consortium Court
London, ON N6E 2S8

7.4 All notices so sent shall be deemed to have been received by the recipient on the date of the facsimile transmission, or on the date of delivery or on the second business day following the mailing thereof, whichever is applicable. The above address of either the City or the Reseller may be changed by giving the other party written notice of the new address.

7.5 If postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall only be sent by facsimile transmission or delivered by courier.

8.0 GENERAL:

8.1 Further Acts

The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

8.2 Partial Severability

If any part of this agreement is rendered invalid or illegal, the remainder of the agreement continues to apply.

8.3 Headings

The headings in this agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions of this agreement.

8.4 Entire Agreement

This agreement embodies the entire agreement of the parties with regard to the matters herein, and no other agreement shall be deemed to exist except as entered into in writing by both parties to this agreement.

8.5 Amendments

No subsequent alteration, amendment, change or addition to this agreement shall be binding on the City or the Reseller unless in writing signed by each of them.

8.6 Assignment

Neither the City nor the Reseller shall assign this agreement or any part of it without obtaining the prior written consent of the other party, which consent may be unreasonably withheld.

8.7 Non-Exclusivity

The City's obligations under this Agreement are non-exclusive to the Reseller.

8.8 Not a Partnership

The parties are each independent of the other and this Agreement shall not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other similar relationship between the City and the Reseller or between the City and any employees, agent or contractor of the Reseller.

8.9 Enurement

This agreement shall ensure to the benefit of and be binding on the parties and their respective heirs, executors, successors and assigns.

8.10 Governing Law

This agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

8.11 Waiver

Any waiver by the City of any breach by the Reseller of any of the provisions of this Agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.

8.12 Circumstances Beyond the Control of Either Party

Neither party shall be responsible for damages caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the parties including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other insurrection, lawful act of public authority, or delay or default caused by a common carrier which cannot be reasonably foreseen or provided against.

8.13 Execution

The Reseller acknowledges that it has read this agreement, understands it and agrees to be bound by its terms and conditions. Further the Reseller agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreement, oral or written, and all other communications between the parties relating to the subject-matter of this agreement.

IN WITNESS WHEREOF the Reseller has hereunto affixed its corporate seal under the hands of its duly authorised officers in that behalf and the City has hereunto affixed its corporate seal under the hands of its Mayor and Clerk.

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

Catharine Saunders, City Clerk

LONDON GOLF CLUB INC

Per:
Name:
Title:

I/We have authority to bind the Corporation.

APPENDIX 2

<u>London Golf Club (Reseller)</u>		
<i>Comparison of the 2012 agreement to the proposed 2013 agreement</i>		
	2012	2013
# of "Spots" per Day		
Thames Valley	16	16
Fanshawe Traditional	24	24
Fanshawe Quarry	30	24
River Road	30	24
Total	100	88
Fees		
Initial Fee +HST	\$ 248,600.00 including tax	\$ 125,000.00 including tax
Average fee per round	\$ 27.62 including tax	\$ 45.45 including tax
Maximum # of "Spots"	9000	2750
Fee charged for rounds in excess of maximum	\$ 22.60 including tax	\$ 55.00 including tax

Notes:

- 1) The 2013 agreement better reflects the 2012 experience with respect to the actual utilization of spots. While the number of spots purchased in advance as a result of this agreement decreases from 9000 to 2750, the cost per spot has increased to reflect the value of the spot given the reduced number. (\$27.62 up to \$45.45)
- 2) Similarly additional spots purchased greater than the 2750 initial maximum will be charged significantly more per round after the maximum has been surpassed. (\$22.60 up to \$55.00)