AWARD A CONTRACT FOR THE LEASE OF SWENSON PARK GOLF COURSE TO KSM SWENSON, LLC; ADOPT FINDINGS IN SUPPORT OF AN EXCEPTION TO THE COMPETITIVE BIDDING PROCESS; APPROVE A SECOND AMENDMENT WITH KEMPERSPORTS MANAGEMENT; AUTHORIZE THE CLOSURE OF VAN BUSKIRK GOLF COURSE; AMEND THE FY 2019-20 BUDGET, APPROVE A CONTRACT CHANGE ORDER WITH BRIGHTVIEW, AND APPROVE RELATED ACTIONS

RECOMMENDATION

It is recommended that the City Council Adopt the following:

1. A resolution authorizing the execution of a contract to KSM Swenson, LLC for the lease of Swenson Golf Course beginning January 1, 2020, and approving findings pursuant to Stockton Municipal Code 3.67.070 adopting findings in support of an exception to the competitive bidding process; and

2. A resolution authorizing the execution of a Second Amendment to the Management Agreement and Transition Plan with KemperSports Management (C-11-202NP), approving the closure of Van Buskirk Golf Course, appropriating $350,000 from the General Fund reserve to KSM for cafe improvements and critical repairs, and authorizing the City Manager to take all actions related to Golf Cart disposition; and

3. A resolution authorizing the execution of Contract Change Order Number 5 in the amount of $307,760 with Brightview Landscaping (Project No. OM-18-062) for sixteen months of landscaping services at the Van Buskirk property.

It is also recommended that the City Manager be authorized to take all appropriate and necessary actions to carry out the purpose and intent of these three resolutions.

Summary

For over a decade the City Council has grappled with the increasing General Fund subsidy required to keep municipal golf courses afloat as unfunded capital needs mount and golf play declines. Since 2010, several City Council actions related to golf have attempted to address issues by working with consultants, establishing an operating agreement in 2011 (Attachment A), and increasing subsidy levels. On December 4, 2017, the City Council gave direction to staff to provide a solution that reduces or eliminates the City’s General Fund golf subsidy, preserves golf at the Swenson Park Golf Course and considers the needs of residents near the Van Buskirk Golf Course in any plans to repurpose the property as a recreational facility with broader access to the public.
In January 2017, Mayor Tubbs formed a Golf Task Force composed of residents living near each course, to develop a recommendation that fulfilled City Council direction. Following a facilitated engagement process, the Task Force recommended that the City release a Request for Proposals (RFP) for a long-term lease of the Swenson property to keep it maintained as a golf course. An RFP was released on May 22, 2018. Three proposals were received. Two proposals, one from Kemper Sports Management Inc. (KSM) and one from Sierra Golf Management, offered a long-term lease and favorable terms to keep golf at Swenson. One proposal from Courseco offered to operate Swenson under an agreement like the one currently in place with KSM. Each proposal was evaluated by a panel composed of City Staff and members of the public, including a representative from the Mayor's Golf Task Force. The panel also conducted interviews with each proponent and reviewed proposed financial terms from each company. The panel unanimously recommended KSM as the most qualified proponent based on their community-oriented programming, professional management experience, and financial terms.

Staff requests that Council grant authority to approve a lease agreement (Exhibit 1 of the Resolution awarding a contract to KSM Swenson, LLC), or a substantially similar version to meet the agreed-upon obligations and deadlines. Major terms of the agreement that are not subject to change shall be:

1. A fifteen (15) year lease beginning January 1, 2020, with one additional ten (10) year option.

2. Annual lease payment of $1 per year to the City for year one through ten, and 10% of net operating profit to the City in year 11 through 15 estimated at $82,000.

3. Commitment from KSM to expend approximately $250,000 (“Capital Contributions”) for greens maintenance equipment.

4. Beginning in years 5 through 15, KSM will set aside a 2% annual capital contingency for future improvements, estimated at $463,000.

5. The City will make a one-time payment of $350,000 to make improvements to the cafe, patio, food and beverage areas and critical repairs to golf course structures based on a completed building inspection.

6. The City will take actions to transfer golf carts into KSM’s name or return the golf carts to the Leaseholder.

7. The City Council will approve ceasing golf operations at the Van Buskirk Golf Course per KSM request, no later than August 31, 2019.

In considering the needs of residents living near the Van Buskirk golf course, staff conducted a civic engagement process in the Van Buskirk area. Meetings were held at Conway Homes housing complex (16 attendees) and the Van Buskirk Community Center (50 attendees). Additionally, a paper and online survey was administered to residents in the Van Buskirk neighborhood to gain a sense of community needs. The City also received a letter from the Van Buskirk heirs reiterating commitment that the property serves a recreational purpose, but also indicating a willingness to negotiate other uses of the property if they fulfilled educational goals.
Results of the engagement process identified several desires including a soccer complex; pool or water feature; skating rink; BMX park; community gardens; expanding the existing community center; and walking trails. Because the property cannot quickly transition from golf course to a developed recreational amenity, Staff conferred with stakeholder departments including Public Works, Police, Fire, and Risk to understand the most pressing needs for maintaining the Van Buskirk property. Concerns to be addressed included: property security; tree management; Fire truck access; and debris removal. Furthermore, staff has prepared a draft Request for Proposals (RFP) for the Van Buskirk pro shop and café buildings to determine if there is interest from organizations to use the facilities for services that benefit the local neighborhood.

Staff has also developed a landscaping management and security plan to maintain the property as open space until sources are identified to develop the property in line with resident priorities. Staff recommends redirecting $418,000 of the existing annual budgeted subsidy amount of $700,000 for ongoing parkland maintenance ($238,000) and security costs ($180,000) until such time as there is available funding for recreation improvements and operating costs. This accomplishes City Council goals in eliminating subsidies for golf and utilizing them for open space available to all residents. This also reduces the General Fund commitment by $282,000. Staff still anticipates one-time costs in the future for property needs such as tree removal, fence removal, pump repairs, state-mandated water measurement devices, and emergency property issues as they arise. However, these requests will be made during the annual budget process. Staff will factor General Fund costs into any future plans for the property with the goal of reducing them further. The interim solution includes executing a contract change order with BrightView Landscaping up to $307,760. This change order covers the remaining 16 months of the existing landscape agreement, with funds being expended over the current and next fiscal years. Two months of subsidy for use by KSM has already been allocated toward both courses for July and August of 2019. For the final four months of the operating agreement at Swenson, the City will cover operating expenses in an amount not to exceed $105,000, which is based on the previous two years during the same period. Staff estimates that start-up costs for the new agreement for improvements and critical repairs will exceed the budgeted subsidy by $350,000 this year and return to budgeted levels in 2020-21.

It is recommended that Council adopt resolutions authorizing the City Manager to execute a Second Amendment to the Management Agreement and Transition Plan (“Second Amendment”) with KSM and to execute a new Lease Agreement for Swenson Park Golf Course with KSM Swenson, LLC, a subsidiary of KSM (“Lease”). It is also recommended that the City Council appropriate $350,000 from the General Fund reserve for building improvements and critical repairs to course structures and approve a change order in the amount of $307,760 to add the Van Buskirk property to the BrightView agreement for 16 months of service. Those costs will be appropriated in FY 2019-20 ($200,000) and FY 2020-21 ($107,760). Annual security costs and other property management obligations will be paid using redirected golf subsidy funds in this and future fiscal year budgets.

Background

The City of Stockton owns two municipal golf courses. Swenson Park Golf Course is a 214-acre property that opened in 1952 and is located at 6803 Alexandria Place. Van Buskirk Golf Course, completed in 1969, is located at 1740 Houston Avenue on approximately 192 acres deeded to the City in 1957 by Charles and Bertha Van Buskirk. A portion of the property houses the Van Buskirk
Community Center, park, and ballfields. There are deed restrictions on the Van Buskirk property that limit its use to “public recreation or public park purposes.” The property reverts to the donors’ heirs if the City is non-compliant with respect to the intended use.

Golf ceased being a profit-generating enterprise in 2010 and required a $160,000 subsidy to break even. That trend has continued and grown and is now $700,000 per year. Both properties were included as security for the 2009 Public Facility Fee Lease Revenue Bonds, held by Franklin Fund Investments and in 2010, the City hired a consultant to provide analysis of golf course operations. The consultant corroborated staff research that the courses could not survive unless additional amenities such as banquet facilities, mid-course restrooms, and cart paths were built. Lacking the capital for such investment and facing mounting financial issues, the City issued an RFP for the lease or purchase of one or both courses. There were no respondents. In 2011, the City issued an RFP for golf course operations, and a contract was awarded to KSM, who has operated both courses since that time. Effective June 29, 2016, the parties executed a First Amendment to the Management Agreement, which exercised a five-year option and changed two additional contract terms regarding early termination and closure of a course. The Management Agreement and First Amendment are included for reference as Attachment A. The courses were included in the bankruptcy proceedings filed in 2012 and were held as collateral until the City exited bankruptcy in 2015. Community Services staff prepared a white paper in 2013, updated in 2017, describing the changes in the golf market and the likelihood that municipal courses would continue to require more General Fund subsidy without the ability to make needed improvements or achieve profitability or break-even status.

To address the growing financial concern and determine Council direction, staff presented an informational item to the City Council on December 4, 2017. The item described options for the sale and development of the Swenson Golf Course and two design options for repurposing the Van Buskirk Golf Course as a recreation facility. Public comment and Council direction from that meeting made clear that developing the Swenson property was not an option. The consensus was that Swenson should remain a golf course and that staff should return later with options that adhered to that direction while reducing or eliminating the General Fund subsidy for golf.

Following the Council meeting, Mayor Tubbs formed a task force of residents living near both golf courses to provide a recommendation for moving forward. Following two facilitated meetings, the task force recommended proceeding with an RFP for the long-term lease of Swenson. Staff also made plans to do further community engagement with the Van Buskirk stakeholders to determine and address their needs.

The RFP was released on May 22, 2018, and closed on August 23, 2018. A mandatory walkthrough was held, and six organizations were present. At deadline, the City received three proposals. Two offered a long-term lease as desired by the City, and one offered an operating agreement like the one that currently exists and relies upon City subsidy to survive.

A panel composed of two Community Services staff, one Procurement staff and two members of the public (including a member of the Golf Task Force) evaluated the written proposals and interviewed each of the proponents.

Two of the proponents, KSM and Sierra Golf Management, offered a long-term lease to operate Swenson as a golf course. The third, Courseco, offered an operating agreement like the current Management Agreement, which would still require a General Fund subsidy. For that reason,
Courseco was the lowest-rated proposal and was not seen as a viable solution that addressed City Council direction.

Both KSM and Sierra Golf Management offered favorable terms to the City, which included investment in the golf course and profit-sharing arrangements in out years. Upon completion of the review process, the panel unanimously selected KSM as the most qualified applicant based on the following:

- KSM demonstrated a history of and an ability to develop additional programming based on community needs.
- KSM provided the most realistic income and expense projections.
- KSM provided a thriving youth program that is well-regarded.
- KSM offered a healthy level of investment in the property, including improvements to the property and a capital contingency to purchase future greens maintenance equipment.
- KSM has a national presence that allows it access to resources that can be leveraged to support Swenson Park Golf Course.

**Present Situation**

The City has conducted an RFP process to find a long-term leaseholder for the Swenson Park Golf Course. Three proponents were evaluated by a panel of staff, and members of the public and KSM was unanimously determined to be the most highly qualified vendor.

Staff has negotiated a fifteen (15) year lease agreement with KSM Swenson, LLC with one additional ten (10) year renewal option which maintains golf at Swenson Park. The Lease is included as Exhibit 1 of the Resolution awarding a contract to KSM Swenson, LLC. Other key points under the Lease include a Capital Contribution payback schedule if the Lease is terminated before the initial fifteen-year term is completed. KSM will pay Lease payments of $1.00 a year for the first ten years, and an annual payment of 10% of Net Operating Profit will be provided from Years 11 through 15 estimated at $82,000. Additionally, a Capital Contingency Fund equal to 2% of budgeted Operating Revenue is provided by KSM for the initial fifteen-year term to support Capital Improvements for an estimated $463,000.

The City and KSM will concurrently enter into a Second Amendment and Transition Plan (Exhibit 1 to the resolution authorizing the Second Amendment with KSM) to identify key actions and provide an orderly transition to the Lease. Under the amendment, KSM agrees to invest a minimum of $250,000 in new greens maintenance equipment. The City will provide a one-time payment of $350,000 to KSM to make improvements to the cafe area and make critical property repairs. The Second Amendment also governs activities related to the formal closure of Van Buskirk Golf Course by August 31, 2019, the disposition of golf carts, the development of a Transition Plan between Parties, a final accounting, and approval of funding to KSM for operations at Swenson not to exceed $105,000 from August through December 2019. Under the Second Amendment, all management services by KSM will cease December 31, 2019.
Upon the close of Golf operations at Van Buskirk on August 31, 2019, the property management duties will return to the City. Contract negotiations stipulate that the Van Buskirk Golf Course must cease operations to avoid competition with the new lease at Swenson and staff has completed a community engagement process to determine long and short-term needs for the Van Buskirk Property. To secure and maintain the property as open space in the short-term, staff has prepared a contract change order (Exhibit 1 to the Resolution authorizing Change Order Number 5) with BrightView Landscaping for annual, non-irrigated service to the property. This includes mowing, pond skimming, bathroom cleaning, and trash pickup. Staff has also budgeted for security services and other property management duties until further improvements can be made. Security service will begin at seven days a week and be adjusted as needed. Furthermore, staff has developed an RFP for release to determine if there is interest by any community organizations to utilize the Van Buskirk café and pro shop buildings provide services to neighborhood residents.

Findings

Pursuant to the Stockton Municipal Code Section 3.68.070.A.3 relating to exceptions to the competitive bidding process, the following proposed findings support the use of the RFP process to select a leaseholder for the Swenson Park Golf Course:

1. The primary purpose of the golf course is to offer professionally managed public golf to the residents of Stockton and others in the surrounding area; to provide an adequate facility and greens for golf play, and to provide programs that help instruct and improve the skills of golf players.

2. In determining the most qualified lease-holder for the golf course, the predominant criteria is a proponent’s professional expertise in the sport of golf; business experience in operating golf courses including food and beverage operations, and the ability to forge connections in the local community by developing innovative programs that draw non-golf players.

3. Use of the RFP process is appropriate in this case because it relies on the evaluation of professional expertise, business experience, and the ability to develop successful community-based programs. While cost is one of the factors that is considered, it is not the sole basis of selection as the other criteria listed are of equal importance in providing the highest-caliber service to the public.

4. The RFP process, which included proposal evaluation, interviews, and review of financial offers, allowed the City to select the organization best suited for a long-term lease of Swenson golf course.

Public Notice

The City Charter requires publication of a notice to lease City Property. “A Notice of Intention to Lease City Property” has been published for the Lease of Swenson Golf Course at least ten days before City Council action.
Financial Summary

General Fund Expenditures

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During the current FY 2019-20, the $700,000 in General Fund golf subsidy will be used for transitioning Swenson to KSM and returning Van Buskirk back to City-managed open space. The spending plan includes subsidy and administration ($230,000), ten months of landscaping ($200,000) and security ($150,000) costs for Van Buskirk, and expected property maintenance such as tree removal, fence removal, and legally mandated water measurement devices ($120,000).

In subsequent fiscal years, staff recommends that $418,000 of the budgeted General Fund golf subsidy be redirected as park maintenance funds for the Van Buskirk property for annual landscaping ($238,000) and security ($180,000). Staff will annually analyze the need for property maintenance and improvements and request additional funds as needed through the budget process.

Staff also recommends a one-time appropriation from the General Fund reserve in the amount of $350,000 to be paid to KSM at signing which they will use to make the agreed-upon improvements and critical building repairs for Swenson Park Golf Course.

The financial benefit of the Second Amendment and Lease with KSM will provide revenue, non-capital assets, and capital improvements to Swenson Golf Course in excess of $1,000,000. In addition to the Capital Contribution of $250,000 for equipment in the Second Amendment and original Lease term, KSM will provide Lease revenue of $82,000; replacement of golf carts (non-capital assets) for approximately $250,000, and a Capital Contingency Fund estimated at $463,000.

Attachment A - 2011 KemperSports Operations and Management Agreement
MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of June 21, 2011, by and between City of Stockton, a California municipal corporation ("Owner") and KemperSports Management, Inc., an Illinois corporation ("KSM").

WITNESSETH:

WHEREAS, Owner owns the golf club facilities located in Stockton, California known as "Swenson Park Golf Course" and "Van Buskirk Golf Course" (collectively, the "Courses"); and

WHEREAS, Owner and KSM desire for KSM to operate and manage the Courses subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth on Exhibit A attached hereto.

ARTICLE 2

APPOINTMENT AND TERM

2.1. Appointment. Owner hereby retains, engages and appoints KSM as Owner’s agent to perform the Management Services during the Term, as more fully described herein, and KSM hereby accepts said appointment upon and subject to the terms hereof.

2.2. Term. The initial term of this Agreement shall begin on July 11, 2011 (the "Commencement Date") and shall terminate on June 30, 2016 (the "Termination Date") unless terminated or extended according to the provisions hereof (the "Term"). The Term of this Agreement may be extended for a term of up to five (5) years upon the expiration of the Term then in effect upon the mutual agreement of Owner and KSM.
ARTICLE 3

MANAGEMENT SERVICES

3.1. Management of the Courses and Property. KSM shall perform the management services described in this Article 3 (collectively, the “Management Services”) and shall supervise, manage, direct, and operate the Courses and the Property on behalf of and for the account of Owner, subject to the terms hereof and at all times consistent with the Operating Budget approved by Owner. Owner hereby delegates to KSM, subject to the (i) Budgets, (ii) Owner’s approval rights specifically described in this Agreement (the “Approval Rights”), and (iii) other terms and conditions set forth herein, the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing, and other policies, rules, and regulations affecting the Courses or the Property or the operation thereof, to implement all of same, and to perform any act on behalf of Owner deemed by KSM to be necessary or desirable for the operation and maintenance of the Courses and the Property, subject to Owner's reasonable input and direction from time to time and approval on specific identified items.

3.2. Use of the Property. Owner hereby grants to KSM the right to use and occupy the Property during the Term for the purposes set forth herein. KSM shall, upon the expiration or prior termination of the Term, vacate and surrender the Courses and Property to Owner.

3.3. Scope of Services. KSM will manage all activities of the Courses that are included in the annual Operating Budget and approved by Owner. KSM will operate the Courses to high quality standards (i.e., golf course maintenance, customer service, etc.), including the Maintenance Standards attached hereto as Exhibit C, as provided for in the approved Operating Budget. Subject to the terms of this Agreement and the approved Operating Budget, KSM shall have the authority and responsibility to:

3.3.1. Manage all operations of the Courses, including but not limited to, pro shop operations, golf course maintenance, starter and marshal services, and use commercially reasonable efforts to achieve the approved Operating Budget;

3.3.2. Maintain clubhouse landscape and hardscape, including the parking lot areas;

3.3.3. Employ at each of the Courses, a Class A Golf Professional and a Class A Superintendent;

3.3.4. Employ a professional food and beverage manager and staff to manage and conduct day-to-day food and beverage operations at each of the Courses. Operational hours will be presented with the Annual Budget and recommendation to change hours shall require written notification and approval by Owner;

3.3.5. Purchasing and sale of merchandise for the pro shop, and maintenance and replacement (as necessary) of furnishings, equipment and fixtures for the pro shop;
3.3.6. Implement the policies and standards of the Courses, as approved by Owner;

3.3.7. Establish and adhere to high quality golf course maintenance standards (Exhibit C) approved by Owner and funded appropriately in the Operating Budget;

3.3.8. Manage and supervise all day-to-day operations of the Courses, including tee time reservations, collecting green and cart fees, clubhouse operations, outside services, course maintenance, managing tournaments and events, payroll and benefits administration, accounting and financial reporting, etc;

3.3.9. Maintain driving ranges, including providing and servicing hitting mats, rubber tees, dividers and grass hitting areas;

3.3.10. Develop and provide to the public golf instructional programs, with special emphasis on the development of junior golf instruction programs.

3.3.11. Establish and nurture golf leagues, tournaments, in-house golf clubs and junior programs;

3.3.12. Hire, train, and supervise all employees required to carry out KSM’s responsibilities;

3.3.13. Manage payment of all Courses operating expenses as identified in the Operating Budget;

3.3.14. Determine hours of operations and dress code requirements subject to approval by Owner, establish starter, marshal and other outside services, establish handicap services, and golf instruction programs;

3.3.15. Acquire all goods and services necessary to carry out KSM’s responsibilities;

3.3.16. Maintain all golf course and food and beverage buildings, including but not limited to, the clubhouses, pro shops, cart barns, restrooms, and maintenance buildings and related storage areas;

3.3.17. Market the Courses to achieve targeted objectives;

3.3.18. Measure customer satisfaction levels of golf course and food and beverage operations and reporting results to Owner at least semiannually;

3.3.19. Arrange for the design of a website with design and content approved by Owner in advance;

3.3.20. Obtain licenses and other operating permits; including ABC license for sale of alcoholic beverages at each course, both in the food and beverage
buildings and on the courses, the costs associated therewith to be Operating Expenses of the Courses;

3.3.21. Negotiate contracts for maintenance equipment and carts to be approved and executed by Owner;

3.3.22. Prohibit placement of signs or advertisement upon any property of Owner or upon any vehicle used by KSM in connection with the Management Services under any contract or agreement without written approval by Owner;

3.3.23. Honor pre-sold season tickets and gift certificates to allow completion of these transactions at either of the Courses;

3.3.24. Use commercially-reasonable efforts to comply with all insurance and legal requirements of the Courses; and

3.3.25. Make repairs and other improvements to keep the Courses in good order.

3.3.26. Arrange for the provision and maintenance of a fleet of 45 electric-powered golf carts for public rental at Van Buskirk Golf Course and 60 electric-powered golf carts for public rental at Swenson Park Golf Course;

3.3.27. Develop golf policies and manual for Owner approval, educating the golfing clientele about them and enforcing them;

3.3.28. Select and price food and beverage items, to be at least comparable to industry standards for other northern California golf courses;

3.3.29. Arrange for the provision and maintenance of all restaurant and kitchen equipment needed (including utensils and dishes) beyond what the Owner currently provides for food and beverage service at the golf course, replacing equipment when needed;

3.3.30. Meet at least quarterly with Owner representatives to evaluate and discuss golf course and food and beverage operations and to make any operational changes that may be warranted;

3.3.31. Give the Owner the right to use the golf courses for special Owner events, including golf, for not less than (5) Mondays, excluding holidays, with the option for an additional two (2) special event days each year of the Agreement.

3.4. Budgets. All budgets, as hereinafter set forth (collectively the “Budgets”), shall be prepared with the advice and counsel of Owner, based on what KSM believes to be reasonable assumptions and projections, and delivered to Owner for Owner’s review and written approval. All Budgets shall be presented in reasonable detail. KSM shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the
Budgets and the parties acknowledge that the Budgets are based solely upon KSM’s judgment and the facts and circumstances known by KSM at the time of preparation.

3.4.1 Operating Budget. Within twenty one (21) days after the Commencement Date, KSM shall submit to Owner, for Owner’s review and written approval, an Operating Budget setting forth the forecasted revenues and expenses associated with the operations of the Courses for the 2012 fiscal year (July 1, 2011 through June 30, 2012) (the “Operating Budget”). Thereafter, on or before March 1st of each year, KSM shall submit to Owner, for Owner’s review and written approval, a proposed Operating Budget for the upcoming fiscal year or part thereof within the Term. The Operating Budget shall include a marketing plan for the upcoming year.

3.4.2 Capital Expenditures Budget. Within ninety (90) days after the Commencement Date, KSM shall submit to Owner, for Owner’s review and written approval, a budget setting forth the proposed capital improvements (including equipment purchases and leases) within and to the Property for the 2012 fiscal year and a five (5) year Capital Expenditure forecast (the “Capital Expenditures Budget”). Thereafter, on or before March 1st of each year, KSM shall submit to Owner, for Owner’s review and written approval, a proposed Capital Expenditure Budget for the upcoming fiscal year or part thereof within the Term, which shall include an update to the five (5)-year Capital Expenditure forecast.

3.4.3 Owner’s Review and Approval of Budgets. The Budgets shall be for Owner’s review and written approval, subject to the terms of this Agreement. Owner shall give its written comments and/or tentative approval within thirty (30) days after KSM delivers the Budgets to Owner. Owner shall respond to KSM indicating whether such Budget is accepted for presentation to the City Council, or Owner will indicate the items in the Budget that preclude the Owner from accepting it. KSM shall work with Owner regarding Owner’s concerns and accordingly amend the Budget and resubmit the same for acceptance by the Owner and such process shall continue until the Owner accepts the Budget. The accepted Budget will then be submitted for City Council approval along with the Owner’s normal budget approval process, and only if approved by the City Council shall it be considered an approved budget. In the event of disapproval of any Budgets, KSM shall continue operating the Courses pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenues or (ii) other matters beyond the control of KSM, until such time as Owner and KSM agree upon the appropriate replacement Budgets.

3.4.4 Unanticipated Expenditures and Reallocation of Funds. Owner agrees that the Budgets are intended to be reasonable estimates, and, accordingly, KSM shall be entitled from time to time to revise the Budgets to cover any expenditures that were unanticipated at the time of preparation of the Budgets but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, KSM shall be required to obtain Owner’s prior written approval of any expenditures which would result in the total budgeted expenditures being exceeded by more than five percent (5%) of the annual Operating Budget. KSM is authorized to take all action reasonably deemed necessary by KSM to
implement, perform, or cause the performance of the items set forth in the Budgets. Owner acknowledges that KSM has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenues or Operating Expenses to be generated or incurred from the operation of the Courses.

3.5 Course Operations. KSM shall use commercially reasonable efforts to perform all acts that are necessary in the opinion of KSM to operate and manage the Courses, subject to the Budgets, the Approval Rights and terms and conditions set forth herein, on behalf of and for the account, and at the sole cost and expense of, Owner, in accordance with the standards of quality expected at high quality golf courses in the vicinity of the Courses. KSM shall have the authority and responsibility for the administration, operation and management of the Courses and the Property. At a minimum, KSM shall perform the following acts and services:

3.5.1 Financial Management, Accounting Records and Reporting. The day-to-day accounting and financial affairs of the Courses shall be handled generally by KSM’s home office. KSM’s duties shall include: (i) maintaining all books, records, and other data associated with the financial activities of the Courses, (ii) preparing all operating budgets, cash flow budgets, and other financial forecasts, and (iii) being responsible for the day-to-day financial affairs of the Courses (collectively, the “Accounting Services”). All accounting records shall be maintained in a format consistent (in all material respects) with generally accepted accounting principles. In order to reimburse KSM for the use of its internal resources in connection with the performance of such Accounting Services by its home office, Owner shall pay to KSM a monthly accounting reimbursement as described in Section 5.1.2 (the “Accounting Reimbursement”), which Accounting Reimbursement shall be an Operating Expense.

(A) Financial Reporting. During the Term, KSM shall provide the following financial statements in conformance with GAAP, as set forth by the AICPA and a format specified by Owner:

1) KSM shall submit to Owner, within twenty (20) days after the close of each calendar month, a financial statement showing in reasonably accurate detail the budgeted and actual financial activities of the Courses for the preceding calendar month and the fiscal year to date.

2) KSM shall submit to Owner, within sixty (60) days after the close of each fiscal year, a financial statement prepared in conformity with General Accepted Accounting Principles, as set forth by the American Institute of Certified Public Accountants, for the fiscal year then ended. KSM will engage an auditor to provide an independent auditor’s report containing an opinion of an independent certified public accountant to be submitted to Owner no later than 90 days after the fiscal year-end, the cost of which shall be an Operating Expense of the Courses. The annual audit shall be performed by a reputable firm selected by KSM. The
Owner will have the right to approve the auditor selected, which approval shall not unreasonable be withheld or delayed.

(B) **Internal Control.** KSM agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls designed to safeguard assets, ensure compliance with all laws, regulations and contracts, and detect defalcation and fraud.

(C) **Records and Inspection.** KSM shall maintain, at all times during the Term, and all extensions, a full set of all financial, vendor and operating records relating to the Courses at the Properties. At any time during the Term, Owner shall have the right, to inspect the books, records, invoices, deposits, canceled checks, or other financial or operating data or transactions of the Courses, during normal business hours at the Property. Notwithstanding the foregoing, such inspection rights shall not extend to any inspection of KSM corporate records at its corporate office nor any records relating to any other projects or locations. Upon expiration or termination of this Agreement, KSM will promptly turn over all such Course records to Owner.

3.5.2 **Bank Accounts.** KSM shall assist Owner in establishing, in Owner’s name, utilizing the federal tax identification number of Owner, a deposit account (the “Deposit Account”). Owner agrees that individuals designated by KSM, and approved in writing by Owner, shall be signatories on the Deposit Account, and that Owner will not change the signatories of such account or close such account without the prior written consent of KSM. Additionally, KSM shall establish a payroll account (the “Payroll Account”) and an operating expense account (the “Operating Expense Account”) in KSM’s name. Pursuant to section 3.5.1(C), all bank accounts, the records and bank statements shall be subject to inspection by Owner pursuant to the terms recited herein. All Gross Revenues of the Property shall be collected, received, and deposited by KSM exclusively through the Deposit Account in accordance with the terms of this Agreement. All Operating Expenses shall be handled and expended exclusively through the Operating Expense Account. All Gross Payroll for the Courses shall be handled and expended exclusively through the Payroll Account.

3.5.3 **Employees.** As part of the Operating Budget, KSM shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and Course incentive programs. KSM shall hire, promote, discharge, and supervise all employees performing services in and about the Courses. All of the employees of the Courses shall be employees of KSM, and shall not be considered employees of Owner.

3.5.4 **Marketing.** KSM shall make recommendations to Owner as to green fees and other fees and rates in the Marketing Plan for the approval of the Owner. KSM shall develop the ongoing marketing plan for the Courses and define a schedule of
marketing and advertising activities, which shall be submitted to Owner as part of the Operating Budget. Upon Owner's approval, KSM shall indicate on the premises that the Courses are being operated by KSM.

3.6 **Environmental Remediation.** Throughout the Term, if KSM becomes aware of the presence of any Hazardous Material, in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under the Property or if KSM, Owner, the Courses, or the Property becomes subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up the Property, KSM shall, at Owner's request and sole expense, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of the Property; provided that such remediation activities shall be at KSM's expense if such activities are required as a direct consequence of Hazardous Material being present in, on or under the Property solely as a result of negligent actions undertaken by KSM and not directed or approved by Owner, excluding current customary usage. Owner acknowledges and agrees that Owner shall be solely responsible for any legal or other liability arising out of the presence of any Hazardous Material in, on or under the Property, except to the extent such Hazardous Material is present in, on or under the Property solely as a result of negligent actions undertaken by KSM and not directed or approved by Owner, excluding current customary usage.

3.7 **Contracts.** KSM shall negotiate, consummate, enter into, and perform, in the name of the Courses, such agreements as KSM may deem necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as KSM determines are needed from time to time for the management and operation of the Courses. Notwithstanding the above, any contract which exceeds Twenty Five Thousand Dollars ($25,000) in total payments over the term of such contract or which has a term of over one (1) year shall require the prior written consent of Owner. Any contract that cannot be made in the name of the Courses shall be provided to Owner for its execution in the name of Owner.

3.8 **Licenses, Permits, and Accreditations.** KSM shall apply for and use its commercially reasonable efforts to obtain and maintain, in Owner’s name (or, if otherwise required by applicable law, in KSM’s name), all licenses, permits, and accreditations required in connection with the management and operation of the Courses, the cost of which shall be an Operating Expense. Owner will cooperate with KSM in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

3.9 **Legal Action.** KSM may not institute any legal action by or on behalf of Owner or the Courses without the prior written consent of Owner and Owner may not institute any legal action by or on behalf of KSM without the prior written consent of KSM.

3.10 **Emergency Expenditures.** In the event, at any time during the Term, a condition should arise in, on, or about the Property of an emergency nature which, in KSM’s sole and absolute discretion, requires immediate action to preserve and protect the Property, to assure the continued operation of the Courses, or to protect the customers, guests, or employees of the Courses, KSM is authorized to take all steps and to make all reasonable expenditures necessary
to repair and correct any such condition, whether or not provisions have been made in the applicable Budgets for any such expenditures. Owner shall be notified of the need for, and estimated amount of, any such emergency expenditures as soon as reasonably practical.

3.11 Compliance with Laws. KSM shall use commercially reasonable efforts to (i) comply with all federal, state and local laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively “Laws”) applicable to the use, operation, maintenance, repair and restoration of the Courses and Property, whether or not compliance therewith shall interfere with the use and enjoyment of the Courses and Property; and (ii), except for those which are the obligation of Owner or Owner’s separate contractors, procure, maintain and comply with all licenses and other authorizations required for any use of the Courses and Properties then being made, and for the operation and maintenance of the Courses and Property or any part thereof, the costs of which shall be Operating Expenses. Notwithstanding the foregoing, Owner acknowledges and agrees that Owner or its construction contractors shall be responsible for procuring, maintaining and complying with all licenses and other authorizations relating to design, construction, zoning, erection, installation and similar matters relating to any construction at the Courses. If at any time during the Term KSM is notified or determines that repairs, additions, changes, or corrections in the Property of any nature shall be required by reason of any Laws, KSM shall notify Owner and request Owner’s consent to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such repairs, additions, changes, or corrections whether or not provisions have been made in the applicable Budgets for any such expenditures, the costs of which shall be Operating Expenses. If Owner withholds such consent, KSM shall not be liable for any failure of the Property to be in compliance with such Laws.

3.12 Other Duties and Prerogatives. KSM shall use commercially reasonable efforts to perform any act that is necessary to operate and manage the Courses and the Property during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder and subject to the limitations otherwise stated herein, KSM shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of the Courses and the Property, the incurring of trade debts in Owner’s name (other than mortgage indebtedness), the approval and payment of obligations, and the negotiating and signing of leases and contracts. KSM shall not be obligated to advance any of its own funds to or for the account of Owner nor to incur any liability, unless Owner shall have furnished KSM with funds necessary for the full discharge thereof. Further, KSM shall not be obligated to sign any leases, contracts or other agreements in KSM’s name. However, if for any reason KSM shall have advanced funds, with Owner’s consent or otherwise in accordance with the terms of this Agreement, in payment of any reasonable expense in connection with the maintenance and operation of the Courses or the Property, Owner shall reimburse KSM within thirty (30) days after invoice for the full amount of such payments less any advances Owner has made to KSM.
ARTICLE 4

RESPONSIBILITIES OF OWNER

4.1 Expenditures. Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Courses provided that such Operating Expenses and capital expenditures are made in accordance with the terms of this Agreement. Owner shall be responsible for all other expenditures and obligations in connection with the Courses and the Property, including without limitation, all federal, state and local taxes and all principal and interest payments on indebtedness.

4.2 Owner’s Advances. Owner shall advance funds to the Operating Expense Account described in Section 3.5.2 to conduct the affairs of the Courses and maintain the Property (the “Owner’s Advances”) as set forth below. Such Owner’s Advances may be paid by check, wire transfer or authorization to apply funds from the Deposit Account towards the payment of such Owner’s Advances. Owner acknowledges and agrees that it has sole responsibility for providing Owner’s Advances and KSM shall have no responsibility to provide funds for the payment of any Operating Expenses, Gross Payroll, debts or other amounts payable by or on behalf of the Courses, the Property or Owner.

4.2.1 Operating Expense Account. On or before the Commencement Date (and in any event, prior to KSM’s incurrence of any Operating Expenses), Owner shall remit to KSM for deposit into the Operating Expense Account, Owner’s Advances equal to six week’s estimated Operating Expenses, including Gross Payroll obligations (as specified in the approved Budget) (the “Operating Expense Minimum”). Owner shall replenish the Operating Expense Account in order to maintain the Operating Expense Minimum in the Operating Expense Account as described below. KSM shall use the funds in the Operating Expense Account to pay the Operating Expenses of the Courses and to fund the Payroll Account. On a monthly basis by the 15th day of the preceding month, KSM shall provide Owner with a statement describing the anticipated source and use of funds for the Courses for the next monthly period. Within thirty (30) days after Owner’s receipt of such statement from KSM, Owner shall remit to the Operating Expense Account the amount set forth in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Operating Expense Account. The parties agree to adjust the Operating Expense Minimum seasonally or as otherwise required from time to time, in order to reflect the then-current payment obligations of the Courses.

4.2.2 Payroll Account. On or before the Commencement Date (and in any event, prior to KSM’s incurrence of any Gross Payroll obligations), Owner authorizes the transfer from the Operating Expense Account to the Payroll Account advances equal to six week’s estimated Gross Payroll obligations (as specified in the approved budget) (the “Payroll Expense Minimum”). Owner shall replenish the Operating Expense Account and authorize the transfer from the Operating Expense Account to the Payroll Account in order to maintain the Payroll Expense Minimum in the Payroll Account as described below. On a bi-weekly basis, KSM
shall fund payroll and the Gross Payroll obligations from the Payroll Account and concurrently provide Owner with a statement containing such funded Gross Payroll obligations of the Courses. Within (thirty (30) days after Owner’s receipt of such statement from KSM, Owner shall remit to the Operating Expense Account the amount set forth in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Payroll Account. The parties agree to adjust the Payroll Expense Minimum seasonally or as otherwise required from time to time, in order to reflect the then-current payroll obligations of the Courses.

ARTICLE 5

FEES, EXPENSES AND RECEIPTS.

5.1 Management Fee. During the Term, Owner shall pay KSM management fees as follows (the “Management Fee”):

5.1.1 Fixed Management Fee. Owner shall pay KSM an annual fixed management fee of $84,000 (the “Fixed Management Fee”), which fee shall be paid in equal monthly installments in advance, no later than the first day of each calendar month. (Such Fixed Management Fee shall be prorated for any partial calendar month occurring during the Term.) The Fixed Management Fee shall be increased each year on the anniversary of the Commencement Date by (i) the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) - U.S. City Average – All items as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the twelve month period ending prior to the Commencement Date, or (ii) three percent (3%), whichever is lower. Payment of the Fixed Management Fee may be made directly from the Operating Expense Account.

5.1.2 Accounting Reimbursement. Owner shall pay KSM an annual Accounting Reimbursement equal to Thirty Six Thousand Dollars ($36,000). The Accounting Reimbursement shall be paid in equal monthly installments, in advance, no later than the first day of each calendar month. (Such Accounting Reimbursement shall be prorated for any partial calendar month occurring during the Term.) The Accounting Reimbursement shall be increased each year on the anniversary of the Commencement Date by (i) the percentage change in the Consumer Price Index – All Urban Consumer (CPI-U) – U.S. City Average – All items as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the twelve month period ending prior to the Commencement Date, or (ii) three percent (3%), whichever is lower. Payment of the Accounting Reimbursement may be made directly from the Operating Expense Account.

5.1.3 Incentive Management Fee. Commencing in the 2012 fiscal year (July 1, 2011 through June 30, 2012), Owner shall pay KSM an annual incentive management fee (the “Incentive Management Fee”) calculated as follows:
Five percent (5%) of the increase in the combined Gross Revenues for the Courses for such fiscal year from the Threshold Amount. The “Threshold Amount” shall mean the actual combined Gross Revenues for the Courses for the 2011 fiscal year (July 1, 2010 through June 30, 2011). However, notwithstanding any other term herein, in no event shall the Incentive Management Fee exceed the Fixed Management Fee in any fiscal year.

The Incentive Management Fee shall be paid to KSM within thirty (30) days after KSM delivers to Owner the year-end Financial Statement.

[For example: If the actual combined Gross Revenues for the Courses for the 2011 fiscal year equal $2,000,000, then this becomes the Threshold Amount. Then if the combined Gross Revenues for the Courses in the 2012 fiscal year equals $2,200,000, the Incentive Management Fee would equal $10,000 ($2,200,000 - $2,000,000 = a $200,000 increase, multiplied by 5%)

5.2 Out-of-Pocket Expenses. In addition to all other fees and expenses recited herein payable to KSM, and subject to Owner’s approval of same in the Budgets, it is agreed that Owner shall reimburse KSM within thirty (30) days of invoice for all actual out-of-pocket expenses incurred by KSM in the performance of this Agreement. Out-of-pocket expenses shall include, but shall not be limited to, reasonable travel, air express, costs of recruitment (including applicable agent’s fees), and other incidental expenses. Reimbursement for such out-of-pocket expenses will be made at actual cost and may be made directly from the Operating Expense Account.

5.3 Late Fees. Owner shall pay to KSM all of the fees described above, and any other sums due KSM, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by Owner to KSM pursuant to the terms hereof shall become overdue for a period of thirty (30) days, a “late charge” may be charged by KSM for the purpose of defraying the expense incident to handling such delinquency. The late charge shall be equal to (i) one percent (1%) per month. In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of this Agreement. Further, nothing herein shall be construed as waiving any rights of KSM arising out of any Events of Default of Owner by reason of KSM assessing or accepting any such late payment or late charge; the right to collect the late charge is separate and apart from any rights relating to remedies of KSM after default by Owner in the performance or observance of the terms of this Agreement. Owner shall bear the costs of any legal or collection fees and expenses incurred by KSM in attempting to enforce Owner’s payment obligations hereunder.

5.4 Owner’s Receipts. During the Term, in each calendar month Owner shall receive the Positive Net Cash Flow for such calendar month after payment of the Management Fee and any other fees, which amount shall be distributed, to the extent requested by Owner, within fifteen (15) days following the close of each calendar month (“Owner’s Receipts”); provided, however, that a minimum balance of at least the Operating Expense Minimum and the Payroll Expense Minimum is maintained in the Operating Expense Account and the Payroll Account at all times.
5.5 **Payments.** In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event, Owner shall take all necessary steps to initiate and authorize payment of the Management Fee on or before the fifth (5th) day of each month for services to be rendered during the upcoming month.

5.6 **Deposit.** In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event, KSM will require the payment of a security deposit which will not be applied against amounts owing by Owner to KSM and will be retained by KSM as security for the payment of fees and expenses and returned to Owner at the end of the engagement. The terms and conditions applicable to the retainer are set forth in this Section 5.6.

5.6.1 **Amount and Payment of Deposit.** The initial deposit (the “Deposit”) shall be set at an amount equal to the aggregate of the Management Fee plus the expected out-of-pocket expenses of KSM, each to be estimated by KSM in its reasonable discretion based on expected amounts due and owing from Owner to KSM during a one (1) month period. KSM shall have the right to request that Owner add to the Deposit in the event that, at any time, KSM’s monthly Management Fee plus the monthly expected out of pocket expenses exceeds the amount of the Deposit. Such Deposit shall be submitted by Owner as directed by KSM within thirty (30) days after KSM’s request.

5.6.2 **Security Interest in Deposit.** The Deposit is a separate obligation of Owner and Owner understands and agrees that failure to submit such Deposit in accordance with the terms of this Agreement shall constitute an Event of Default hereunder. The Deposit shall not be applied or credited to amounts due from Owner as they come due, but will be returned to Owner once all amounts due hereunder are paid in full, or when the condition that created the Insecurity Event is resolved, reversed, or ceases to exist. Owner hereby grants a security interest in the Deposit to KSM to secure payment of all amounts due hereunder and expressly authorizes KSM to pay itself any amounts past due from the Deposit. Owner acknowledges and agrees that this security interest is perfected by virtue of KSM’s possession of the Deposit.

5.6.3. **Interest on Deposit.** Interest earned on the Deposit is the property of Owner and shall be returned to Owner once all amounts due under the Agreement are paid in full. The Deposit is not intended to be an estimate for the total expenses to be incurred by Owner hereunder.

5.7 **Payment Prior to Insolvency Proceeding.** Prior to the initiation of an Insolvency Proceeding (as defined in Section 11.3 below) by Owner, if applicable, Owner shall pay all amounts then outstanding and owing to KSM in immediately available funds by wire transfer.

**ARTICLE 6**

**COVENANTS AND REPRESENTATIONS**

6.1 **Owner’s Covenants and Representations.** Owner makes the following covenants and representations to KSM, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:
6.1.1 **Corporate Status.** Owner is a municipal corporation, duly organized, validly existing, and in good standing under the laws of California, and authorized to transact business in California, with full corporate power and authority to enter into this Agreement.

6.1.2 **Authorization.** The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by all requisite action, and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms.

6.1.3 **Effect of Agreement.** Neither the execution and delivery of this Agreement by Owner nor Owner’s performance of any obligation hereunder (a) shall constitute a violation of any law, ruling, regulation, or order to which Owner is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which Owner is a party or is otherwise bound, or (ii) to which the Courses, the Property or any part thereof is subject.

6.1.4 **Ownership Rights.** As of the Commencement Date and throughout the Term of this Agreement, Owner owns and shall retain all right, title and interest in the Courses and the Property peaceably and quietly. Owner represents and warrants that KSM’s performance of any of the services contemplated by this Agreement shall not violate the property rights or interests of any other Person.

6.1.5 **Documentation.** If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to KSM, on or after the Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which KSM may reasonably request in connection with the operation of the Courses.

6.2 **KSM’s Covenants and Representations.** KSM makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.2.1 **Corporate Status.** KSM is a corporation duly organized, validly existing, and in good standing under the laws of Illinois, and authorized to transact business in California, with full corporate power to enter into this Agreement and execute all documents required hereunder.

6.2.2 **Authorization.** The making, execution, delivery, and performance of this Agreement by KSM has been duly authorized and approved by all requisite action of the board of directors of KSM, and this Agreement has been duly executed and delivered by KSM and constitutes a valid and binding obligation of KSM, enforceable in accordance with its terms.
6.2.3 Effect of Agreement. Neither the execution and delivery of this Agreement by KSM nor KSM’s performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which KSM is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which KSM is a party or is otherwise bound.

ARTICLE 7

INSURANCE

7.1 Course Insurance. During the Term, the following insurance shall be maintained in connection with the operations at the Courses:

7.1.1 Insurance Maintained by Owner. During the Term, Owner shall secure the following insurance:

(A) Property Insurance covering loss or damage to the buildings, structures or other improvements, contents, equipment and supplies. Such Property Insurance shall include a waiver of all right of recovery by way of subrogation against KSM and Owner in relation to any damage covered by such policy.

(B) Business Interruption, Loss of Income and Extra Expense Insurance that will reimburse Owner and KSM for direct and indirect loss of earnings attributable to six months of business interruption and for the actual loss sustained until the structures are substantially rebuilt after an insured property loss.

7.1.2 Insurance Maintained by KSM. KSM shall secure, the cost of which shall be an Operating Expense, the following insurance covering its on-site activities under this Agreement:

(A) Commercial General Liability and/or Umbrella/Excess Liability Insurance providing coverage for bodily injury and property damage arising in connection with the operation of the Club or on the Property and including coverage for contractual liability providing limits of not less than:

- Bodily Injury and Property Damage Liability - $5,000,000 each occurrence
- Personal Injury and Advertising Liability - $5,000,000 per person or per organization
- General Policy Aggregate - $10,000,000
- Products Liability/Completed Operations Aggregate - $5,000,000

(B) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than $1,000,000.
(C) Commercial Liquor Liability including coverage for damages arising out of the selling, serving or furnishing of any alcoholic beverage with a limit of $5,000,000 per occurrence/$10,000,000 aggregate limit or the minimum limits required by statute if higher.

Special Note: the limits of liability specified in A, B and C above can be satisfied through a combination of primary, umbrella or excess liability policies, provided that the coverage under such umbrella or excess liability policies is at least as broad as the primary coverage.

(D) Workers’ Compensation Insurance in such amounts that comply with applicable statutory requirements, and Employer’s Liability limits, including Umbrella Liability Insurance, if necessary, of not less than $1,000,000 per accident, $1,000,000 disease-policy limit, and $1,000,000 disease each employee.

(E) Fidelity Bond or Fidelity Insurance covering all employees who have access to or responsibility for or who handle Owner funds.

All such insurance coverage maintained by KSM (except as set forth in (D) and (E)) shall name Owner as additional insured and shall be maintained with insurance companies rated at least A- by Best Key Rating Guide and shall be licensed to do business in California. KSM shall deliver to Owner certificates and endorsements of such insurance evidencing the required policies to:

CITY OF STOCKTON; ATTN: Risk Manager

22 West Weber Street, Suite 150
Stockton, California 95202

Property insurance shall include a waiver of all recovery by way of subrogation against KSM and Owner in relation to any damage covered by such policy.

The expenses for all the coverages outlined in Section 7.1.2 (A) through (E) above shall be Operating Expenses.

7.2 Owner’s Option to Provide Insurance. Upon Owner’s prior written notification to KSM, Owner may procure and maintain, at Owner’s sole cost and expense, with insurance companies rated at least A- by Best’s Key Rating Guide, and licensed to do business in California, sufficient insurance fully covering the Property and operation of the Courses, in at least the amounts specified in Section 7.1.1 and 7.1.2 (A) through (C) above. All such insurance shall name KSM and its shareholders, officers, directors, employees, agents and representatives as additional insureds. Owner shall deliver to KSM certificates of insurance evidencing the above-required policies. Property insurance shall include a waiver of all recovery by way of subrogation against KSM in relation to any damage covered by such policy.

Within fifteen (15) days after receipt of such written notification from Owner, along with appropriate certificates of insurance, KSM shall no longer secure the coverage specified in Section 7.1.2 (A) through (C) above; provided, however, that KSM shall continue to secure the
coverage specified in Section 7.1.2 (D) and (E) above. The expenses for the coverages provided by KSM shall be Operating Expenses.

7.3 Waiver of Subrogation. Notwithstanding anything else contained in this Agreement, Owner and KSM each hereby waives all rights of recovery against the other and their Affiliates, and against each of their officers, employees, agents and representatives, on account of loss by or damage to the waiving party's property or the property of others under its control, to the extent that such loss or damage is (i) insured against under any insurance policy which either may have in force at the time of the loss or damage; or (ii) is required to be insured against in accordance with this Agreement; or (iii) given the facts and circumstances surrounding the Property and the Courses, should reasonably be insured against by the Owner (in any case, regardless of whether or not such insurance policy is in effect). Owner shall, upon obtaining any policies of insurance required under this Agreement, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement. This waiver of subrogation shall survive the expiration or termination of this Agreement.

ARTICLE 8

DAMAGE AND CONDEMNATION

8.1 Substantial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements are damaged or destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to such effective date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Courses).

8.2 Partial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements, or any portion thereof, is damaged or destroyed by fire or other casualty and such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, Owner shall have the obligation to repair the damaged Real Property, Tangible Personal Property, and/or Improvements as nearly as practicable to the condition the same were in prior to such damage. Owner shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

8.3 Substantial Condemnation. In the event (i) all or substantially all of the Real Property is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or (ii) a substantial portion of the Real Property is so taken, but the result is that it is unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, then either party hereto may terminate this Agreement upon written notice to the other party given within
ninety (90) days following the conclusion of the condemnation proceedings. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to the date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Courses).

8.4 Partial Condemnation. In the event a portion of the Real Property shall be taken by any of the events described in Section 8.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, this Agreement shall not terminate. It is further agreed that any portion of any award, damages or other compensation paid to Owner on account of such partial taking, condemnation, or sale as is necessary to render the Property equivalent to its condition prior to such event shall be used for such purpose. The balance of such award, if any, shall be fairly and equitably apportioned between the parties in accordance with their respective interests.

ARTICLE 9

INDEMNIFICATION

9.1 Owner's Indemnification Obligations. Except as provided in Section 7.3, Owner shall defend, indemnify and hold KSM and its Affiliates and each of their shareholders, members, officers, directors, managers, employees, agents, and representatives (the "KSM Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to (i) the performance of the Management Services on behalf of Owner, and (ii) the ownership, leasing, organization, development or construction of the Courses or the Property; and (iii) Hazardous Materials or other conditions existing at the Courses or the Property; and (iv) the use by KSM of Courses trade names, trademarks, logos or other intellectual property used in connection with the Courses; and (v) any acts or omissions of Owner (or its officers, directors, agents, employees, representatives, contractors and others for whom Owner is responsible); and (vi) any activities in connection with the transition of the management of the Courses to KSM; and (vii) any acts or omissions occurring in connection with the operation or management of the Courses prior to the Term; to the fullest extent permitted by law, except to the extent such liabilities were caused by KSM's willful or criminal misconduct, gross negligence or fraud. Owner's duty to defend and indemnify KSM and the KSM Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term.

9.2 KSM's Indemnification Obligations. Except as provided in Section 7.3, KSM shall defend, indemnify and hold Owner and Owner's shareholders, officers, directors, employees, agents, and representatives (the "Owner Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to the negligent acts or omissions of KSM (or its officers, directors, agents, employees, representatives, contractors and others for whom KSM is
responsible), to the fullest extent permitted by law, except to the extent such acts or omissions were directed or approved by Owner, or such liabilities were caused by Owner's willful or criminal misconduct, gross negligence or fraud. KSM's duty to defend and indemnify Owner and the Owner Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term. Notwithstanding anything else contained herein, Owner acknowledges that KSM shall not be responsible for any damage to property under its care custody and control and that Owner shall ensure that all such damage is covered by appropriate insurance coverage.

9.3 **Survival.** The defense and indemnification obligations contained in this Article 9 shall survive the expiration or termination of this Agreement for any reason.

**ARTICLE 10**

**RIGHT TO CURE**

10.1 **Performance.** Other than with respect to Owner's obligations pursuant to Section 5.5 to 5.7 hereof, if, after the expiration of any permitted grace period or notice and cure period, a party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other party. Notwithstanding the above, in the case of an emergency, either party may, after notice to the other party, so reasonably perform in the other party's stead prior to the expiration of any applicable grace period; provided, however, the other party shall not be deemed in default under this Agreement.

10.2 **Reimbursement.** If, pursuant to this Article, either party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such party, with all interest, cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

10.3 **Disgorgement.** If the incurring of any debt or the payments of money or transfers of property made to KSM by or on behalf of Owner, pursuant to this Agreement or any related documents shall subsequently be declared to be "void" or "voidable" within the meaning of any state or federal law relating to creditors' rights, including, without limitation, fraudulent conveyances, a preference, or otherwise voidable or recoverable, in whole or in part, for any reason under the federal Bankruptcy Code or any other federal or state law (individually, a "Voidable Transfer"), and if KSM is required to repay or restore any such Voidable Transfer or the amount or any portion thereof, or upon the advice of its counsel is advised to do so, then, as to any such Voidable Transfer or the amount repaid or restored (including all reasonable costs, expenses and attorneys' fees of Servicer on behalf of KSM related thereto), the obligations to KSM, or portion thereof, paid or deemed satisfied by such Voidable Transfer or such amount shall automatically be revived, reinstated and restored to the extent that such obligation to KSM,
or portion thereof, existed immediately prior to such Voidable Transfer, and such indebtedness to KSM, or portion thereof, shall exist as though such Voidable Transfer had never been made, and this Agreement and all liens granted hereunder shall be revived, reinstated and restored as though such Voidable Transfer had never been made. Moreover, KSM shall be entitled to the imposition of a constructive trust and equitable lien on all of Owner’s assets to the extent any liens and security interest under this Agreement are not revived, reinstated or restored and there remains amounts due and owing under this Agreement as a consequence of a Voidable Transfer.

ARTICLE 11

EVENTS OF DEFAULT

The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an “Event of Default”):

11.1 Failure to Pay Sums Due. Either party’s failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of ten (10) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

11.2 Failure to Comply. Either party’s material failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

11.3 Bankruptcy. If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature and has not paid when due any sums owing to the other party as provided in this Agreement, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an “Insolvency Proceeding”).

11.4 Reorganization; Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order,
judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE 12

REMEDIES

12.1 Owner's Remedies. Upon the occurrence of an Event of Default by KSM, Owner may:

12.1.1 Seek specific performance of KSM’s obligations or injunctive relief, as applicable;

12.1.2 Demand and receive payment of all amounts due Owner under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys’ fees of Owner arising due to KSM’s Event of Default; and

12.1.3 Terminate this Agreement by written notice of termination to KSM. Upon proper termination of this Agreement, KSM shall surrender occupancy of the Property to Owner.

No remedy granted to Owner is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by Owner to exercise any right accruing upon an Event of Default shall impair Owner’s exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

IN NO EVENT SHALL KSM BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS AND LOSS OF GOODWILL) EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 KSM’s Remedies. Upon the occurrence of an Event of Default by Owner, KSM may:

12.2.1 Seek specific performance of Owner’s obligations or injunctive relief, as applicable;

12.2.2 Demand and receive payment of all amounts due KSM under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys’ fees of KSM due to Owner’s Event of Default;

12.2.3 Terminate this Agreement by KSM’s written notice of termination to Owner. In such event, Owner shall pay to KSM a fee (the "Early Termination Fee") calculated as the greater of (i) six (6) months of Fixed Management Fees; or (ii) the remaining Fixed Management Fees that KSM would have earned had the
Attachment A

Agreement remained in effect until June 30, 2014. The Early Termination Fee shall be paid within thirty (30) days after the effective date of termination, not as a penalty, but as a reasonable estimate of the damages to be caused to KSM by such early termination.

No remedy granted to KSM is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by KSM to exercise any right accruing upon an Event of Default shall impair KSM’s exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

12.3 Litigation. In the event of any litigation under or respecting this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs through all pretrial, trial, appellate, administrative, and post-judgment proceedings.

ARTICLE 13
TERMINATION

13.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the events set forth below:

13.1.1 An Event of Default by KSM, and Owner sends to KSM a notice of termination for cause (after the expiration of any applicable cure period);

13.1.2 An Event of Default by Owner, and KSM sends to Owner a notice of termination for cause (after the expiration of any applicable cure period);

13.1.3 Both parties agree in writing to terminate this Agreement;

13.1.4 Upon the expiration or termination of this Agreement according to its terms; and

13.1.5 In accordance with Section 13.2 below.

13.2 Early Termination Option.

13.2.1. Owner may terminate this Agreement for convenience, in its sole discretion, upon the end of the 2013 fiscal year (June 30, 2013) by providing at least ninety days (90) days advance written notice to KSM of such decision. Termination shall be effective following expiration of the notice period and payment of the Management Fee (including both the Fixed Management Fee and the Accounting Reimbursement portions) in full for the period through and including June 30, 2014. If such option is not exercised as described above, then this Agreement shall continue until the Termination Date; provided that either party may still exercise the right of termination pursuant to Section 13.2.2 below.
13.2.2. Either party may terminate this Agreement for convenience, in its sole discretion, upon the end of the 2014 fiscal year (June 30, 2014) by providing at least one hundred eighty (180) days advance written notice to the other party of such decision. If such option is not exercised as described above, then this Agreement shall continue until the Termination Date.

13.3 Payments Upon Termination; Repayment of Loan. Upon expiration or termination of this Agreement, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination. Such payment obligations shall include repayment in full of all amounts outstanding under the KSM Loan (described in Section 15.20 below), including all principal as well as accrued yet unpaid interest.

13.4 Employee and Other Obligations Upon Termination. Upon a termination of this Agreement for any reason, Owner shall remain responsible for payment of obligations connected with the Management Services rendered through the effective date of termination (including all Operating Expenses, all Gross Payroll obligations, as well as the Management Fee and all out of pocket expenses). Such obligations shall include all amounts to become due and owing to the terminated staff of KSM at the Courses through the effective date of termination. Owner shall pay all accrued wages for the terminated staff through such termination date and shall reimburse and/or hold harmless KSM for workers compensation insurance and other employee benefits paid or accrued by KSM on behalf of Owner to the terminated staff as of the termination date. Additionally, Owner shall be responsible for the payment of any earned and accrued vacation owed or due to the terminated staff as a result of the termination as well as any manual adjustments of wages and any unclaimed wages due the terminated staff accruing prior to the termination date and shall, if requested by KSM, reimburse KSM for any such payments made by KSM. Any amounts owed to KSM pursuant to this Section shall be paid to KSM within thirty (30) days of written request therefor.

ARTICLE 14

NOTICES

14.1 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, postage prepaid ("Mail"), or sent by nationally-recognized overnight mail or courier service ("Overnight Courier"), addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. Any notice will be deemed received (A) upon the date personal delivery is made, (B) three (3) business days after the date it is deposited in the Mail, (C) one (1) business day after it is deposited with an Overnight Courier, or (D) the date upon which attempted delivery of such notice, whether by Mail, Overnight Courier or personal delivery, is refused or rejected.

If to Owner: City of Stockton
605 N. El Dorado
Stockton, California 95202
Attention: Pamela Sloan
If to KSM:  
KemperSports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062
Attention: Steven K. Skinner, Chief Executive Officer

with a copy to:  
KemperSports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062
Attention: Corporate Counsel

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

ARTICLE 15

MISCELLANEOUS

15.1 Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and dated and initialed by the parties.

15.2 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

15.3 Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

15.4 Proprietary Information. The trade names, trademarks and logos of Owner (collectively, the “Owner Marks”) shall be used by KSM only in connection with the performance of the services provided under this Agreement and as otherwise provided in this Agreement or as agreed upon by Owner; provided, however, that Owner agrees that KSM may
use the Owner Marks in its marketing and promotional materials as a course managed by KSM. All specifically identifiable information developed by KSM for Owner at the expense of Owner shall be the property of both KSM and Owner and such information may continue to be used by Owner at the Courses beyond any expiration or termination of this Agreement; provided, however, that Owner may not use or grant others the right to use such information at any other location nor disclose or grant any rights to such information to any third party. All of KSM’s proprietary information, including (i) trade names, trademarks and logos as well as programs that have been or may be developed by KSM, and (ii) software and technology, shall remain the exclusive property of KSM and neither Owner nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of KSM. The obligations and restrictions contained in this Section shall survive the expiration or termination of this Agreement for any reason.

15.5 **No Partnership or Joint Venture.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of independent contractor.

15.6 **Restrictions as to Employees.** During the Term and for a period of two (2) years after the end of the Term, it is agreed that Owner and/or its agents and contractors shall not, directly or indirectly, seek to contact, entice, or discuss employment with any Key Employee of KSM nor shall Owner, its agents and/or contractors employ or seek to employ, directly or indirectly, any such Key Employee, without first obtaining the written consent of KSM. For purposes hereof, a “Key Employee” of KSM shall mean any individual holding any of the following positions at any time during the Term: the general manager, superintendent, accountant/bookkeeper, head professional or assistant superintendent of the Courses, or any employee of KSM’s corporate office.

15.7 **Assignment; Successors and Assigns.**

15.7.1 This Agreement may not be assigned by either party hereto without the express written consent of the other party, except that KSM may assign this Agreement to any of its Affiliates. Owner shall have final approval of assignments to KSM Affiliates.

15.7.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

15.8 **Severability.** Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other affect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise
intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

15.9 Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith, and shall continue in full force and effect.

15.10 Accord and Satisfaction; Allocation of Payments. No payment by Owner or receipt by KSM of a lesser amount than that which is owed to KSM shall be deemed to be other than on account of such amounts owed to KSM, nor shall any endorsement or statement on any check or letter accompanying any check or payment to KSM be deemed an accord and satisfaction, and KSM may accept such check or payment without prejudice to KSM's right to recover the balance of the amounts owed to KSM or pursue any other remedy provided for in this Agreement or as otherwise provided at law or in equity. In connection with the foregoing, KSM shall have the absolute right in its sole discretion to apply any payment received from Owner, regardless of Owner's designation of such payments, to any outstanding amount of Owner then not current and due or delinquent, in such order and amounts as KSM, in its sole discretion, may elect.

15.11 Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of California. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

15.12 Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

15.13 Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

15.14 Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall Owner or KSM have any right to share or participate in any such other businesses or investments of the other party.

15.15 Counterparts; Facsimile or E-Mailed Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement. Facsimile signature or scanned and e-mailed signature shall be as effective as an original signature.
15.16 **Unavoidable Delays.** The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions beyond the reasonable control of the party obligated to perform. If either party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent the delay is occasioned by such event. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

15.17 **No Third-Party Beneficiaries.** Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

15.18 **Certain Services Excluded.** Notwithstanding anything else contained in this Agreement to the contrary, KSM's services are limited to those specifically noted in the Agreement and do not include, amongst others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax related assistance or advice, legal advice or services, expert witness services, professional cost report preparation, data processing or feasibility studies. KSM’s services will not constitute an audit, review or compilation or any other type of financial statement reporting, or consulting engagement subject to the rules of the AICPA or other similar bodies. KSM will not be expressing any professional opinions on and makes no representations or warranties in conjunction with this engagement.

15.19 **Bankruptcy Obligations.** KSM shall have no obligation to provide any services under the Agreement in the event that Owner becomes a debtor under the Bankruptcy Code, and, in accordance with Section 12 hereof, may terminate the Agreement in such event. In the event that Owner is or becomes a debtor under the Bankruptcy Code and KSM agrees to provide services to Owner post-petition, the parties shall enter into a revised written agreement or an amendment to this Agreement to govern their respective rights and obligations as part of Owner's bankruptcy case. Notwithstanding the foregoing, Owner expressly agrees that KSM shall be compensated by Owner for all commercially reasonable efforts to comply with all requirements or requests for information placed upon KSM in an Insolvency Proceeding by Owner, any receiver, trustee or liquidator for Owner or any property of Owner, any assignee for the benefit of creditors, or any trustee in any case under the Bankruptcy Code, at a reasonable hourly rate set by KSM in its reasonable discretion, in addition to the out-of-pocket expenses (including legal fees) incurred by KSM in connection with the Insolvency Proceeding (the
“Insolvency Administration Fees”). All such Insolvency Administration Fees shall be considered “Operating Expenses” under this Agreement.

15.20 **KSM Loan.** If requested in writing by Owner during the twelve (12) months after the Commencement Date, KSM agrees to provide a loan to Owner of up to $200,000 to be used by Owner solely for capital expenditures in connection with the Courses (the “KSM Loan”). At KSM’s option, KSM may enter into a loan agreement and related documents with a financial institution of its choosing in order to acquire the funds for the KSM Loan (the “Loan Documentation”). In the event that KSM enters into such Loan Documentation, Owner agrees to cooperate fully with KSM in connection with such Loan Documentation, including without limitation, signing any requisite guarantee or security agreements. Owner further acknowledges and agrees that, in the event KSM elects to procure third party funds to provide the KSM Loan, KSM’s obligation to provide the KSM Loan hereunder shall be subject to KSM’s ability to acquire such funds on terms and subject to conditions reasonably acceptable to KSM. The maturity date of the KSM Loan shall be the earlier of (A) the fifth (5th) anniversary of the Commencement Date, or (B) the expiration or termination of this Agreement for any reason (the “KSM Loan Maturity Date”). Owner shall pay interest on the outstanding amounts under the KSM Loan at rate equal to (i) one month LIBOR (the London InterBank Offer Rate quoted for a term of one (1) month by the Wall Street Journal on the last business day of each month), plus 400 basis points (4.0%) per month, but in no event less than six percent (6%) annually; or (ii) the rate at which KSM obtains the funds from a third party financial institution, if applicable. (In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of the Agreement.) Interest shall be due and payable on the first day of each consecutive month beginning on the first day of the month next succeeding the date of the granting of the KSM Loan, with all remaining accrued and unpaid interest due and payable on the KSM Loan Maturity Date. Principal shall be amortized over the term of the KSM Loan and shall be due and payable on the first day of each consecutive month beginning on the first day of the month next succeeding the first anniversary of the Commencement Date, with all remaining outstanding principal due and payable on the KSM Loan Maturity Date. On the first anniversary of the Commencement Date after granting the KSM Loan to Owner, KSM shall provide to Owner an amortization schedule setting forth the amount of principal and interest to be repaid by Owner over the term of the KSM Loan. The monthly principal and interest payments may be made directly out of the Operating Expense Account. As security for the payment of the KSM Loan and the performance by Owner of all obligations relating thereto, Owner shall assign and grant to KSM a continuing first priority lien on and security interest (to the extent permitted by law) in upon and to all right, title and interest of Owner, whether now owned or hereafter created, in and to any and all accounts, money, contract rights, chattel paper, documents, deposit accounts, securities, investment property, instruments, letter-of-credit rights, commercial tort claims, insurance claims and all of Owner’s rights, remedies, security, liens and supporting obligations, in to and in respect of the foregoing (unless otherwise defined in this Agreement, all terms used in this sentence shall have the meanings given them in Article 9 of the Uniform Commercial Code (collectively, the “Collateral”). In order to evidence the KSM Loan and KSM’s security interest in the Collateral, Owner shall execute and deliver to KSM a Promissory Note, Security Agreement and Deposit Account Control Agreement. KSM shall not be required to provide the KSM Loan unless and until Owner delivers to KSM and duly authorizes fully executed originals of the Promissory Note, Security Agreement and Deposit Account Control Agreement, each in
form and substance acceptable to KSM in its sole and absolute discretion. All amounts outstanding under the KSM Loan shall be repaid to KSM in full (including all principal and all accrued yet unpaid interest) on the KSM Loan Maturity Date. If at any time KSM deems it to be in its best interest and/or if Owner defaults under any term or provision of, or causes an acceleration of the performance required under, any other agreement or document with a financial institution, creditor or other third party, or defaults in any of its payment obligations to KSM or any third party, then KSM may, in its sole discretion, require additional collateral, guarantees or other security in connection with the KSM Loan.

15.21 **Closure of a Course.** In the event that Owner decides, for whatever reason, to close one of the Courses during the term of the Agreement the parties shall negotiate in good faith to restructure this Agreement to take into account that new circumstance and its effect upon the services to be provided by KSM and the Management Fees and other expenses to be paid by the Owner.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

**KEMPERSPORTS MANAGEMENT, INC.**

By: [Signature]

Steven K. Skinner
Chief Executive Officer

**CITY OF STOCKTON,**

A Municipal Corporation

By: [Signature]

Name: Bob Deis
Title: City Manager

**APPROVED AS TO FORM**

JOHN LUEBBERKE
CITY ATTORNEY

By: [Signature]

Deputy City Attorney

**ATTEST:**

By: [Signature]

for

KATHERINE GONG MEYERS
City Clerk of the City of Stockton

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KSM Management Agreement Form Rev 6/11
EXHIBIT A
DEFINITIONS

All capitalized terms referenced or used in the Management Agreement (the “Agreement”) and not specifically defined therein shall have the meaning set forth below in this Exhibit A, which is attached to and made a part of the Agreement for all purposes.

- **Affiliate(s).** The term “Affiliate(s)” shall mean a Person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the Person in question and any officer, director, or trustee, and any stockholder or partner of any Person referred to in the preceding clause owning fifty percent (50%) or more of such Person. For purposes of this definition, the term “control” means the ownership of fifty percent (50%) or more of the beneficial interest of the voting power of the appropriate entity.

- **Courses.** The term “Courses” shall mean the golf courses to be operated as “Swenson Park Golf Course” and “Van Buskirk Golf Course” located on and operated from the Real Property.

- **Environmental Laws.** The term “Environmental Laws” shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.

- **Gross Revenues.** The term “Gross Revenues” shall mean all monthly receipts related to or derived from the operation of the Courses from cash or credit transactions recognized during the Term, computed on an accrual basis, including, but not limited to, greens fees, cart rental fees, income derived from the investment of Gross Revenues, the amount of all sales (wholesale or retail) of food, beverages, goods, wares, or merchandise on, at, or from the Property, or for services of any nature performed on, at, or from the Property, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by KSM or Owner in the course of obtaining such Gross Revenues.

Gross Revenues shall not include:
Attachment A

- Applicable gross receipts taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services;

- Service charges that are percentage gratuities added to billings, to the extent paid to employees of the Courses;

- Proceeds of borrowings by Owner;

- Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss;

- Interest or investment income earned on distributed Positive Net Cash Flow to Owner or KSM pursuant to the terms of the Agreement; or

- Owner's Advances.

Any of the above provisions resulting in a double exclusion from Gross Revenues shall be allowed as an exclusion only once.

- **Hazardous Material.** The term “Hazardous Material” shall mean any solid, liquid, or gaseous substance, chemical, compound, product, byproduct, waste, or material that is or becomes regulated, defined, or designated by any applicable federal, state, or local governmental authority or by any Environmental Law as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant or contaminant, and shall include, without limitation, asbestos, polychlorinated biphenyls, and oil, petroleum, petroleum products and petroleum byproducts.

- **Improvements.** The term “Improvements” shall mean the improvements, structures, and fixtures placed, constructed, or installed on the Real Property for the Courses, and any additions or subsequent modifications thereto.

- **Insecurity Event.** The term “Insecurity Event” shall mean the occurrence of any one or more of the following events: (a) there shall occur a default under any agreement, document or instrument, other than this Agreement, to which Owner is a party, the consequences of which could reasonably be expected to have a Material Adverse Effect; (b) any statement, report, financial statement or certificate made or delivered by Owner, or any of its officers, employees or agents, to KSM is untrue, incomplete or incorrect in any material respect; (c) any of Owner's assets are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter; (d) an application is made by any person, other than Owner, for the appointment of a receiver, trustee, or custodian for any of Owner's assets and the same is not dismissed within thirty (30) days after the application therefor; (e) any material change in Owner's capital structure or in any of its business objectives, purposes and operations which might in any way adversely affect the repayment of its obligations to KSM pursuant to this Agreement; or (f) any other event or occurrence, which, in the
reasonable discretion of KSM, could materially and adversely affects Owner’s ability to repay its obligations to KSM pursuant to this Agreement.

- **Intangible Personal Property.** The term “Intangible Personal Property” shall mean all intangible property or rights owned or held by Owner in connection with the Courses, including, but not limited to, security deposits, prepaid rents, liquor and operating licenses, and all trademarks related to the Courses.


- **Management Services.** The term “Management Services” shall mean the services provided by KSM pursuant to this Agreement.

- **Material Adverse Effect.** The term “Material Adverse Effect” shall mean any event that has a material adverse effect on (i) the business, assets, operations or financial or other condition of Owner, and (ii) Owner’s ability to pay the amounts owed to KSM in accordance with the terms hereof.

- **Net Operating Income.** The term “Net Operating Income” or “NOI” shall be computed as the sum of Gross Revenues less cost of goods sold, payroll, other Operating Expenses, maintenance equipment and golf carts leases, accounting reimbursements and the Fixed Management Fees. Such calculation shall not include payments associated with capital expenditures, interest expense, taxes, depreciation and amortization.

- **Operating Expenses.** The term “Operating Expenses” shall mean all operating expenses incurred or paid in connection with the operations of the Courses, computed on an accrual basis, including, but not limited to, the following items:
  - Salaries, wages, employee benefits, and payroll expenses, including without limitation, payroll service bureau fees, payroll taxes, Course profit sharing programs, and insurance for all employees employed on-site in the direct operation of the Courses, excluding, however, service charges, which are defined as percentage gratuities added to billings and paid to employees (collectively, the “Gross Payroll”);  
  - Marketing, advertising, and promotional expenses;  
  - Purchase and replacement, as necessary, of inventories of maintenance parts and supplies, food stores and bar supplies;  
  - Purchase and replacement, as necessary, of silver, chinaware, glassware, cooking utensils, and other similar items of equipment;  
  - Purchase and replacement, as necessary, of office supplies, computers, restaurant and kitchen equipment, printers, facsimile machines, photocopiers,
postage, printing, routine office expenses, and accounting services incurred in
the on-site operation of the Courses

○ Rental or lease payments and applicable taxes for maintenance equipment,
golf carts and any other major items of furniture, fixtures, or equipment;

○ The costs of IT consultants and other consultants utilized for the Courses;

○ Reasonable travel expenses of on-site employees incurred exclusively in
connection with the business of the Courses;

○ Accrual of a reserve for insurance (including workers' compensation) and
property taxes each month in an amount or at a rate that is sufficient to pay
such insurance premiums or property taxes when they become due and
payable;

○ Insurance premiums and property taxes, to the extent not provided for in the
reserve established therefore and any deductible amounts required to be paid
pursuant to Course insurance coverage;

○ Accounts receivable previously included within Gross Revenues, to the extent
they remain unpaid ninety (90) days after the first billing;

○ Auditing, accounting costs, computer fees (including costs to license and
maintain accounting software), and legal fees incurred in respect of the
operation of the Courses, including any reasonable financial management and
reasonable accounting fees paid to third party accounting firms, if included in
the Budgets;

○ Costs incurred for utilities, including, but not limited to, all electric, gas, and
water costs, and any other private utility charges incurred in connection with
the operation of the Courses;

○ Ordinary maintenance and repairs, exclusive of any capital improvements or
capital replacements, which are hereby excluded;

○ The amount to be retained for purposes of maintaining Working Capital at an
appropriate level;

○ All out-of-pocket expenses incurred by KSM in providing the services under
the terms of the Agreement, including without limitation, reasonable travel for
employees employed on-site at the Property and KSM's other employees
while engaged in performing the obligations of KSM hereunder, air express,
costs of recruitment (including applicable agent's fee), and other incidental
expenses included in the Budget;
o Expenses, including legal fees, damages or other costs, involved in defending any employment-related lawsuits, charges, or claims involving personnel of the Courses;

o All expenses set forth in the approved Budgets; and

o All other customary and reasonable expenses incurred in the operation of the Courses and the Improvements.

Any of the above provisions resulting in a double inclusion as an Operating Expense shall be allowed as an inclusion only once.

Operating Expenses shall not include (i) depreciation or amortization, (ii) principal or interest payments on indebtedness, and (iii) federal, state and local income taxes of any nature or kind incurred by Owner or KSM.

• **Unanticipated and Emergency Expenditures.** The term “Unanticipated Expenditures” and “Emergency Expenditures” shall mean all expenses incurred or paid as a result of damage to equipment and physical plant including, but not limited to, the golf courses and the buildings.

• **Owner.** The term “Owner” means the City of Stockton, California and its successors, legal representatives, and permitted assigns.

• **Person.** The term “Person” shall mean any individual, partnership, corporation, association, or other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits; and, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa.

• **Personal Property.** The term “Personal Property” shall mean the Intangible Personal Property and the Tangible Personal Property.

• **Positive Net Cash Flow.** The term “Positive Net Cash Flow” shall mean the amount, if any, by which Gross Revenues exceed Operating Expenses for the particular period being measured.

• **Property.** The term “Property” shall mean (i) the Improvements, (ii) the Personal Property, and (iii) the Real Property.

• **Real Property.** The term “Real Property” shall mean that certain parcel of land upon which the Courses are located, the legal description of which is attached hereto as Exhibit B.

• **Tangible Personal Property.** The term “Tangible Personal Property” shall mean all equipment, machinery, fixtures, furnishings, accessories, and other tangible personal
property placed or installed, or to be placed or installed, on or about the Real Property and used as a part of or in connection with the operation of the Courses.

- **Working Capital.** The term "Working Capital" shall mean an amount sufficient to pay Operating Expenses for any given month.
EXHIBIT B

LEGAL DESCRIPTION OF REAL PROPERTY

The Assessor's Parcel Numbers for Swenson Golf Course located at 6803 Alexandria Place in Stockton, CA 95207, are as follows: APN 097-110-14 and APN 097-110-24

The Assessor's Parcel Number for Van Buskirk Golf Course located at 1740 Houston Avenue in Stockton, CA 95206 is as follows: APN 163-070-36

KSM Management Agreement Form Rev6/11
EXHIBIT C
CITY OF STOCKTON GOLF COURSE MAINTENANCE STANDARDS

Technical Maintenance Specifications

I. PUTTING GREEN MAINTENANCE

A. Mowing

Mowing shall be done daily using triplex type greens mowers. Height of cut shall be 3/16". Frequencies and height of cut may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The practice of alternating mowing patterns will be followed and clippings will be collected except following aeration.

B. Aeration

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. This practice shall be carried out with the minimum of interference to play.

C. Grain Control

Vertical cutting shall be scheduled a minimum of four (4) times per year and done at 90 degree angles for full benefit. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

D. Topdressing

Shall be done a minimum of two (2) times per year following aeration using a minimum of 1/8" of material per application. An approved topdressing material similar to the greens construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Excess sand shall be removed.

Spot topdressing may be applied to repair damage from ball marks or any other damage. Light topdressings may be done in conjunction with verticutting.

E. Fertilization

Types of materials and analysis shall be determined from the results of an annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.5 to 1.2 pounds of actual nitrogen per thousand square feet may be applied per growing month. Typically, a variety of granular slow-release and liquid types of material may be utilized. Greens shall not be closed for fertilization. All
applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

F. **Weed Control**

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations and Bermuda grass encroachment. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

G. **Insect and Disease Control**

Greens shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

H. **Overseeding**

Certified bent grass shall be uniformly seeded a minimum of two (2) times per year during the aeration/topdressing process. Light vertical mowing may be done prior to seeding, and covered with a light topdressing. Mowing heights shall be set at slightly higher cuts for the initial growth period.

I. **Watering**

The greens shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Irrigation should produce greens that are evenly wet over the total green. Hand watering may be necessary.

J. **Additional Green Requirements**

Any damage done to greens by any source shall be repaired as soon as possible.

Ball marks shall be repaired prior to mowing.

Damaged cups shall be replaced as soon as possible.

II. **TEE AND COLLAR MAINTENANCE**

A. **Mowing**
Mowing shall be three (3) complete cycles per week with triplex type greens mowers, less often during climatic periods of reduced growth. Height of cut shall be 5/8" but may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The width of the collar should be no greater than three (3) feet.

B. Aeration

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. Plugs shall be chopped and returned to the playing surface. This practice shall be carried out with the minimum of interference to play.

C. Thatch Control

Vertical cutting shall be scheduled a minimum of two (2) times per year and done at 90 degree angles for full benefit. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

D. Topdressing

Shall be done a minimum of 2 (two) times per year following aeration using a minimum of 1/4" of material per application. An approved topdressing material, similar to the tee construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Spot topdressing may be applied to repair divot damage.

E. Fertilization

Types of material and analysis shall be determined from results of annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.25 to 0.75 pounds of actual nitrogen per thousand square feet may be applied per growing month. Typically combinations of granular slow release and liquid type of materials may be utilized. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

F. Weed Control

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.
G. **Insect and Disease Control**

Tees and collars shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of **CONTRACTOR**.

H. **Litter Control**

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

I. **OverSeeding**

Tees shall be over seeded two (2) times per year during the aeration process using Perennial Ryegrass at a standard rate. Mowing heights shall be set at higher cuts for the initial growth period.

All divots on tees shall be filled with a topdressing/seed mixture weekly or as needed.

J. **Watering**

The tees and collars shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

III. **FAIRWAY, DRIVING RANGE AND ROUGH MAINTENANCE**

A. **Mowing**

The fairways shall be mowed two (2) times per week at a height of 3/4".

The driving range shall be mowed one (1) time per week at a height of 3/4".

The first cut of rough (12 feet out from fairway cut) shall be mowed one (1) time per week at a height of 1-1/2".

All other rough shall be mowed one (1) time per week at a height of 2-1/2".

Additional resources may need to be used after inclement weather to keep grass at an acceptable height.

B. **Aeration/Vertical Mowing**
Aeration shall be done two (2) times per year, or more often if needed using 5/8" tines penetrating to a depth of at least 3". Spot aeration may be done to relieve compaction.

Vertical mowing is not required except in extraordinary circumstances for disease control or to reduce thatch from stoloniferous weed grasses.

C. *Fertilization*

Types of material and analysis shall be determined from results of the annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 125-250 pounds of actual nitrogen per acre, per growing season, may be applied annually.

D. *Weed Control*

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

E. *Insect and Disease Control*

Fairways, driving range and roughs shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

F. *Turf Maintenance on Fairways, Driving Range and Roughs*

Bare spots shall be seeded or sodded, whichever is most appropriate, a minimum of weekly to insure there are no bare areas on the course.

G. *Litter Control*

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

H. *Watering*

The fairways, driving range and roughs shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall
be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

IV. MAINTENANCE RELATED TO ON COURSE PLAY (Non Horticultural)

A. Cups

Cups shall be changed every day the greens are mowed. During this operation, inspection of the putting surface shall be made, and any ball marks or other damage will be repaired. Practice green cups shall be changed 2-3 times per week.

B. Teeing Ground

Tee markers shall be moved as often as the cups are set on the greens. Litter containers shall be emptied daily. Tee towels shall be changed weekly or as needed. Ball washers shall be checked daily and filled at least twice a week or as needed.

C. Miscellaneous Requirements

Superintendent shall have the responsibility to mark temporary hazards, out of bound areas, and other course conditions as they occur or are required by tournament play.

CONTRACTOR shall be responsible for the maintenance of all tee markers, cups, flags, ball washers, trap rakes, yardage signs and benches on the course. Maintenance shall include repairing, painting, replacing and otherwise keeping these amenities in a good condition that is conducive to player enjoyment of and respect for the course. Repairs shall be done whenever function or appearance is hampered.

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.). Additional litter pick-ups may be necessary after special events.

Golf course restrooms shall be maintained a minimum of two times per day and more often during heavy use. Restrooms shall be cleaned, supplied with adequate paper and free from unpleasant odors.

Graffiti shall be removed as soon as possible after discovery.

Surfaces shall be kept clean at all times; sweeping, cleaning or washing of surfaces shall be done as often as necessary to keep a pleasant appearance.

Inspect, repair and replace minor damage to fencing weekly.

Cart paths shall be maintained in a smooth condition. Repair promptly and remove standing water when discovered.
V. **SAND BUNKER MAINTENANCE**

A. **Raking**

Raking shall be accomplished in its entirety 3-5 days per week to maintain a semi-soft, dry condition of the desired smoothness. Checking and spot raking shall be done daily.

B. **Edging**

Edging shall be every three (3) months, or more frequently if required. Care shall be taken to maintain the design outline of the bunkers to insure the integrity of the bunker shape.

C. **Weed Control**

Weed control shall be accomplished by manual removal, as required. Spot treatments with contact herbicides shall be done as needed.

D. **Sand Depth**

Bunkers shall be randomly checked monthly for depth of sand, and shall be maintained no less than six (6) inches deep on slopes and eight (8) inches deep in the bottoms. Additional sand shall be added where needed. (This requirement is based on adequate levels of sand at contract inception).

F. **Litter Control**

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, pine cones, etc.).

VI. **TREES, SHRUB/OTHER LANDSCAPING MAINTENANCE**

(CLUBHOUSE/GOLF COURSE/PARKING LOT)

A. **Tree Pruning**

Height limitation for tree pruning included within the scope of this agreement is fifteen (15) feet above the ground. Low hanging branches that present a hazard to golf carts or to the golfer shall be removed where practical.

Trees are to be low pruned one (1) time per year in the winter months with the exception of safety related pruning which will be performed as required. Removal of dead wood, debris and unwanted growth may be removed at this time.
Stakes and ties are to be inspected monthly for correct installation and placement. When trees are stable enough and have developed caliper to stand alone, stakes and ties shall be removed. Trees staked (without ties) for protection from golfer damage may remain staked an additional period of time.

B. **Tree Basins**

A cleared circle 2-4 feet in diameter shall be chemically maintained at the base of trees to reduce competition for nutrients by lawns and ground covers, and to prevent damage from landscape equipment. Stakes or guy wires shall be treated in the same manner as the base of trees described above.

C. **Shrub and Flower Care**

Trim shrubs to maintain a natural shape as a continuous operation, but not when the plant is in flower. It is not a recommended horticultural practice to shear shrubs. However, if The City of Stockton requests it, we will shear shrubs to the desired shape.

Shrub and flower beds will be kept weed free by the use of pre-emergent, selective herbicides, mulch, and manual weeding.

Spent flowers, leaves, and other landscape debris shall be removed from plant areas daily, or as required.

D. **Pest Control**

Frequent inspections of all trees and shrubs shall be done. When insect or disease organisms are detected, they shall be brought to the attention of the CLIENT REPRESENTATIVE to discuss appropriate control measures.

E. **Ground Cover Care**

Edge or prune groundcovers as needed to keep from spreading over walks, curbs, or up walls. Pruning to maintain a natural shape will be a continuous operation.

Keep weed-free at all seasons of the year by the use of pre-emergent, selective herbicides, and manual weeding.

F. **Turf Care**

The mowing of all turf areas shall be no less than once a week. Fertilizer shall be applied at the rate of 4-6 pounds of actual nitrogen per thousand square feet per year, or as needed to maintain health and color.
The edging of all walks and other paved areas will be performed monthly during the active growing season.

G. **Litter and Weed Control**

Paper, grass clippings, cans, and branches shall be removed from the landscape on a daily basis. All parking areas and/or walkways shall be kept clear of debris generated from the maintenance operation.

Weeds in curbs and paved walk joints immediately adjacent to landscaped areas will be removed weekly.

H. **Water and Fertilizer**

Trees, shrubs, ground cover flowers and all other landscape plants shall be watered and fertilized as necessary to provide optimum health.

VII. **IRRIGATION SYSTEM**

A. **Scheduling**

Watering shall be scheduled by the golf superintendent in quantities and frequencies consistent with seasonal requirements, and shall be done at night so as not to interfere with golf play.

B. **Inspection**

Irrigation coverage shall be reviewed daily.

C. **Repair and Replacement**

**CONTRACTOR** shall prepare within the operating budget for minor irrigation repairs and replacement. Any item over $5,000 is considered Capital Improvement and will need to be approved by the City.

D. **Damage**

Any damages to system caused by **CONTRACTOR**'s negligence while carrying out maintenance operations shall be repaired without charge. Where practical, repairs shall be made within one (1) watering period.

Vandalism, excessive damage caused by others, or faulty controllers shall be reported promptly to **CLIENT REPRESENTATIVE**.
VIII. **POTABLE WATER AND SEWER SYSTEM**

*CONTRACTOR'S* responsibility for the potable water system and sewer system shall only be that of minor repairs and maintenance. Items requiring outside service or expertise will be the *OWNER'S* responsibility or billed as an extra charge.

IX. **LAKE WATER AND AQUATIC WEED MANAGEMENT**

A. **Lakes and Waterways**

Lakes and waterways shall be treated for weed and algae infestation by a combination of approved aquatic herbicides and water colorants. Treatments may be applied by *CONTRACTOR*, licensed sub-CONTRACTOR, or a combination thereof. Physical removal may be necessary to keep lakes aesthetically pleasing.

X. **GROUNDS MAINTENANCE OF ADJACENT PREMISES**

A. **Swenson Park Golf Course - Utility Easement**

*CONTRACTOR* shall mow weekly at 2-1/2", keep free from weeds, fallen tree limbs, debris/litter, maintain irrigation system and apply adequate water to keep turf in optimal growing condition.

B. **Swenson Park Golf Course - Five Mile Slough**

*CONTRACTOR* shall remove debris/litter on a regular basis and maintain the aquatic environment through the removal of water hyacinth.

XI. **MISCELLANEOUS**

A. **Weekend and Holiday Schedule**

Greens mowing and course set-up shall be done.

B. **Practice Range**

Move tee markers daily, fill divots with sand/mix, police area, and remove litter.

C. **Materials**

All maintenance materials unless otherwise specified will be supplied by *CONTRACTOR*, and shall conform to specifications. These supplies, materials, and equipment shall include, but not be limited to:
All equipment necessary or appropriate for the performance of services under this Agreement, together with all necessary gas, oil, and spare parts for all equipment used by CONTRACTOR will be contractor's responsibility.

All necessary top dressing, seed, fertilizers, fungicides, insecticides, and herbicides will be contractor's responsibility.

Tee towels, soap, putting green cups and flags, bunker rakes, tee markers, trash receptacles, and other similar golf course equipment.

Contractor will provide Sand for bunkers to maintain the minimum required depth.

The CONTRACTOR shall be responsible for monitoring water consumption to insure adequate, but not excessive, water use.

D. Accessories

Direction signs, ropes (permanent and temporary), stakes, OB, and hazard stakes shall be maintained on a daily basis. Directional signs, putting green cups, pins, ball washer brushes, cleat brushes, and tee markers (that cannot be refurbished or repaired) shall be replaced no more than once per year without extra cost. Silk screened flags may be replaced two (2) times per year without extra cost. Additional client requested custom accessories not listed above shall be an extra cost, and shall be paid for by NAME OF CLIENT upon authorization.

E. Burrowing Animals, and Insect and Disease Control

CONTRACTOR shall take appropriate action to minimize the effects of burrowing animals, and insect and disease infestations.

F. Mulched Areas

Mulched areas shall be edged and kept free of litter (similar to rough area).

XII. ITEMS NOT INCLUDED

A. Acts of God Damage

Damage to the golf course as a result of acts of God may include, but are not necessarily limited to: removing blown-over trees, broken limbs, and stumps; removing silt or debris deposited by floods; damage from freezing, hurricanes, or other unusual occurrences will be handled on an individual basis as a pre-approved extra cost. Maintenance staff shall make every effort to repair damage, and restore and clean the golf course within the framework of the Agreement, without extra cost.
Specialized equipment, Arborist, and additional labor requested by The City of Stockton will require a pre-approved extra cost.

B. Tree, Shrub, and Flower Replacement

The loss of trees, shrubs, or flowers not caused by the CONTRACTOR may be replaced as an extra charge. It shall be the responsibility of CONTRACTOR to bring such needs to the CLIENT REPRESENTATIVE'S attention.

C. Arborist Work

Major tree pruning or other Arborist related work shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE. It shall be the responsibility of CONTRACTOR to provide estimates for needed work to the CLIENT REPRESENTATIVE'S attention.

D. Capital Improvements

Work performed over and above the normal maintenance provided in the Agreement, such as excessive earth moving, reconstruction of a golf hole, tee, or green construction or reconstruction, brush clearing, and installation of french drains, including materials for the aforementioned work, shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE.

E. Bunker Sand

Removal of bunker sand and replacing with new sand shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE.

F. Golf Accessories

Installation or replacement of putting green cups and flags, bunker rakes, tee markers, trash receptacles, ball washers, cleat brushes, benches, and other similar golf course equipment over and above the specified annual replacement shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE. Any major accessory that has been stolen, damaged, or vandalized shall be replaced, repaired, and/or re-installed as an extra charge. It is the responsibility of the CONTRACTOR to bring to the CLIENT REPRESENTATIVE'S attention any such needs.

G. Landscaped Areas

The installation of additional trees, shrubs, vines, and ground cover shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE. Deep feeding of trees requiring supplemental fertilization for growth and development will require prior approval by the CLIENT REPRESENTATIVE. Class one fine pruning of trees over fifteen (15) feet from the ground shall be an extra cost item.
requiring prior approval by the CLIENT REPRESENTATIVE. Materials for mulching and installation of annual color shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE.
FIRST AMENDMENT TO MANAGEMENT AGREEMENT
KEMPERSPORTS MANAGEMENT

This amendment (the "First Amendment") to the Management Agreement ("Agreement") dated as of June 21, 2011 by and between the City of Stockton, a California municipal corporation (the "Owner") and Kemper Sports Management, Inc., an Illinois corporation ("KSM") is made and entered into as of June 19, 2016 (the "First Amendment Effective Date"), by and between Owner and KSM. The Owner and KSM may be referred to collectively as "Parties" or in the singular as "Party" as the context requires.

WITNESSETH

WHEREAS, the Owner owns the golf club facilities located in Stockton, California known as "Swenson Golf Course" with the address of 6803 Alexandra Place; and "Van Buskirk Golf Course" with the address of 1740 Houston; or collectively, the "Courses", and;

WHEREAS, Owner and KSM entered into a Management Agreement on July 1, 2011 for KSM to operate the Courses for a five year term which expires June 30, 2016 with a mutual option for an additional five year term if exercised.

WHEREAS, the Owner and KSM now desire to extend the term of the Agreement and make certain other amendments to the Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties agree as follows:

1. Section 2.2 Term
   According to the provisions in Section 2.2 Term both parties agree to exercise the mutual option to extend the Initial Term for an additional five (5) year mutual option term (July 1, 2016 through June 30, 2021).

2. Section 13.2.2 Early Termination.

Section 13.2.2 is hereby deleted in its entirety and replaced with the following:
"Owner may terminate this Agreement for convenience, in its sole discretion, upon either the closure of one or both Courses, or in the event of non-appropriation of funds, and by providing at least one hundred eighty (180) days advance written notice to KSM. In the event the Owner closes one Course and does not terminate the Agreement, Parties shall negotiate in good faith to restructure the Agreement to take into account the new circumstance and its effect on services to be provided by KSM, the Management Fees, and other expenses to be paid by the Owner."

216 First Amendment to KemperSports Management Agreement
Page 1 of 2
3. Section 15.21 Closure of a Course. Section 15.21 is hereby deleted in its entirety.

4. Article 16 Digital Signature shall be added as follows: The Parties agree that this agreement may be signed with a digital signature, which has the same force and effect of a handwritten signature.

5. Full Force and Effect. All terms and conditions not expressly amended by the First Amendment shall remain unchanged and in full force and effect.

AUTHORITY AND EXECUTION

The undersigned hereby represent and warrant that they are authorized by the parties to execute this First Amendment to the Management Agreement. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Management Agreement to be executed on the first date written above.

ATTEST:  
BONNIE PAIGE  
CITY CLERK  

CITY OF STOCKTON  
KURT O. WILSON  
CITY MANAGER

APPROVED AS TO FORM:  
JOHN LUEBBERKE  
CITY ATTORNEY

BY:  
SUSANA ALCALA-WOOD  
ASSISTANT CITY ATTORNEY

KEMPERSPORTS MANAGEMENT, INC.  
STEVEN SKINNER  
CHIEF EXECUTIVE OFFICER
Resolution No.

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH KSM SWENSON, LLC FOR SWENSON GOLF COURSE; ADOPTING FINDINGS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH OTHER AND FURTHER ACTIONS THAT ARE APPROPRIATE TO CARRY OUT THE PURPOSE AND INTENT OF THIS RESOLUTION

On August 15, 2018, the City Clerk of the City of Stockton opened and publicly declared the sealed proposals offered for the Request for Proposals (“RFP”) Swenson Municipal Golf Course, Operation, Maintenance, and Improvement (PUR18-012); and

The purpose of the RFP was for long term operation, maintenance, and improvement of Swenson Golf Course, a municipal golf course located at 6803 Alexandria Place. The golf course includes pro shop, restaurant/cafe, driving range, golf instruction and programs, and course grounds with proposed work for non-golf activities, events and improved venues to increase revenues and encourage complimentary community use; and

After a KSM Swenson, LLC. (“KSM”), is the most qualified Proponent, and the Response is regular and responsive in all respects; and

The City published “A Notice of Intention to Lease City Property” for the Lease of Swenson Golf Course at least ten days before City Council action; and

The City and KSM Swenson will concurrently enter into a Second Amendment to the Management Agreement and Transition Plan to provide for the transition of services at Swenson Golf Course from a Management Agreement to a Lease, and terminate golf services at Van Buskirk Golf Course; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is authorized and directed to execute a fifteen (15) year Lease Agreement for Swenson Golf Course (“Lease”) with an additional ten-year option with KSM Swenson LLC., in substantially the form as Exhibit 1 to this Resolution; and to make all payments, approve and execute any necessary contractual assignments, sign all legal and financial documents, and undertake all activities contemplated therein with such changes therein as shall be approved by the City Manager and which the Lease will be available for public inspection at the office of the City Clerk of the City of Stockton.

2. The following findings are hereby approved pursuant to Stockton Municipal Code section 3.68.070 in support of an exception to the competitive bidding process.
a. The primary purpose of the golf course is to offer professionally managed public golf to the residents of Stockton and others in the surrounding area; to provide an adequate facility and greens for golf play; and to provide programs that help instruct and improve the skills of golf players.

b. In determining the most qualified lease-holder for the golf course, the predominant criteria is a proponent’s professional expertise in the sport of golf; business experience in operating golf courses including food and beverage operations, and the ability to forge connections in the local community by developing innovative programs that draw non-golf players.

c. Use of the RFP process is appropriate in this case because it relies on the evaluation of professional expertise, business experience, and the ability to develop successful community-based programs. While cost is one of the factors that is considered, it is not the sole basis of selection as the other criteria listed are of equal importance in providing the highest-caliber service to the public.

d. The RFP process, which included proposal evaluation, interviews, and review of financial offers, allowed the City to select the organization best suited for a long-term lease of Swenson golf course.

3. The City Manager, agents, and employees of the City of Stockton are hereby authorized and directed to take such further actions deemed necessary in his reasonable and appropriate to ensure that the Lease is accurate; and execute such other documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of the Resolution; and amend the Lease to carry out, comply with, and perform the duties where it is the Council’s intent that it be a proper part thereof and enforceable as between the Parties to the Lease.

4. The proposed Lease is Categorically Exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301 (Existing Facilities). Consistent with that section, the lease would authorize the operation, repair, and maintenance of existing public structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing. The proposed Lease is also not subject to any of the exceptions to the use of a Categorical Exemption identified at CEQA Guidelines section 15300.2 (Exceptions).
5. The City Manager is authorized to take all other actions that are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED August 20, 2019.

__________________________________
MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

__________________________________
ELIZA R. GARZA, CMC
City Clerk of the City of Stockton
SWENSON GOLF COURSE LEASE AGREEMENT

This Lease Agreement ("Lease" or "Agreement") is made and entered into and is effective January 1, 2020, by and between the City of Stockton, a municipal corporation organized and existing under the laws of the State of California ("City"), and KSM Swenson, LLC ("KSM"), a wholly-owned subsidiary of Kemper Sports Management Inc. The City and KSM may be referred to collectively as "Parties" or in the singular as "Party" as the context requires.

RECITALS

The City owns certain real property located within the geographical limits of the City of Stockton, California commonly known as Swenson Golf Course (the "Golf Course") located at 6803 Alexandra Place which is described in Exhibit 1, which is attached hereto and incorporated herein by reference. The real property covered by this Lease, includes an 18-hole championship course and a Par-3 executive 9-hole golf course, together with all buildings, structures, and improvements located or that may in the future be located, thereon is collectively hereinafter referred to as the "Premises" or the "Leased Premises"; and

Kemper Sports Management, Inc. entered into a Management Agreement ("Management Agreement") on June 21, 2011, for the operation of both Swenson Golf Course and Van Buskirk Golf Course.

Kemper Sports Management, Inc. and City entered into a First Amendment of the Management Agreement on June 29, 2016, to extend the term of Management Agreement and amend termination language.

Kemper Sports Management, Inc. and City are concurrently entering into a Second Amendment of the Management Agreement and Transition Plan to take reasonable efforts to transition to this Lease, close Van Buskirk Golf Course, and complete tasks to terminate the Management Agreement.

The budget impact of City’s golf courses has been substantial. Since the 1990s, rounds of golf at City Courses have decreased by 66 percent. City Council directed the City Manager to evaluate options to address the financial status of City golf courses. After examining alternatives, the City Council and City Manager determined an RFP for a long-term lease would be in the City and community’s best interest.

City released an RFP for Golf Course for Swenson Golf Course Operation, Maintenance, and Improvement (PUR-18-012) which closed August 16, 2018. After a competitive
request for proposal process, KSM was selected as most qualified.

City believes it is in the best interest of KSM, the City of Stockton, and the citizens who utilize the golf course facilities to enter into this Lease with KSM pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the City and KSM hereby agree as follows:

**ARTICLE 1**
**DEFINITIONS**

As used in this Lease, all capitalized terms referenced or used in this Lease and not specifically defined herein shall have the respective meanings indicated below:

**Affiliate** - Any and all corporations, partnerships, trusts, and other entities directly or indirectly controlled by, controlling, or subject to direct or indirect common control of any entity or person.

**Annual Level of Play** – “Annual Level of Play” means an annual report provided to the City which describes the uses of Leases Premises and provided in Section 9.1.

**Capital Contingency Fund**- Capital Contingency Fund shall have the meaning set forth in Section 4.4 “Capital Contingency Fund”.

**Capital Improvements** – "Capital Improvements" shall mean improvements, and/or replacement of the buildings, golf course, practice facilities, clubhouse, pro shop, food and beverage facilities, maintenance facilities, fixed equipment, irrigation, and other systems, which, (i) have a per-occurrence aggregate cost of $5,000 or more, and (ii) have an expected useful life of greater than five (5) years.

**City Event** - “City Event” shall have the meaning set forth in Section 5.3 “City Events”.

**General Improvements** – “General Improvements” shall mean the repairs and maintenance made by KSM in its discretion to maintain the Leased Premises.

**Grace Period** – A provision for a specific period of thirty (30) working days after which a default condition occurs whether or not the notice has been received.

**Improvements** - The buildings, structures (surface and subsurface) and other improvements, including without limitation all Capital Improvements, In-kind Improvements, and General Improvements, now or hereafter located on the Premises.

**In-kind Improvements** - If KSM provides in-kind improvements, adequate documentation must be provided to City to support the value of the in-kind improvement. This information
will be included in the annual Capital Improvement and Upgrade Plan Report.

**Insurance Requirements** - All requirements of each insurance policy, and all orders, rules, regulations, and other requirements of the City’s Risk Services Department that are applicable to the Leased Premises or the operation of the Leased Premises.

**KSM Equipment Contribution** – “KSM Equipment Contribution” shall have the meaning set forth in Section 4.5 “KSM Equipment Contribution”.

**Land** - The parcel or parcels of land being leased under this Lease and described in Exhibit 1.

**Leased Premises** - A collective term for the Land and Improvements and City's interest in the Land and Improvements, and any greater estate or interest hereafter acquired, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or pertaining thereto.

**Legal Requirements** - All laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, including those of the City which now or hereafter may be applicable to the Golf Course, the Leased Premises, and the construction, management, and operation of the Golf Course and Leased Premises.

**Net Operating Profit** - Net Operating Profit shall be computed on a calendar year basis as the sum of Gross Revenues less cost of goods sold and other Operating Expenses for such calendar year. Such calculation shall not include payments associated with Capital Improvements, interest expense, income taxes, depreciation, and amortization.

**Operating Inventory** - Consumable items used in or held in storage for use in the operation of the Golf Course, including scorecard and cart tickets, driving range balls, professional shop merchandise, food and beverages, paper and plastic ware, fuels, cleaning materials, fertilizers, pesticides, supplies, and other similar items.

**Operating Expenses** - Operating Expenses means any and all expenses and expenditures of whatever kind or nature incurred by KSM directly or indirectly in promoting, operating, maintaining and managing the Leased Premises including without limitation, the following, as determined in accordance with generally accepted accounting principles consistently applied:

1. Salaries, wages, employee benefits, and payroll expenses, including without limitation, payroll service bureau fees, payroll taxes, profit-sharing programs, and insurance for all employees employed on-site in the direct operation of the Leased Premises, excluding, service charges, which are defined as percentage gratuities added to billings and paid to employees;

2. Marketing, advertising, and promotional expenses;
(iii) Purchase and replacement, as necessary, of maintenance parts and supplies, food stores and bar supplies; silver, chinaware, glassware, cooking utensils, and other similar items of equipment;

(iv) Purchase and replacement, as necessary, of office supplies, computers, printers, facsimile machines, photocopiers, postage, printing, routine office expenses;

(v) Lease payments on any item(s) of furniture, fixtures or KSM acquired equipment;

(vi) The costs of consultants utilized;

(vii) Reasonable travel expenses;

(viii) Accrual of a reserve for insurance (including workers’ compensation) each month in an amount or at a rate that is sufficient to pay such insurance premiums when they become due and payable;

(ix) Insurance premiums, administrative and financing charges, and expenses, to the extent not provided for in the reserve established therefore and any deductible amounts required to be paid pursuant to insurance coverage;

(x) Expenses, including legal fees, damages or other costs, involved in defending any employment-related lawsuits, charges or claims involving personnel of KSM;

(xi) Auditing and accounting costs, computer fees (including costs to license and maintain accounting software), including any reasonable financial management and reasonable accounting fees paid to third-party accounting firms;

(xii) Costs incurred for utilities, including, but not limited to, all electric, sewer, gas, and water costs, and any other private utility charges incurred;

(xiii) Ordinary maintenance and repairs, exclusive of any Capital Improvements;

(xiv) Accounts receivable previously included with Gross Revenues, to the extent they remain unpaid ninety (90) days after the first billing; and

(xv) All other customary and reasonable expenses incurred in the operation of the Leased Premises.

Operating Expenses shall not include expenses or expenditures in connection with capital equipment and Capital Improvements purchases. Operating Expenses shall exclude depreciation and amortization, interest, and debt service.

Operating Revenues – All revenues derived by KSM from the operation of the Leased Premises from cash or credit transactions recognized during the Term, computed on an accrual basis, including, but not limited to, annual pass/card sales, driving range fees, outing cash sponsor donations, room rentals, greens fees, cart rental fees, annual passes, income derived from the investment of Operating Revenues, the amount of all
sales, whether wholesale or retail, of food, beverages, goods, wares, or merchandise on, at, or from the Leased Premises, or for services of any nature performed on, at, or from the Leased Premises, determined in accordance with generally accepted accounting principles applied on a consistent basis. Operating Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by KSM in obtaining such Operating Revenues; provided however, Operating Revenue does not include the following:

(i) Cash refunds or credits allowed on returns by customers;

(ii) Sales tax, excise tax, gross receipts tax, use tax, and other similar taxes now imposed upon the sales of food, beverages, merchandise, or whether added to or included in the selling price;

(iii) Fees charged for golf lessons and instruction to the extent that such fees or any portion thereof are retained by the golf professional giving lessons or instruction (including both instances where the fees, or portions thereof, are paid directly to the golf professionals and where the golf professionals receive payments based on the fees received from lessons or instruction);

(iv) The actual uncollectible amount of any check or draft received by KSM as payment for goods or services and returned to Lessee from customer's bank as uncollectible (commonly referred to as non-sufficient funds); provided that Lessee has used reasonable efforts to collect such amount;

(v) The actual uncollectible amount of any charge or credit account (commonly referred to as bad debts) incurred by KSM for the sale of merchandise or services; provided that KSM has used reasonable efforts to collect such amount;

(vi) Receipts in the form of refunds from or the value of merchandise, supplies or equipment to the shippers, suppliers, or manufacturers;

(vii) The amount of any cash or quantity discount or rebates received from sellers, suppliers, or manufacturers;

(viii) The amount of any gratuities paid or given by the customer to or for employees of KSM;

(ix) Meals served or provided to employees of KSM to the extent such employees do not pay for the same;

(x) The discounted portion, if any, of any sales of merchandise to employees;

(xi) Free charity rounds provided by KSM in its reasonable discretion;

(xii) Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss; and

(xiii) Revenue received by City from the cell tower lease referred to in Section 3.8 “Cell Tower”.

Swenson Golf Course Lease with KSM Swenson LLC.
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ARTICLE 2
TERM, TERMINATION, AND DEFAULT

2.1 Initial Term of Agreement. The initial term of this Agreement shall commence on the "Commencement Date", which shall be as of January 1, 2020, and shall expire on December 31, 2035 (the “Expiration Date”), unless terminated sooner pursuant to the terms of this Lease (“Initial Term”).

2.2 Extension of Term. The Initial Term of this Agreement may be extended by mutual written agreement (subject to any mutually agreed upon revisions to the terms and conditions of the Agreement, if any) for a term of ten (10) years (“Renewal Term”) upon the expiration of the Initial Term of Agreement (collectively, the Initial Term and the Renewal Term referred to herein as the “Term”). City Manager and Authorized Representative from KSM are authorized to approve and sign the Mutual Agreement.

2.3 Termination. KSM and City acknowledge and agree that either party has the right to cancel this Lease during the Term by providing written notice to the other party at least 365 days prior of its intent to terminate.

2.4 Default. A Party shall be in default of the Lease upon the occurrence of any one of the following events:

   A. Such Party fails to make its Lease Payments to City pursuant to Article 4.1 “Lease Payments” of this Lease, and such failure continues for a period thirty (30) working days after written notice by City requesting such payments be made;

   B. Such Party fails to keep, observe, or perform any material covenant, agreement, term or provision of this Lease to be kept, observed, or performed by it, and such default continues uncured for a period of sixty (60) days after written notice of such default; or

   C. Any of the following:
(i) Such Party applies for or consents to the appointment of a receiver, trustee or liquidator or of all or a substantial part of its assets;

(ii) Such Party files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors;

(iii) Such Party files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against a party;

(iv) Such Party admits in writing its inability to pay its debts as they come due;

(v) Such Party makes a general assignment for the benefit of creditors; or

(vi) An order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating such Party a bankrupt or insolvent or approving a petition seeking reorganization of such Party or appointing a receiver, trustee, or liquidator of such Party or of all or a substantial part of its assets, and such order, judgment, or decree continues in effect for any period of forty-five (45) consecutive days.

2.5 Remedies for Default. In the event of default by a Party, the non-defaulting Party shall have all rights and remedies afforded to it under all applicable laws and shall have the right to enforce any and all claims as a result of said default against such defaulting Party, its successors and/or assigns. In addition to any and all rights under the law, the non-defaulting Party shall have the option to terminate this Lease immediately upon written notice of default in which case City shall immediately take over management and operation of the Leased Premises with its own personnel or through a third party without jeopardizing any and all rights it might have against KSM, its successors and/or assigns due to any default by KSM, and KSM, its successors and/or assigns shall have no cause of action of any kind against City.

2.6 Curing Default. Any default which is susceptible of being cured shall not constitute a basis for termination of this Lease if the nature of such default will permit it to be cured within the thirty (30) working day Grace Period allotted; provided, that within such Grace Period the defaulting Party shall have given notice of its intent to cure, have commenced to cure such default, is proceeding to complete the cure in good faith and with reasonable diligence, and completes such cure within sixty (60) days after the expiration of such Grace Period.

2.7 Effect of Termination. The expiration or termination of this Agreement shall not affect the rights to the terminating party with respect to any liability or claims accrued or arising out of events occurring prior to the date of termination. In the event of expiration or earlier termination of this Agreement, KSM shall surrender and vacate the Leased Premises to the City.
2.8 Vacation of Premises. KSM agrees to fully vacate the Leased Premises at the termination of this Agreement. Should KSM fail to vacate as herein provided, KSM agrees that City or its authorized agents may enter upon the premises and remove all personal property and equipment therefrom and that the cost of removal and any temporary storage or disposal shall be billed to the KSM and shall be the responsibility of KSM. The City shall, within its sole discretion, determine whether any such property or equipment shall be stored or disposed of. Nothing herein shall be considered a waiver of the City’s rights under the law to demand and obtain possession of the Leased Premises in the event of a violation of KSM’s part of any of the terms or conditions hereof.

2.9 Miscellaneous. At the termination of the Agreement, the City shall have and assume no liability for costs, expenses, damages or lost profits resulting from contracts entered into by KSM with third parties in reliance upon this Agreement.

ARTICLE 3
LEASED PREMISES

3.1 Lease of Premises. The City does lease to KSM, and KSM does lease from the City subject to the terms, covenants, conditions, and provisions hereof the Leased Premises.

3.2 Condition of Premises. Except as provided herein, KSM agrees that it is leasing the Premises “AS IS”, “WHERE IS”, and “WITH ALL FAULTS”. The City makes no warranties, express or implied, as to fitness, merchantability, use, or condition of either the Premises or its suitability for KSM’s implied use. KSM leases the Leased Premises and accepts the Leased Premises without representation or warranty by City, express or implied, in fact, or by law, and without recourse, with respect to the condition of the Premises, including, but not limited to the soil and subsurface conditions thereof.

By commencement of Lease, the parties contemplate that City, at its expense, shall have completed a Phase I environmental site assessment performed by a reputable professional with the written results to be provided to KSM. In the event that KSM, in KSM’s sole discretion, is dissatisfied with the results of any Phase I environmental site assessment(s), KSM may request that a Phase II environmental site assessment be performed at City’s expense with a written report thereof ordered to KSM within sixty (60) days of commencement of Lease. In the event the City encounters a delay in delivery, approval of an extension for the delivery of the Phase II assessment shall not be unreasonably withheld by KSM. In such event, in lieu of providing the report, City may elect to terminate the Lease on thirty (30) days; written notice to KSM. In the event that KSM, in KSM’s sole discretion, is dissatisfied with the results of any Phase II environmental site assessment(s), KSM may terminate the Lease by written notice to City with no further obligation or responsibility to City.

3.3 City Obligations. Except as provided herein, City shall not be required to remove, to maintain, nor to make any improvements, repairs or restorations upon or to the Golf
Course or Leased Premises or to any of the improvements presently located thereon or to any improvements placed upon the Leased Premises by KSM, its successors, or assigns. Notwithstanding the foregoing, City shall, throughout the Term of this Lease, assume the entire responsibility, cost, and expense for all replacements, modifications, or improvements as necessary for the Leased Premises to be in compliance with the requirements of the Americans with Disability Act of 1990 as amended, and all regulations as issued thereunder (the “ADA”), as well as corresponding California law, including without limitation in connection with any such ADA compliance work as necessary to secure permits for Capital Improvements or other maintenance, repairs or restorations made to the Leased Premises in accordance with this Agreement.

3.4 KSM Obligations. Except as otherwise provided in Section 3.3 “City Obligations”, KSM shall, throughout the Term of this Lease, assume the entire responsibility, cost, and expense for all repair, maintenance and replacement whatsoever to the Golf Course and the Leased Premises whether such repair or maintenance be ordinary or extraordinary, structural or otherwise, and, shall keep the Leased Premises in a good condition and repair as reasonably determined by the City. Costs associated with all maintenance and repair obligations with a cost of $5,000 or more as set forth herein which are not Capital Improvements shall be Operating Expenses.

Any replacements KSM makes under this Lease shall be of equal or better quality as the item being replaced and shall be approved by the City (such approval shall not be unreasonably withheld or delayed). Without limiting the generality of the foregoing, KSM shall: keep at all times, in a clean, professional, and orderly condition and appearance, the Golf Course and Leased Premises, all Improvements thereon, and all of KSM's fixtures, equipment and personal property which are located on any part of the Leased Premises; maintain, repair, when necessary the greens, bunkers, irrigation systems, drainage systems, buildings, and other property associated with the Leased Premises; repair any damage caused by KSM or its invitees, tenants, or contractors to paving, grasses, turf, soils, water or other parts of the Golf Course or Leased Premises caused by any oil, gasoline, grease, lubricants, solvents, flammable liquids, or substances having a corrosive or detrimental effect thereon, and remediate any release caused by KSM or any of its invitees, tenants or contractors of any substance that has or potentially has a harmful effect on human health or the environment as determined by any regulatory agency; take whatever measures are necessary to adequately control sedimentation and erosion, and to address all sanitary and storm water issues related to the Leased Premises and surrounding property affected by the Premises and its use; maintain and repair all utility service lines placed on the Leased Premises, including but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers, except to the extent such maintenance and repair are the obligation of the City or third party hired by the City. KSM is responsible for managing any third party agreements for which KSM is the contractor. For purposes of clarity, KSM shall have no responsibility or liability in connection with the City Tower Obligation as further described in 3.8 Cell Tower.
3.5 **Compatible Use.** KSM agrees not to make use of Golf Course and Leased Premises in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use as it is intended and according to the terms and conditions of use.

3.6 **Good Neighbor.** KSM will use commercially reasonable efforts to establish and maintain a good neighbor relationship with Lincoln Unified School District adjacent schools and the surrounding residential neighborhoods.

3.7 **Access.** During the Term hereof, and until such time as this Lease expires or is earlier terminated, KSM shall have access to the Leased Premises 24 hours a day, seven days a week, 365 days per year.

3.8 **Cell Tower.** Parties acknowledge a cell tower and active cell tower lease (“Cell Tower Obligation”) on Leased Premises. Contact information for the Cell Tower Lease document and information regarding the official City department of record is attached hereto as Exhibit 3 “Cell Tower Lease Information”. Inclusion of the cell tower or cell tower language in this Lease is not intended to confer any additional obligations or responsibilities on the part of KSM with regards to maintenance or damages associated with the cell tower or cell tower lease.

**ARTICLE 4**
**FINANCIAL MATTERS**

4.1 **Lease Payments.** In consideration of this Lease, KSM will make the following Lease payments to the City for the Initial Term of this Agreement. All Lease payments shall be made within 120 days following the applicable Lease Period identified below.

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<td>$1.00</td>
</tr>
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<td>January 1, 2029 – December 31, 2029</td>
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<tr>
<td>January 1, 2030 – December 31, 2030</td>
<td>10% of Net Operating Profit</td>
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<td>January 1, 2031 – December 31, 2031</td>
<td>10% of Net Operating Profit</td>
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<td>January 1, 2033 – December 31, 2033</td>
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<td>January 1, 2034 – December 31, 2034</td>
<td>10% of Net Operating Profit</td>
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</table>
4.2 **Possessory Interest, Taxes, Assessments, Permits, Fines.** KSM shall pay any, and all federal, state, county or other taxes, fees, permits, fines, and assessments levied upon the Leased Premises and its operation. This shall include, but not be limited to all taxes related to KSM’s property, use of property (possessory interest) assets, business, capital, profit, sales and use taxes related to the use and lease of this Golf Course, with the exception of any real estate taxes, which shall be the sole responsibility of the City.

4.3 **Golf Cart Lease Payments and Annual Asset Report.** In 2016, Community Services approved a 36-month lease of 100 E-Z Go Textron electric golf cart for a total payment of $357,123 (the “Cart Lease”). Owner is responsible for canceling the Cart Lease effective as of December 31, 2019. Effective as of the Commencement Date, KSM shall have arranged for a fleet of replacement carts and shall replace inventory as needed to maintain a minimum inventory of 60 carts as the existing carts exceed their useful life.

4.4 **Capital Contingency Fund.** Beginning in 2024, KSM shall maintain an annual capital contingency fund in a separate bank account in an amount equal to 2% of the budgeted Operating Revenue for that year to be used to fund any Capital Improvements deemed necessary by KSM during such annual period (the “Capital Contingency Fund”), provided, however, KSM shall not be obligated to fund any Capital Improvements for which funds are not available in the Capital Contingency Fund. KSM agrees to include this information as part of their Annual Report.

4.5 **KSM Equipment Contribution.** By commencement of Lease, the parties contemplate that KSM will have purchased a total sum of $250,000 in equipment for the Leased Premises, provided, however, if the purchases are delayed, KSM and City shall work together in good faith to establish a mutually agreed upon revised date. The foregoing obligations shall be referred to herein as the “KSM Equipment Contribution”.

4.6 **City Contribution to Repairs and Improvements.** By commencement of the Lease, the parties contemplate that City will have provided $350,000 toward repairs and improvements as mutually agreed upon by parties. KSM shall be responsible for managing the repair and improvement projects and completing funding for those projects to be substantially completed by commencement of Lease. If KSM does not use KSM employees to complete the work, KSM will use a competitive bidding process with the same standard of transparency and competition as the City’s process and follow all permitting and Prevailing Wage requirements. If the repairs are delayed, KSM and City shall work together in good faith to establish a mutually agreed upon revised date of completion.
ARTICLE 5
CITY RULES, RIGHTS, AND REQUIREMENTS

5.1 Inspection. Upon one (1) business day prior written notice, the City designated representatives shall have the right to enter and inspect Leased Premises and improvements, to install, remove, adjust, repair, replace, or otherwise handle any equipment, utility lines, or other matters in, on, or about the Leased Premises or to do any act or thing which the City may be obligated to have the right to do under this Agreement. In connection with the exercise of these rights, the City will endeavor, but not be required to advance notice to KSM for security purposes and to minimize an interference with or disruption of KSM’s work under this Agreement. This is not intended to limit other rights of the City under this Agreement or impose or construed to impose any independent obligation to construct, maintain, or make repairs, replacements, alterations, additions, or improvements, or create independent liability for any failure to do so. If KSM is not available, City will have right to enter without prior notice to protect health and safety of life or protection of property during an emergency. Under emergency circumstances and entry without KSM, City shall contact KSM at first opportunity to discuss incident. KSM hereby waives any claim for damages for any injury to, inconvenience to, or interference with KSM or KSM’s business operations resulting from any such entry by City.

5.2 City Rules and Requirements. Notwithstanding the foregoing or anything else herein to the contrary, the parties acknowledge that the City is a public entity and the general authority having jurisdiction with respect to its operations and properties, including, the Leased Premises and all occupants in their respective use of and activities at the Leased Premises, in which case (a) it reserves its governmental powers and immunities and is entitled to enforce its codes and other rules and regulations (including standard inspection fees and the like) independent of this Lease, and (b) require KSM to comply with any applicable laws as a condition of this Lease.

5.3 City Events. The Community Services Department shall have the right to use Leased Premises for no more than three (3) annual golf events (“City Events”). These City Events shall be produced by the City for City benefit and purpose as identified by the Director of Community Services and shall be held on weekdays only (i.e. not on Saturdays or Sundays) and not on holidays. There will be no greens fees or driving range fees charged to the City, but the City (or its patrons) will be responsible for all other direct expenses, including without limitation cart fees, food and beverage charges and pro shop merchandise purchases except as otherwise mutually agreed upon by Parties in writing.

5.4 Prevailing Wage and Contractor/Subcontractor Registration Requirements. Without limiting the generality of the foregoing, the City requires compliance with its Prevailing Wage requirements and requires compliance with bidding and bond requirements for alterations, additions, improvements, and associated work at the Leased Premises during the Term, whether by or on behalf of City or KSM, which can be found at the State of California website www.dir.ca.gov/DPreWageDetermination.htm.

Swenson Golf Course Lease with KSM Swenson LLC.
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Pursuant to Labor Code Section 1771.1(a), a Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

5.5 Integrated Pest Management. To the greatest extent practical, KSM will use Integrated Pest Management practices, principles, concepts and the least toxic method to achieve the desired result.

KSM shall comply with all applicable County, State or Federal regulations regarding pesticides, herbicides, and fertilizers. KSM shall analyze plant problems and apply correct types and rates of fertilizers, insecticides, fungicides, and herbicides. Any insecticides, pesticides, herbicides, fungicides, and/or fertilizers used shall be applied in accordance with manufacturer's instructions.

KSM shall advise the City in writing prior to the application of any insecticides, pesticides, herbicides, fungicides, and/or fertilizers. KSM shall provide City with Material Safety Data Sheets for all insecticides, pesticides, herbicides, fungicides, and/or fertilizers proposed for use prior to their actual use. KSM shall provide a site-specific schedule showing where, when and what insecticides, pesticides, herbicides, fungicides, and/or fertilizers will be applied at least five (5) working days prior to application. KSM is solely responsible for any damages due to KSM's application or misapplication of insecticides, pesticides, herbicides, fungicides, and/or fertilizers.

At least three days prior to a proposed application of a pesticide, a notice shall be posted on City property. The notice shall be conspicuously posted in one or more regular locations at the site of the application. It shall be 8 1/2" by 11" and specify the pest, manner of application, proposed date of application, the time, and location. It shall contain the brand and common name of the pesticide and list the acute effects. The notice shall remain posted for three days after the application.

Pest management schedules, applications, public posting, and Material Safety Data Sheets shall be discussed and reported on during the regularly scheduled meetings. KSM shall complete an annual Integrated Pest Management Plan and Use of Chemicals Report with components as directed by City before July 1 of each year of Term.
ARTICLE 6
RIGHTS, OBLIGATIONS, AND OPERATING RESPONSIBILITIES OF KSM

6.1 Quiet Enjoyment; Permitted Use. KSM shall at all times peaceably and quietly hold, use, enjoy and occupy the Leased Premises for the operation, maintenance, improvements of a public golf course (i.e., publicly accessible with payment of fees) including the operation, maintenance, and improvement of facilities (including food and beverage operations) and for no other use or purpose. KSM shall have the responsibility to perform all operational, maintenance, and management duties without exception.

6.2 Standard of Operation. KSM agrees it will manage, maintain, repair, improve, and operate the Golf Course on a continual basis throughout the term of this Lease and in a professional and competent manner and in a manner consistent with the management and operational practices at other municipally-owned public golf courses with similar operating budgets located in the San Joaquin Valley area.

6.3 Corporate Status. KSM is a limited liability company duly organized, validly existing, and in good standing and authorized to transact business in California with full corporate power to enter into this Agreement and execute all documents hereunder.

6.4 KSM Employees. KSM will maintain one full-time staff member who is a Professional Golfer's Association Class A professional (or equivalent) as well as a full-time staff member who is a Superintendent who is a member of the Golf Course Superintendents Association of America (GCSAA) located at the golf course full time. KSM shall determine personnel requirements, recruitment schedules, compensation levels, furnish job descriptions, performance appraisal procedures, employee benefit programs, operational and procedural manuals for all personnel, establish procedures for employee compensation and incentives and provide dress code requirements for employees.

6.7 Contracts. KSM shall have the right and obligation to negotiate, consummate, enter into, and perform contracts for the furnishing and payment of food, beverages, utilities, concessions, operating supplies, maintenance, equipment and other services and products for the Leased Premises, all in its own name and for its own account for all materials and services needed for operation, maintenance and repair of Leased Premises.

6.8 Purchasing and Inventory. KSM shall acquire all goods and services necessary to operate the Golf Course, including sale merchandise for the pro shop and food and beverage improvements, capital equipment and Improvements as necessary to operate and maintain the Golf Course, the costs of which shall be Operating Expenses; provided, however, any Operating Inventory existing as of the Commencement Date shall be deemed to have been contributed by City to KSM as part of its obligations hereunder. KSM maintain levels of Operating Inventory deemed appropriate by KSM for supplying the needs of the Golf Course and its customers. KSM shall provide proper inventory
training, procedures, and reports.

6.9 **City of Stockton Business License.** Prior to the City’s execution of this Agreement, KSM shall obtain and maintain one City of Stockton business license for golf course operations and one business license for café operations, which must be kept current during the term of this Agreement.

6.10 **Maintenance of Licenses and Permits.** Throughout the term of this Agreement, KSM represents and warrants that it has or will have at the time this Agreement is executed, all licenses, permits, professional qualifications, insurance, and approvals of whatsoever nature which are legally required for KSM to perform under this Agreement as contemplated. KSM further warrants that it shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, (including alcohol liquor licenses) permits, qualifications, insurance, and approvals. KSM further warrants that it shall utilize the best current, generally accepted and professional practices regarding the operation of Golf Course.

6.11 **Special Event Permit Requirements.** If any event is scheduled which expands beyond the use permit of the Golf Course and requires a special event permit, KSM will comply with City Special Events Permit Process and notify the Community Services Department of such potential activity according to the policies and guidelines.

6.12 **Law Abiding Conduct.** KSM agrees that it will comply with all the applicable federal, state, and local laws, codes, ordinances, administrative regulations, and orders of appropriate government authority in the conduct of its business. KSM shall maintain in effect and post in a prominent place all necessary and/or required licenses or permits. If there is any discrepancy amongst the laws, rules, and/or regulations, the most restrictive provision shall apply.

6.13 **Legal Action.** KSM shall not institute any legal action by or on behalf of City or Golf Course or Leases Premises without prior written consent of City and City will not institute any legal action by or on behalf of KSM without prior written consent of KSM.

6.14 **No Third-Party Beneficiaries.** No person or entity, other than KSM shall be deemed to be a third-party beneficiary hereof, or a third party of the Leased Premises.

6.15 **Debt Liability Disclaimer.** KSM shall be solely responsible for reimbursing vendors, contractors, employees, and subcontractors. City will not be liable for any debts or claims that arise from the obligations of KSM.

6.16 **Keys and Security Codes.** Installation of locks and keys will be the responsibility of KSM. Upon termination of the Agreement, KSM shall provide a complete set of keys and codes to Golf Course to the City.

6.17 **Emergency Contacts.** KSM will provide City with emergency phone numbers of
key staff members and ensure that City representatives have the ability to communicate with said persons twenty-four hours a day in the event of an emergency.

6.18 **Security.** KSM shall be responsible for determining the security needs of the Golf Course and Leased Premises, and arrange for security for the facility, operations, and events. Each year, KSM will provide and update an annual written Security Plan filed with the City of Stockton. The Security Plan shall include both emergency and non-emergency procedures and protocols to be followed by KSM and or any contractor or Golf Course user.

6.19 **Signs and Re-Branding.** During the term of this Agreement, KSM shall have the right, at its expense and subject to the terms hereof, to place in or on the Leased Premises a sign or signs identifying the Golf Course and cafe and such signage as is customary in the operation of a golf course, including, without limitation, directional signage in the Golf Course, tee placement advisories, and cart path restrictions. KSM shall be responsible for obtaining from the appropriate governing body all necessary permits for such signage. KSM shall also have the right to rebrand the Golf Course in order to increase and maintain the interest of patrons who use the Golf Course and the amenities of the Leased Premises. City may also maintain a sign or signs at its expense, identifying City as owner and acknowledging any patrons or students. City and KSM shall work cooperatively on the placement, appearance and content of any signage proposed for the Golf Course.

6.20 **Defects in Material and Workmanship.** As to work performed by KSM, KSM will perform to industry norms and applicable industry standards. As applicable, KSM will provide the City documentation of any manufacturer warranties for installed equipment.

6.21 **No Threat.** KSM represents and warrants that the work and materials used by KSM or contractors/vendors are not currently known to be harmful to public health and safety. KSM warrants that the work shall not constitute any threat to the safety of persons when used in the manner for which it was designed and agrees to cooperate with City in making or permitting changes, if necessary to eliminate hazards which become apparent.

6.22 **Maintenance.** Consistent with terms and conditions of this Agreement KSM shall make all repairs, decorations, revisions, cleaning, alterations, repairs, and improvements to the Golf Course and Leased Premises as shall be reasonably necessary for maintaining the Leased Premises in good order, condition, and repair, in a manner consistent with the maintenance practices at other municipally-owned public golf courses with similar operating budgets located in the San Joaquin Valley area.

6.23 **Water Measurement, Conservation, and Regulations.** KSM shall measure, report, and use water in compliance with Chapters 13.28 and 13.32 of the Stockton Municipal Code, or any later Council-approved water regulations, as well as the State of California rules and regulations unless additional watering is approved annually by the Municipal Utilities Director.
KSM further agrees that all water measurement, usage, and regulations by the State of California in connection with Leased Premises will be monitored and adhered. KSM will immediately contact Municipal Utilities if there is any discharge or release of water or materials into the storm drains. KSM shall work with City representative to accurately report water usage in the “Annual Water Measurement Report” due to the California Water Board.

6.24 State of California and San Joaquin County Hazardous Materials Storage, Reporting, and Safety Plan Requirements. KSM shall be familiar with the California Environmental Reporting System requirements and remain responsible for meeting the state and local requirements for storage of hazardous materials, reporting of hazardous materials or substances, and filing of a Business Plan and or a safety plan if required. KSM may be required to obtain chemical storage permit as required.

6.25 Community Engagement. KSM shall report annually on community engagement efforts and describe how KSM meaningfully engages all segments of the community.

ARTICLE 7
PRO SHOP

KSM shall provide golf pro shop inventory, sales, and services at Leased Premises.

7.1 Fixtures. City has supplied and furnished the shelves, cabinets, countertops, display cases, display racks and other furniture fixtures, equipment and appliances for the operation of the golf pro shop. KSM, may at its own expense, supply and furnish any supplemental display fixtures, such as mannequins and temporary display fixtures, that KSM in its discretion elects to purchase for the golf pro shop. Title to fixtures, equipment and appliances which are built into or fastened to the Leased Premises shall remain with City at the termination of this Lease, without any payment therefor, from City to KSM.

ARTICLE 8
CAFÉ, CONCESSIONS, AND CATERING

KSM shall provide a food and beverage program at Golf Course including café service, box lunch menu, on course/ beverage cart service, concessions, and events. KSM shall consider service options for breakfast, lunch and dinner.

8.1 Restaurant and Kitchen Equipment. KSM shall arrange for provision, maintenance, and replacement of all restaurant and kitchen equipment needed (including dishes and utensils) beyond what is currently located at Facility to meet the service goals identified by KSM.
ARTICLE 9
GOLF PLAY AND PROGRAMMING

9.1 Service Level. KSM will implement policies and procedures and standards of the golf course in a manner consistent with the management and operational practices at other municipally-owned public golf courses with similar operating budgets located in the San Joaquin Valley area. KSM will manage and supervise day to day operations, including café, pro shop, and clubhouse operations. KSM will provide access to Golf Course 364 days a year, additional closure, additional closure dates due to inclement weather, special course maintenance days or special situations excluded. An Annual Level of Play Report will be provided to the City as mutually agreed upon.

9.2 Starter and Marshall Services. KSM shall provide starter and marshal services on busy days when demand warrants to ensure smooth operation of golf courses.

9.3 Player Development. KSM shall encourage player development programming to enhance and optimize use of the golf course.

9.4 Golf Programs for Youth and Adults. KSM shall implement and nurture youth and adult golf programs such as camps, PGA programs, Junior League, Family Golf rates, First Tee, instructional Leagues, tournaments, beginner golf programming, and other golf events.

ARTICLE 10
FURNITURE, FIXTURES, AND EQUIPMENT

10.1 City Equipment. The City owns structures, furniture, fixtures, and equipment utilized at the Leased Premises. By April 1, 2020, KSM will provide an inventory of equipment currently at Golf Course and provide a list of additional equipment required to properly maintain and repair facilities, landscaping, greens, irrigation, and overall operation of Golf Course. KSM will be responsible to provide all equipment as deemed necessary by KSM.

10.2 City Golf Carts. KSM will maintain carts in clean and well-maintained condition, replace golf carts at the end of their useful life, and replace inventory as needed to maintain a minimum inventory of 60 carts. KSM will include this information annually as part of their Annual Asset and Inventory Report.

10.3 Furniture, Fixtures, and Equipment. During the term of this Agreement, KSM shall have the right, at its expense, to place in or on the Leased Premises trade fixtures, furnishings, personal property, equipment and materials necessary to perform its services or any other services required or authorized hereunder. Said trade fixtures, furnishings, personal property, equipment and materials shall remain the property of KSM, and except as may otherwise be directed by City, KSM shall remove immediately such fixtures and personal property at the expiration or termination of this Lease and repair any damage to
the Leased Premises resulting from such removal. This information should be clearly identified as City or KSM property in the Annual Asset and Inventory Report.

10.4 Right and Obligation to Dispose of Equipment and Materials. Within the guidelines of Community Services Department policy, KSM shall retain the right and responsibility to recycle and dispose of furniture, fixtures, and equipment that is beyond useful life, broken, or beyond useful repair. Disposal shall be included in the Annual Asset and Inventory report.

ARTICLE 11
REAL PROPERTY AND CAPITAL IMPROVEMENTS

11.1 City Asset and Inventory Report. City and KSM shall inventory all real property, Capital Improvements, and property including attached or unattached personal property within 90 days of the Commencement Date of this Agreement, and thereafter on an annual basis throughout the term of this Agreement.

11.2 Discretion of the City, Prior Written Approval, Additional Improvements to Leased Premises. City’s execution of this Agreement in no way limits the discretion of City in the permit and approval process in connection with any improvements by KSM. KSM may propose or make recommendations to the Director of Community Services or designee with respect to proposed additions or repairs to structures, or improvements to the Leased Premises to increase use and service to the community. It is specifically understood that prior written approval by Community Services Director for addition, removal, alteration, etc. will include specific terms and conditions that must be met or the failure will be considered a breach of Agreement. No improvements, new construction, temporary alterations, expansions, changes or removal of any existing structures may be made to the Leased Premises without prior written approval by the City, which shall not be unreasonably withheld or delayed, and any such improvements, new construction, temporary alterations, expansions, changes or removal of any existing structures or equipment must follow any regulatory requirements including obtaining any necessary approvals and permits. Any such approved improvement shall be at KSM’s sole cost and expense. Responsibility for maintenance of any such approved improvements shall rest with KSM. Title to such improvements shall vest in City upon expiration or termination of this Agreement with the exception of any personal property purchased by KSM which the Parties have agreed as part of the Annual Inventory List are to remain the sole and separate personal property of KSM.

11.3 Regulatory Bodies. Leased Premises includes ecological and aquatic resources especially relating to waterways and ponds on site. Any improvements that impact any lake, river, stream, creek, drainage ditch or other body of water constituting a "water of the United States" or jurisdictional wetland shall be reviewed and approved by City and any other appropriate or required local, State and/or Federal regulatory offices and agencies, prior to construction of these improvements.
11.4 **Capital Improvements.** Capital Improvements will be required as determined by KSM to enhance the Golf Course and Leased Premises and keep it in good condition.

**ARTICLE 12**

**MAINTENANCE AND REPAIR**

12.1 **Maintenance and Repair.** Except as otherwise provided in Section 3.3 “City Obligation” KSM shall be responsible for all maintenance and repair including elements of landscaping, hardscape, grounds, electrical, mechanical systems, all furniture, fixtures, equipment, plumbing systems, building exteriors, drains, roof, sidewalks, entranceways, parking lots, irrigation systems and water monitoring and measurement systems and software, custodial cleaning services, pest control, and trash removal.

12.2 **General Improvements.** Separate and apart from the Capital Improvements that are approved by the City, it is anticipated over the life of the Lease that additional general repairs ("General Improvements") may be needed. If such General Improvements are deemed necessary by the KSM then, in that event, the cost thereof shall be borne by KSM.

12.3 **Environmental Remediation.** During the Term, if KSM becomes aware of the presence of any hazardous materials or hazardous substances, in a quantity sufficient to require remediation or reporting under any environmental law, in or under the Leased Premises, or if Leased Premises becomes the subject of any order of any federal, state, or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate, or otherwise clean up the Leased Premises. KSM shall use commercially reasonable remediation activities. Responsibility for such remediation shall be as set forth in Section 14.4 “Environmental Indemnification”.

12.4 **Failure to Maintain.** In the event KSM fails to maintain, clean, repair, rebuild, replace, repaint or perform in accordance with this terms of this Lease within a period of sixty (60) days after written notice from City to perform any obligations required to be done under the provisions of this Lease, then City may, at its option but without any obligation to do so, and in addition to any other remedies which may be available to it under this Lease or otherwise at law or in equity, enter the Golf Course and Leased Premises, without such entering causing or constituting a trespass, a cancellation of this Lease, or an interference with the possession of the Leased Premises, and perform any obligation of KSM under the Lease with respect to such maintenance, replacement or repair, including, repair, replace, rebuild, paint all or any part of the Leased Premises or the Improvements thereon, and do all things reasonably necessary or desirable to accomplish the work required, and the reasonable and documented cost and expense thereof shall be paid to City by KSM on demand. If, however, in the reasonable opinion of City, KSM's failure to perform any such obligations endangers the safety of the public, the property of City or other users, or occupants at the Leased Premises, and City so states same in its notice to KSM along with the actions City believes must be taken to remedy such failure and time frame for taking such actions, City may, at its sole option...
but without any obligation to do so, in addition to all other remedies which may be available to it, elect to perform such obligations at any time after the giving of such notice and a reasonable opportunity under the circumstances to cure the default, and provided KSM has been given such notice and failed to cure the default, the KSM agrees to pay City the reasonable and documented cost and expense of such performance on demand. The rights of City under this Article shall be in addition to, and not in lieu of, the rights and remedies set forth elsewhere in the Lease. The foregoing shall in no way affect or alter the primary obligations of KSM as set forth in this Agreement, and shall not impose or be construed to impose upon City any obligations to maintain the Golf Course or Leased Premises.

ARTICLE 13
ACCOUNTS, RECORDS, FINANCIAL REPORTS, AUDITS

13.1 Records. KSM shall keep true and accurate accounting records on an accrual basis of accounting related to its activities at the Golf Course and Leased Premises. KSM shall give City’s authorized representatives access to such books and records maintained by KSM during reasonable business hours upon reasonable advance notice. KSM shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase orders, sales books, credit card invoices, bank books, deposit slips, and all other evidence of Operating Revenues and Operating Expenses for such period.

13.2 Internal Controls. KSM agrees to develop, install, implement, and maintain accounting, operating, and administrative internal controls designed to safeguard assets, ensure compliance with all laws, regulations, contracts, and detect defalcation and fraud. City reserves the right to complete periodic internal control assessments at the cost of the City. KSM to make policies and procedures available for review by City’s authorized representative.

13.3 Bank Accounts. KSM shall establish in KSM’s name, utilizing the federal tax identification number of KSM, bank accounts for the operation and maintenance of the Golf Course and Leased Premises. All bank accounts, statements, and records shall be subject to inspection by City pursuant to the terms of this Agreement. All Revenues of Golf Course shall be collected, received, and deposited by KSM exclusively into these accounts in accordance with the terms of this Agreement. All expenses including payroll shall be handled and expended exclusively through these accounts.

13.4 Annual Financial Report and Lease Payment Report. An annual financial report required for lease payment calculation will be provided annual in a format mutually agreed upon in writing by both Parties.
ARTICLE 14
INSURANCE AND INDEMNITY

14.1 Insurance Requirements. KSM must obtain and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in Exhibit 2 “Insurance Requirements”, attached hereto and incorporated by this reference. For purposes of this exhibit, “Contractor” shall mean KSM.

14.2 Proof of Insurance. KSM shall provide proof of insurance in the required form to the City’s Risk Manager prior to the first day of operation as evidence that it has complied with the insurance requirements set forth in Exhibit 2 “Insurance Requirements”.

14.3 Indemnity and Hold Harmless. With the exception that this section shall in no event be construed to require indemnification by KSM to a greater extent than permitted under the public policy of the State of California, KSM shall, indemnify, protect, defend with counsel reasonably approved by City and at KSM’ sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys’ fees, expert and consultant fees, and other expenses of litigation) of every nature arising out of third party claims for death or injury to persons, or damage to property, to the extent caused by the negligent act or omission of KSM, KSM officer’s agents, employees, volunteer’s or subcontractors in connection with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law, or ordinance, or City Policy. Notwithstanding the foregoing, KSM shall not be obligated to indemnify, defend, or hold harmless City for (i) claims or liability arising from the active negligence or willful misconduct of the City, (ii) claims or liability arising from the cell tower and active lease identified in Section 3.8 “Cell Tower” (iii) claims or liability arising out of City’s obligations set forth in Section 3.3 “City Obligations”, or (iv) claims arising out of use of the Leased Premises and Property by City and its agencies, contractors, agents, employees, representatives, or licensees pursuant to rights granted under Section 16.13 “Reserved Rights”.

It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code Sections 2782, et seq., limit the defense or indemnity obligations of KSM to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by KSM under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

14.4 Environmental Indemnification For purposes of this Lease, "Hazardous Substance" shall mean any toxic or hazardous wastes, materials, pollutants or substances, including without limitation, petroleum products and by-products, flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls, and substances
defined as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901 et seq., as amended; any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, 15 U.S.C. 2601 et seq., as amended; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. 466 et seq., as amended; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; and any toxic or hazardous wastes, materials, pollutants or substances regulated under any other federal, state local or other governmental legislation, statute, law, code, rule, regulation, order, requirement, ordinance or guideline now existing or hereafter enacted, identified by its terms as pertaining to toxic or hazardous wastes, materials, pollutants, or substances. "Environmental Laws" as used herein shall mean all such laws described above and any other applicable federal, state and local laws, rules and regulations related to air quality, environmental control, release of hazardous materials, hazardous wastes and hazardous substances, and any and all other applicable environmental laws.

KSM hereby agrees that it shall: not dispose of, store, or allow the release of any Hazardous Substances on or from the Golf Course or Leased Premises (except in compliance with all environmental laws and all other laws, ordinances, orders, requirements, rules or regulations of governmental authorities pertaining thereto), and provide City with written notice upon KSM's obtaining knowledge of any potential or known release of any Hazardous Substances on or from the Leased Premises in violation of any Environmental Law or other law, ordinance, order, requirement, rule or regulation of governmental authorities; upon KSM's receipt of any notice of any such potential or known release, or threat of release, from any governmental authority; or upon KSM's obtaining knowledge of the incurring of any expense or loss by such governmental authority in connection with the assessment, containment, or removal of any Hazardous Substances for which expense or loss KSM or the City may be liable or for which expense a lien may be imposed on the Leased Premises. Except for (i) the negligent or intentionally tortious acts or omissions of City, its members, officers, employees, and agents, and (ii) releases of Hazardous Substances or violations of any Environmental Laws existing as of the Commencement Date ("Pre-Existing Environmental Conditions"), KSM shall indemnify, defend and hold harmless City, its curators, officials, authorities, employees, and agents from and against any and all losses, liabilities, including strict liability, injuries, damages, and expenses including, but not limited to, attorney fees and expenses and court costs and other costs of any litigation or other proceeding, related to costs of settlement or judgment and claims of every kind whatsoever paid, incurred or suffered by, or asserted against City by any person or governmental agency and/or pursuant to any Environmental laws, as a direct or indirect result of, the presence on or under, or the escape seepage, leakage, spillage, discharge, or release on or from the Leased Premises or any improvements constructed thereon of any Hazardous Substance arising from or in connection with the wrongful or negligent actions or omissions of KSM, its members, officers, employees or agents.
City hereby agrees that it shall: not dispose of, store, or allow the release of any Hazardous Substances on or from the Golf Course and Leased Premises (except in compliance with all environmental laws and all other laws, ordinances, orders, requirements, rules or regulations of governmental authorities pertaining thereto), and provide KSM with written notice upon City's obtaining knowledge of any potential or known release of any Hazardous Substances on or from the Leased Premises in violation of any Environmental Law or other law, ordinance, order, requirement, rule or regulation of governmental authorities; upon City's receipt of any notice of any such potential or known release, or threat of release, from any governmental authority; or upon City's obtaining knowledge of the incurring of any expense or loss by such governmental authority in connection with the assessment, containment, or removal of any Hazardous Substances for which expense or loss KSM or the City may be liable or for which expense a lien may be imposed on the Leased Premises. Except for the wrongful, negligent, or intentionally tortious acts or omissions of KSM, its officers, employees, and agents, City shall indemnify, defend and hold harmless KSM, its officers, agents, employees, volunteers, and subcontractors from and against any and all losses, liabilities, including strict liability, injuries, damages, and expenses including, but not limited to, attorney fees and expenses and court costs and other costs of any litigation or other proceeding, related to costs of settlement or judgment and claims of every kind whatsoever paid, incurred or suffered by, or asserted against KSM by any person or governmental agency and/or pursuant to any Environmental laws, as a direct or indirect result of, the presence on or under, or the escape seepage, leakage, spillage, discharge, or release on or from the Leased Premises or any improvements constructed thereon of any Hazardous Substance arising from or in connection with the negligent actions or omissions of City, its curators, officials, authorities, employees, and agents and/or any Pre-Existing Environmental Conditions.

Notwithstanding any other provisions of this Lease to the contrary, the indemnification and notice provisions of this paragraph (Environmental Indemnification) shall remain in full force and effect and be fully binding following the expiration or earlier termination of the Agreement.

14.5 Tender of Claims. Pursuant to the obligation created by Indemnity clause above, the indemnifying party shall accept the proper tender of any third-party claim submitted to it by the other party herein within thirty (30) days of such tender.

14.6 Use of Contractors/Subcontractors. If KSM uses Contractors or Subcontractors for Leased Premises or Agreement, the Contractor/Subcontractor agrees to be bound to KSM and City in the same manner and to the same extent as KSM is bound to the City under this Agreement, including indemnity and Insurance requirements, with any Subcontractor to the extent they apply to the scope of the Subcontractor's work.
ARTICLE 15
REPORTS

KSM will provide to City the following reports. All annual reports will be due by May 1, unless otherwise noted.

- Annual Financial Report and Lease Payment Report
- Annual Level of Play
- Annual Asset and Inventory Report
- Capital Improvement and Upgrade Plan
- Community Engagement Report
- Crime Reports (due within 48 hours of significant or material events)
- Disposal of City Property Report
- Integrated Pest Management Plan Use of Chemicals Report (due by July 1)
- Security Plan/Emergency Plan
- Water Measurement Report (due by January 20)

ARTICLE 16
GENERAL PROVISIONS

16.1 Notices. All written notices and communication required to be given under the provisions of this Agreement shall be delivered personally, or mailed and addressed as follows:

To City: City of Stockton
Attn: City Manager
425 N. El Dorado
Stockton, CA 95202

With a copy to:
City of Stockton
Attn: Dir of Community Services
605 N. El Dorado
Stockton, CA 95202

With a copy of legal notices to:
City of Stockton
Attn: City Attorney
425 N. El Dorado
Stockton, CA 95202
16.2 Title of Parts and Sections. The title of parts and sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

16.3 Language Construction. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity any status of any person.

16.4 Severability. The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

16.5 Waiver. Any waiver by either Party of any obligation or condition in this Agreement must be in writing. No waiver will be implied form any delay or failure by a party to take action on any breach or default of the other Party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to perform any obligation under this Agreement shall not operate as a waiver or release from any obligations under this Agreement. Consent by one Party to any act or omission by the other shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for written consent to future waivers.

16.6 Brokers. Each Party represents that it did not have any real estate broker(s) involved on its behalf in connection with this Lease and that no other person or entity is entitled, as a result of such first Party's actions, to a commission or other fee resulting from the execution of this Lease. Each Party will be responsible for all liability relating to its breach of, and will pay any compensation that constitutes such a breach of, this representation.

16.7 Title VI of the Civil Rights Act and Non-Discrimination. Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of,
or be subjected to discrimination under any program or activity receiving federal funding assistance.” 42 USC Section 2000d. http: www.dol.gov/oasam/regs/statutes/titlevi.htm. The City of Stockton is committed to complying with the requirements of Title VI in all of its federally funded programs and activities. In performing services under this Agreement, KSM shall not discriminate in the employment or application of employment of employees or in the engagement of any contractors or subcontractors on the basis of race, color, religion, sex/gender (including gender identity/expression), marital status, national origin, ancestry, age, pregnancy, childbirth, breastfeeding, and related medical conditions, or any other criteria prohibited by law. KSM agrees to comply fully with all applicable federal, state, local laws, ordinances, executive orders and regulations which prohibit discrimination.

16.8 Confidentiality. Subject to limitations imposed by law, each party shall exercise all reasonable precautions to prevent the unauthorized disclosure and use of reports, information or conclusions that are confidential to either party.

16.9 Conflict of Interest. KSM covenants that other than this Agreement, KSM has no financial interest with any official, employee, or other representative of the City. KSM and its Affiliates do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of KSM’s services under this Agreement. If such an interest arises, KSM will immediately notify City.

16.10 No Personal Liability. No official or employee of City shall be personally liable to KSM in the event of any default or breach by City or for any amount due KSM.

16.11 Control. Neither City nor its officers, agents, or employees and/or volunteers shall have sufficient control over the conduct of KSM or any of its employees, except as herein set forth; and KSM expressly agrees not to represent that KSM or any of KSM’s agents, servants, or employees, to be deemed the agents, servants, or employees of City.

16.12 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and KSM or its agents, employees, or contractors. Nothing herein contained is intended to be construed as creating or establishing a relationship of partners, or a joint venture between KSM or City. Neither KSM, its Affiliates, principals, nor any employee is an employee of City, and none are entitled to any of the rights, benefits, or privileges of City employees, including but not limited to medical, unemployment, or worker’s compensation. Except as City may specify in writing, KSM shall have no authority to act as an agent of City or bind City to any obligation. Nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than City and KSM and their respective officers, directors, employees, and agents providing services under this Agreement any rights, remedies, obligations, or liabilities or by reason of this Agreement.
16.13 **Reserved Rights.** During the term of this Agreement, there shall be and is hereby expressed reserved to City and its agencies, contractors, agents, employees, representatives, or licensees, the right to use the Leased Premises and Property for any and all purposes which will not unreasonably interfere with KSM’s enjoyment of its rights under this Agreement. City reserves the right to make use of the property for such proposes as it may deem necessary or appropriate, if, and whenever in the interest of its service to customers or the public, it shall appear necessary or desirable to do so. City further reserves the right at any and all reasonable times, to temporarily enter upon said Leased Premises for inspection or other lawful City purposes.

16.14 **Dispute Resolution.** Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between the senior managers of each Party having authority to resolve the dispute. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.

16.14 **Applicable Law, Resolutions of Disputes, Forum, and Attorney’s Fees.** California law shall govern any legal action pursuant to this Agreement with venue in the San Joaquin County Superior Court and for federal claims in the Federal District Court for California, Eastern District, Sacramento Division. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney’s fees expended in connection with such an action.

16.15 **Force Majeure.** For purposes of this Agreement, “Force Majeure” shall mean earthquake, fire, drought, or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, “acts of God”, war, civil disturbance, court-ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts, or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either City or KSM and which cause either party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement other than the payment of money.

If either KSM or City is delayed or prevented from the performance of any act required by this Agreement by reasons of Force Majeure, performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent of the period of such delay. Both parties shall take reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either party’s reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of the conditions.
16.16 Condemnation. If the whole or any substantial part of the Leased Premises shall be taken by any paramount public authority under the power of eminent domain, then this Agreement shall be terminated as to such Leased Premises from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of City, and all Agreements pertaining to that sale including without limitation all related Agreements. However, City shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to KSM, if any.

16.17 Assignment. KSM shall not have the right to assign or in any manner transfer any of its interest or obligations in and under this Lease nor contract or subcontract for the operation of the Golf Course, nor permit occupancy of the Leased Premises or any portion thereof by anyone with, through or under KSM, without the prior written consent of City Manager, which shall not be unreasonably withheld or delayed. Consent by City to one or more such acts, transfers, or assignments of this Lease shall not operate as a waiver of City's rights under this section or any subsequent act, transfer, or assignment. No such assignment shall release KSM as assigning party, from any obligation or liability hereunder with respect to acts, facts, or circumstances arising prior to the date of such assignment unless City specifically agrees in writing to such release. Subject to the foregoing, all provisions of this Lease shall inure to and be binding upon KSM, and its legal representatives, successors, and assigns. Any assignment by KSM in violation of the provisions of this section shall be null and void and shall result in termination of this Agreement. In addition to any other remedies available to City, the provisions of this section shall be enforceable by injunctive proceeding or by a suit for specific performance.

16.19 Records Retention. For purposes of this Agreement, City shall retain all such records pertaining to this Agreement for a period not less than three years after termination of Lease, or after all pending matters are closed.

16.20 Public Records Act. If any person provides a Public Record Request with respect to the Golf Course or KSM under the Public Records Act, prior to making such a disclosure, City shall notify KSM of such request, in which case KSM shall promptly and timely inform City of any requested materials are confidential, proprietary, or trade secret information of KSM which may be exempted from disclosure under the Public Records Act. KSM shall cooperate with City in preparing appropriate responses and or filings to any such person with respect to such request, including any litigation involved therein, to prevent disclosure of such information. KSM shall refer all Public Records Act requests to City Manager or designee and shall not respond to any Public Records Act request except in cooperation with City.

16.21 Digital Signature. The Parties agree that this agreement may be signed with a digital signature or provided by electronic copy, which has the same force and effect of a handwritten signature.
ARTICLE 17
ENTIRE AGREEMENT, INTEGRATION, MODIFICATION

This Agreement represents the entire integrated agreement between KSM and City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by authorized representatives of KSM and City. All exhibits and this Lease are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

The following exhibits are included and incorporated into this Agreement by this reference:

Exhibit 1: Property Description
Exhibit 2: Insurance Requirements
Exhibit 3: Cell Tower Lease Information

ARTICLE 18
AUTHORITY AND EXECUTION

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement. This Agreement may be executed in counterparts, by fax, PDF or digital signature each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

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

ATTEST: CITY OF STOCKTON

BY: ________________________   BY: _________________________
ELIZA R. GARZA, CMC  LAURIE MONTES
CITY CLERK  ACTING CITY MANAGER and
DEPUTY CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE  KSM SWENSON LLC
CITY ATTORNEY

BY: ________________________   BY: _________________________
TARYN N. JONES  STEVEN K. SKINNER
DEPUTY CITY ATTORNEY  CHIEF EXECUTIVE OFFICER

Swenson Golf Course Lease with KSM Swenson LLC.
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EXHIBIT 1
PROPERTY DESCRIPTION

Swenson Golf Course has a Par-3 executive course and an 18-hole championship course designed by Jack Fleming on 210 acres located at 6803 Alexandra Place. The course is adjacent to Alexandria Place, Five Mile Slough, Swenson Municipal Park, Plymouth Road, and Benjamin Holt Drive and near Interstate 5. The golf course was constructed in 1952. The course is a par 72 golf course with a rating of 71.5 and slope of 120 from the blue tees. The course includes several ponds and mature trees. The golf course and all components include:

- One 4,752 square foot clubhouse building with food and beverage service
- One 2,250 square foot golf pro building
- One driving range with 20 tees and a putting green
- An indoor storage area for 60 carts
- One 2,250 square foot maintenance building
- One on-course restroom building
- A landscaped 120 space parking lot in fair condition
EXHIBIT 2
INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, their agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $3,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.

2. **Automobile Liability** (AL): ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation**: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

4. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

5. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. (If Claims-made, see below.)

6. **Liquor Liability** If Operator will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If Operator is using a caterer or other vendor to supply alcohol, that vendor must have liquor liability coverage. If Operator intends to sell alcohol either the Operator or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.

If the contractor maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.
Other Insurance Provisions
The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **Additional Insured Status**
The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Additional insured Name of Organization shall read “City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers.” Policy shall cover City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers for all locations work is done under this contract.

- **Primary Coverage**
For any claims related to this contract, the Contractor’s insurance coverage shall be endorsed as primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Contractor’s insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor’s insurance coverage to the sole negligence of the Named Insured.

- **Notice of Cancellation**
In the event of cancellation, Contractor shall provide notice to the City of Stockton.

- **Waiver of Subrogation**
Contractor hereby grants to the City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

- **Deductibles and Self-Insured Retentions**
Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
• **Acceptability of Insurers**
  Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A+:X.

• **Claims Made Policies**
  If any of the required policies provide claims-made coverage:
  
  o The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
  
  o If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

• **Verification of Coverage**
  Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements. All certificates and amendatory endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them.

• **Special Risks or Circumstances**
  The City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

• **Certificate holder address**
  Proper address for mailing certificates, endorsements and notices shall be:
  
  o City of Stockton
  o 400 E Main Street, 3rd Floor – HR
  o Attn: City Risk Services
  o Stockton, CA 95202

  City of Stockton Risk Services Phone: 209-937-5037
  City of Stockton Risk Services Fax: 209-937-8558

• **Maintenance of Insurance**
  If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.
• **Subcontractors**

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor’s insurance shall have the same impact as described above.
EXHIBIT 3
CELL TOWER LEASE INFORMATION

The Cell Tower Lease is maintained by the City of Stockton. A copy is available from the Stockton City Clerk’s Office:

425 N. El Dorado Street
Stockton, CA, 95202
209.937.8458
cityclerk@stocktonca.gov
RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT BETWEEN THE CITY OF STOCKTON AND KEMPERSPORTS MANAGEMENT, INC.; AMENDING THE FISCAL YEAR 2019-20 BUDGET; APPROPRIATING FUNDS FOR RELATED ACTIONS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH OTHER AND FURTHER ACTIONS THAT ARE APPROPRIATE TO CARRY OUT THE PURPOSE AND INTENT OF THIS RESOLUTION

The City selected KemperSports Management (“KSM”) to provide management services for Swenson and Van Buskirk Golf Courses by City Council Resolution 11-0152. The City entered into a Management Agreement (C-11-202NP) dated June 21, 2011, between the City and KSM; and

Effective June 29, 2016 the City and KSM entered into a First Amendment to the Management Agreement; and

City Council directed staff to complete community engagement meetings and consider a plan for passive recreation opportunities for the community at Van Buskirk; and

The City and KSM now desire to enter into a Second Amendment to the Management Agreement according to terms and provisions set forth in the Second Amendment and Transition Plan, attached as Exhibit 1 and incorporated herein by this reference (“the Second Amendment and Transition Plan”); and

The Second Amendment and Transition Plan is intended by the City and KSM to provide for the transition of services at Swenson Golf Course to a Lease, guide actions toward the termination of the Management Agreement at Swenson Golf Course, and the termination of golf services at Van Buskirk Golf Course; and

At the termination of services by KSM, City will initiate activities at Van Buskirk property for property maintenance and improvement; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:

1. The City Manager is authorized and directed to execute the Second Amendment and Transition Plan, in the substantial form as Exhibit 1 attached hereto; to further execute, as necessary, each exhibit hereto (if any) and to make all payments, approve and execute any necessary contractual assignments, sign all legal and financial documents, and undertake all activities contemplated therein with such changes therein as shall be approved by the City Manager and which the Second Amendment and
Transition Plan will be available for public inspection at the office of the City Clerk of the City of Stockton.

2. The City Council hereby approves the closure of Van Buskirk Golf Course and the transition of the property to open recreational uses by August 31, 2019.

3. The City Manager, agents, and employees of the City of Stockton are hereby authorized and directed to take such further actions deemed necessary in his reasonable and appropriate to ensure that the Second Amendment and Transition Plan is accurate; and execute such other documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of the Resolution; and amend the Second Agreement Transition Agreement to carry out, comply with, and perform the duties where it is the Council’s intent that it be a proper part thereof and enforceable as between the Parties to the Agreement.

4. The City Manager, agents, and employees of the City of Stockton are hereby authorized and directed to take such further actions deemed necessary, reasonable and appropriate to ensure that the golf cart lease disposition is completed by December 31, 2019; and execute all documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of the Resolution.

5. The City Council hereby authorizes the City Manager to establish; to make the following payments under the Second Amendment and Transition Plan and amend the Fiscal Year (FY) 2019-20 Annual Budget increasing budget and expenditure appropriations as follows:

   a. Allocate and appropriate $350,000 from the General Fund reserve to the Golf Fund account, increase the Golf Fund budget appropriation for improvements to the clubhouse and for critical structure repairs, and make a one-time payment to KSM complete improvements and critical repairs; and

   b. Appropriate remaining Golf Fund 481 balance and FY 2019-20 481 Fund subsidy; amend the FY 2019-20 481 budget to repurpose the golf subsidy and remaining Golf Fund balance for property maintenance and improvement at Van Buskirk, for preparation of property for recreational use by the community, and for expenditures to complete all golf, property maintenance and improvement, and transition-related activities is approved by Council.
6. The City Manager is authorized to take all other actions that are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED August 20, 2019.

________________________________
MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

______________________________
ELIZA R. GARZA, CMC
City Clerk of the City of Stockton
SECOND AMENDMENT TO MANAGEMENT AGREEMENT
AND TRANSITION PLAN
KEMPERSPORTS MANAGEMENT

This Second Amendment to the Management Agreement (“Second Amendment”) is entered into and effective ________________ (“Effective Date”) by and between the City of Stockton, a California municipal corporation (“City” or “Owner”) and Kemper Sports Management, Inc., an Illinois corporation (“KSM”). The City and KSM may each be referred to individually as “Party” or collectively as “Parties” as the context requires.

RECITALS:

City owns certain real property and golf course facilities located within the geographical limits of the City of Stockton, California, known as “Swenson Park Golf Course” located at 6803 Alexandra Place and “Van Buskirk Golf Course” located at 1740 Houston Ave (collectively the “Courses”).

City selected KSM to provide management services for Courses in accordance with that certain Management Agreement C-11-202NP dated June 21, 2011, by and between the City and KSM, (“Management Agreement”) which was amended by a First Amendment to the Management Agreement (“First Amendment”) on June 29, 2016.

Pursuant to the Management Agreement and First Amendment, City granted to KSM and KSM agreed to accept, the authority and responsibility to manage, operate, and market the Courses in accordance with the terms of the Management Agreement and First Amendment.

The Parties now desire to amend the Management Agreement in accordance with the terms and provisions set forth in this Second Amendment in preparation for the establishment of a Lease Agreement for Swenson Golf Course between City and KSM Swenson, LLC, which is a wholly owned subsidiary of KSM.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree to as follows:

1. **Amendments to Management Agreement.** As of the Effective Date, the Management Agreement is hereby amended or modified as follows:

   1.1 Section 2.2 Term of the Management Agreement, as amended by the First Amendment, is hereby deleted in its entirety and replaced with the following:

   “Subject to the terms and conditions of the Management Agreement, First Amendment, and this Second Amendment, The Management Agreement shall terminate on December 31, 2019.”
The termination of KSM management services at Van Buskirk Golf Course is effective August 31, 2019, and the termination of KSM management services at Swenson Golf Course is effective December 31, 2019."

1.2 Section 13.2 Early Termination Option is hereby deleted in its entirety and replaced with the following:

"Parties will terminate KSM services at Van Buskirk Golf Course on August 31, 2019. Parties will terminate the Management Agreement on December 31, 2019."

2. Transition Period and Transition Plan
In addition to the amendments to the Management Agreement set forth above, Parties acknowledge and agree to add the following terms and conditions for an orderly transition of management responsibilities through the termination of the Management Agreement:

2.1 Transition Plan
A detailed Transition Plan ("Transition Plan") with milestones and Party obligations will be established as mutually agreed by Parties within 30 days of Effective Date.

2.1.1 The Transition Plan will include final accounting activities, contract management activities, disposition of bank accounts, completion of payments of specific obligated activities, the marketing/advertising of transition, as well as other administrative and management activities required for orderly movement toward the closure of Van Buskirk and establishment of a lease at Swenson Course during the transition period ("Transition Period") which will be defined as the period between the effective date and the termination date of the Management Agreement.

2.1.2 City will provide guidance regarding internal controls, out of pocket expenses, petty cash, unanticipated and emergency expenditures, and aging receivable issues.

2.1.3 City will provide guidance regarding deposits (including security interests and interest), transfers, working capital, and owner advances.

2.1.4 City at its expense, shall have a Phase I environmental site assessment performed by a reputable professional with the written results to be provided to KSM no later than December 31, 2019.

2.1.5 Parties shall work together to identify agreements, licenses, and obligations for the closure of Van Buskirk Golf Course.
2.1.6 KSM in preparation for the Lease of Swenson Golf Course by January 1, 2020, KSM shall transfer all contracts, equipment, and obligations to KSM Swenson LLC.

2.1.7 KSM will close KSM accounts opened under the Management Agreement and City will remove KSM signatories from all City accounts effective December 31, 2019.

2.2 Transition period for Van Buskirk Golf Course
Parties have established orderly transition activities and closing milestones and agree to work together in good faith to close Van Buskirk Golf Course by August 31, 2019, and terminate KSM Management Services at that location. KSM shall continue to perform or permit specific activities until the closing milestones mutually agreed upon and are met. Subject to the Transition Plan, KSM will not be provided management fees or reimbursement of any out of pocket expenses incurred by KSM beyond August 31, 2019 (or beyond the closure of the Van Buskirk Golf Course if that occurs after August 31, 2019) in connection with the Van Buskirk Golf Course, provided, however that KSM shall have no further obligation to provide any Management Services in connection with Van Buskirk Golf Course after such date.

2.3 Transition period for Swenson Golf Course
Within 30 days of Effective Date of Second Amendment, Parties will establish orderly transition activities and milestones to establish a Lease for Swenson Golf Course by December 31, 2019.

2.4 Payment of expenses and management fees by Owner to KSM.
For efficient and prudent management by KSM from the Effective Date of the Second Amendment through the termination of the Management Agreement, Owner will continue to fund Net Operating Losses for the period from September 1 through December 31, 2019 up to a total amount not to exceed $105,000. Other than as provided in Section 3.10 (“Emergency Expenditures”), KSM shall secure prior written approval prior to incurring any Operating Expenses for the Courses that will result in the aggregate total of Net Operating Losses exceeding $105,000. Notwithstanding the foregoing and for purposes of clarity, as set forth in Section 4.2 of the Agreement, under no circumstances shall KSM have any responsibility to provide funds for the payment of any Operating Expenses of the Courses, including without limitation, Gross Payroll, debts or other amounts payable by or on behalf of the Courses, the Property or Owner.

2.5 Golf cart lease disposition.
In 2016, Community Services approved a 36-month lease of 100 E-Z Go Textron electric golf cart for a total payment of $357,123. The existing golf
cart lease monthly payments shall continue to be paid to Wells Fargo Financial Leasing, Inc. as an Operating Expense of the Courses (and therefore a financial obligation of the Owner. KSM will work with City to terminate the lease and return carts to lease agent. Owner is responsible for cancelling the Cart Lease effective as of December 31, 2019. The final disposition of City leased carts should be agreed upon by both parties and transaction should be completed by the termination of the Management Agreement.

2.6 KSM Equipment Contribution.
Upon signing of this Second Amendment, KSM will purchase a total sum of $250,000 in equipment as provided in Exhibit 1 (“KSM Equipment Contribution”), are purchased by December 31, 2019.

2.7 City Capital Contribution.
Upon signing of this Second Amendment, City will provide a one-time payment of $350,000 to KSM toward repairs, replacements, modifications, and improvements (“City Contribution to Repairs and Improvements”) as provided in Exhibit 2. KSM will complete all the repairs, contribute funds if there are funding shortfalls, manage, and prosecute to completion all listed improvements which are targeted to be completed by December 31, 2019.

2.8 Final Accounting, Financial Statements, and Audit
KSM shall conduct a final accounting for all operations conducted by KSM at the Courses. KSM will provide a final monthly accounting of Courses with a final financial statement in conformity of Generally Accepted Accounting Principles and an opinion of an independent certified public accountant by April 1, 2020.

3. Miscellaneous

3.1 Digital Signature
The Parties agree that this Second Amendment may be signed with a digital signature, fax, or electronic copy, which has the same force and effect of a handwritten signature.

3.2 Severability
The provisions of this Second Amendment are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

3.3 Confidentiality
KSM shall exercise reasonable precautions to prevent the unauthorized release or use of City reports, information, or conclusions.

4. All other terms and conditions of the Management Agreement remain unchanged and remain in full force and effect unless modified in writing by both parties.

AUTHORITY AND EXECUTION

The undersigned hereby represent and warrant that they are authorized by the Parties to execute this Second Amendment. This Second Amendment may be executed in counterparts, each of which shall be deemed to be an original and such counterpart constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment and Transition Plan the day and first year hereinabove written.

ATTEST:

ELIZA R. GARZA, CMC
CITY CLERK

BY: _________________________
LAURIE MONTES
ACTING CITY MANAGER AND DEPUTY CITY MANAGER II

APPROVED AS TO FORM:

JOHN M. LUEBBERKE
CITY ATTORNEY

BY: _________________________
TARYN N. JONES
DEPUTY CITY ATTORNEY

BY: _________________________
STEVE SKINNER
CHIEF EXECUTIVE OFFICER
## EXHIBIT 1: KSM EQUIPMENT CONTRIBUTION

<table>
<thead>
<tr>
<th>Description</th>
<th>Detail</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Tractor to Pull Lastec</td>
<td>580D replaced by Lastec in 2018</td>
<td>$11,273</td>
</tr>
<tr>
<td>Greens Mower</td>
<td>Greens TriPlex</td>
<td>$16,909</td>
</tr>
<tr>
<td>Fairway Mower</td>
<td>Reel Master 6500D</td>
<td>$28,182</td>
</tr>
<tr>
<td>Bunker Rake</td>
<td>JD Bunker Rake</td>
<td>$6,764</td>
</tr>
<tr>
<td>Surrounds Mower</td>
<td>3500D Greens Surrounds</td>
<td>$20,291</td>
</tr>
<tr>
<td>Utility Cart</td>
<td>HD Workman</td>
<td>$9,018</td>
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<tr>
<td>Utility Cart</td>
<td>Mid Duty Workman</td>
<td>$5,637</td>
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<tr>
<td>Utility Cart</td>
<td>Mid Duty Workman</td>
<td>$5,637</td>
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<tr>
<td>Utility Cart</td>
<td>Mid Duty Workman</td>
<td>$5,637</td>
</tr>
<tr>
<td>Utility Cart</td>
<td>Mid Duty Workman</td>
<td>$5,637</td>
</tr>
<tr>
<td>Debris Blower</td>
<td>Pro Force Blower</td>
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<tr>
<td>Rough Mower (Toro 4500)</td>
<td>580 D Rough Unit</td>
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<tr>
<td>Fairway Mower</td>
<td>Real Master 5610</td>
<td>$28,182</td>
</tr>
<tr>
<td>Tee Mower</td>
<td>Tee TriPlex</td>
<td>$16,909</td>
</tr>
<tr>
<td>Greens Roller</td>
<td>Toro Roller</td>
<td>$6,764</td>
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<tr>
<td>Emergency Tri Plex Mower</td>
<td>Tee Mower Jacobsen</td>
<td>$16,909</td>
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<tr>
<td>Aerification Core Harvester</td>
<td>Core Harvester</td>
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<td>Topdresser</td>
<td>Topdresser</td>
<td>$5,637</td>
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<tr>
<td>Topdresser</td>
<td>Topdresser</td>
<td>$5,637</td>
</tr>
<tr>
<td>Fertilizer Spreader</td>
<td>Lely Spreader</td>
<td>$5,637</td>
</tr>
<tr>
<td>Leaf Sweeper</td>
<td>Rak-o-vac</td>
<td>$11,273</td>
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<tr>
<td></td>
<td>Contingency budget</td>
<td>$3,123</td>
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<tr>
<td>Alternative equipment may be substituted as agreed upon in writing by both parties</td>
<td><strong>Equipment One Time Payment</strong></td>
<td><strong>$250,000</strong></td>
</tr>
</tbody>
</table>
EXHIBIT 2

CITY CONTRIBUTION TO REPAIRS AND IMPROVEMENTS

City will make a one-time payment of $350,000 as a City contribution toward completion of the following repairs and Improvements (“City Contribution to Repairs and Improvements”).

KSM will use City payment to complete those repairs and improvements by no later than December 31, 2019 unless reasonable delays require an extension that will be mutually agreed upon in writing by Parties. City Contributions to Repairs and Improvements identified below are substantially described in the Facility Condition Assessment report dated as of March 1, 2019, prepared by EMG.

<table>
<thead>
<tr>
<th>Location</th>
<th>Description</th>
<th>Condition</th>
<th>Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driving Range Improvements</td>
<td>Grading, landscaping, repair</td>
<td>N/A</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Bathroom Improvements</td>
<td>Engineer, Plumbing, Sanitary Sewer, other capital improvements</td>
<td>N/A</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Bunker Renovations</td>
<td>Structures, grading, and repairs</td>
<td>N/A</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Café Restaurant</td>
<td>Engineer, Plumbing, Sanitary Sewer, other capital improvements</td>
<td>N/A</td>
<td>Performance/Integrity</td>
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<tr>
<td>Cart Barn &amp; Public Restroom</td>
<td>ADA</td>
<td>N/A</td>
<td>Accessibility</td>
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<tr>
<td>Maintenance Building (2nd)</td>
<td>Roofing Structural, Wood Repair</td>
<td>Poor</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Maintenance Building (2nd)</td>
<td>Roof Metal Replace</td>
<td>Poor</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Storage Blding Holes #1-#3</td>
<td>Structural Roof Decking, Wood Replace</td>
<td>Failed</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Storage Blding Holes #1-#3</td>
<td>Exterior Wall, Replace</td>
<td>Failed</td>
<td>Performance/Integrity</td>
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<tr>
<td>Storage Blding Holes #1-#3</td>
<td>Roof, Replace</td>
<td>Failed</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Irrigation Pump House</td>
<td>Roof Structure Replace</td>
<td>Poor</td>
<td>Performance/Integrity</td>
</tr>
<tr>
<td>Irrigation Pump House</td>
<td>Flat Roof Membrane Replace</td>
<td>Poor</td>
<td>Performance/Integrity</td>
</tr>
</tbody>
</table>
STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT CHANGE ORDER TO BRITEVIEW DBA MARINA LANDSCAPING IN THE AMOUNT OF $307,760.00; AUTHORIZING THE PAYMENT OF $238,000 FROM 481 FUND FOR THE CURRENT FISCAL YEAR PAYMENTS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH OTHER AND FURTHER ACTIONS THAT ARE APPROPRIATE TO CARRY OUT THE PURPOSE AND INTENT OF THIS RESOLUTION

City Council directed staff to preserve golf at Swenson Golf Course, close Van Buskirk Golf Course permanently, and repurpose the Van Buskirk property for open recreational uses with broader public access; and

The City will take concurrent actions to approve a Lease for Swenson Golf Course with KSM Swenson, LLC., approve a Second Amendment to the Management Agreement and Transition Plan with KemperSports Management; close Van Buskirk Golf Course, and fund actions that support recreation at Van Buskirk property; and

The City Council awarded a three-year contract with four additional one-year extensions to BrightView dba Marina Landscaping (“BrightView”) on December 4, 2017, (Resolution 2017-12-04-0804) for a cumulative contract payment amount of $16,051,304.02 for Parks Maintenance and Janitorial work. The work for this Agreement includes mowing, trimming, fertilizing, weeding, and irrigation, site cleaning and janitorial, and fall surface/playground inspection; and

Staff negotiated parks maintenance and janitorial work with BrightView for Van Buskirk property for a 16-month contract change order in the amount of $307,760.00; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:

1. The City Manager is authorized and directed to execute the Contract Change Order (CCO) Number 5 in the amount of $307,760.00, which is included as Exhibit 1 attached hereto; to further execute, as necessary, each exhibit hereto (if any) and to make all payments, approve and execute any necessary contractual assignments, sign all legal and financial documents, and undertake all activities contemplated therein with such changes therein as shall be approved by the City Manager and which CCO will be available for public inspection at the office of the City Clerk of the City of Stockton.

2. The City Manager, agents, and employees of the City of Stockton are hereby authorized and directed to take such further actions deemed necessary, reasonable and appropriate to ensure that the CCO is accurate; and execute such other
documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of the Resolution; and amend the CCO to carry out, comply with, and perform the duties where it is the Council’s intent that it be a proper part thereof and enforceable as between the Parties to the Agreement.

3. The City Council hereby authorizes the City Manager to make a payment of $200,000.00 under the CCO from account 481-3610-572 (PR5503) and amend the Fiscal Year 2019-20 Annual Budget increasing budget and expenditure appropriations for Van Buskirk property maintenance and janitorial activities.

4. The City Manager is authorized to take all other actions that are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED _______ August 20, 2019 _________.

MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

ELIZA R. GARZA, CMC
City Clerk of the City of Stockton
CITY OF STOCKTON

Contract Change Order #: 5

Resolution/Motion No. ____________________  Purchase Order No. 205751

(If not required enter “N/A”)  Purchase Order #

OM-18-062 – Parks Maintenance and Janitorial

Project Number / Project Name / Activity

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Price</td>
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</tr>
<tr>
<td>Approved Change Order Total</td>
<td>-$75,260.20</td>
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<tr>
<td>This Change Order</td>
<td>$307,760.00</td>
</tr>
<tr>
<td>Revised Contract Price</td>
<td>$6,868,626.04</td>
</tr>
</tbody>
</table>

TO Brightview Landscape Services, Inc. DBA Marina Landscape Maintenance (Contractor). You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

**Additional Work Performed for Above Referenced Project**

Maintain the former Van Buskirk Golf Course property per Attachment A for a cost not to exceed $230,020.00 per year. The property will be a non-irrigated site. Work starts September 1, 2019 and continues through December 31, 2020. FY 2019-20 (09-01-19 through 06-30-20) = $195,950.00; FY 2020-21 (07-01-20 through 12-31-20) = $111,810.00. Total CCO = $307,760.00

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefore the prices shown above.

By reason of this proposed change, 0 days extension of time will be allowed.

Accepted Date: August 8, 2019

Brightview Landscape Services, Inc.
(UBA Marina Landscape Maintenance)

(Contractor)

Date: ___________________________

Submitted by: Mitch Jackson, Project Manager

Approval by: Grace B. Petines, Program Manager II

Approval Recommended by: Jodi Almassy, Deputy Director
Public Works Department

Approval Recommended by:

Gordon A. MacKay, Director
Public Works Department

Change Order Approved By:

Date: ___________________________

Acting City Manager, Laurie Montes

Approved as to Form & Content:
OFFICE OF THE CITY ATTORNEY

BY ___________________________

Date: _________________________

ATTEST:

ELIZA R. GARZA
CITY CLERK OF THE CITY OF STOCKTON
# Contract Change Order No. 5  
*Landscape Maintenance - Former Van Buskirk Golf Course Site*

<table>
<thead>
<tr>
<th>Year - Month</th>
<th>Mowing*</th>
<th>Pond Skimming</th>
<th>Bathroom Cleaning</th>
<th>Trash Pickup</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 - Sep</td>
<td>$4,850</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$17,035</td>
</tr>
<tr>
<td>2019 - Oct</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2019 - Nov</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
</tr>
<tr>
<td>2019 - Dec</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td><strong>2019 Subtotals</strong></td>
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<td>$14,300</td>
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<td>$16,800</td>
<td>$77,740</td>
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</table>

<table>
<thead>
<tr>
<th>Year - Month</th>
<th>Mowing*</th>
<th>Pond Skimming</th>
<th>Bathroom Cleaning</th>
<th>Trash Pickup</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020 - Jan</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - Feb</td>
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<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<td>2020 - Mar</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - Apr</td>
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<td>$3,575</td>
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<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - May</td>
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<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - Jun</td>
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<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
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<td>2020 - Aug</td>
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<td>$3,575</td>
<td>$4,410</td>
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<tr>
<td>2020 - Sep</td>
<td>$4,850</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
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<tr>
<td>2020 - Oct</td>
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<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - Nov</td>
<td>$8,050</td>
<td>$3,575</td>
<td>$4,410</td>
<td>$4,200</td>
<td>$20,235</td>
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<tr>
<td>2020 - Dec</td>
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<td>$3,575</td>
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**TOTALS**  
$112,800  
$57,200  
$70,560  
$67,200  
$307,760

* Mowing Frequencies:  
  - Bi-weekly for October through May.  
  - Monthly for June through September.

## Cost by Fiscal Year

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total</th>
</tr>
</thead>
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<td>$111,810</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$307,760</td>
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