

SWENSON GOLF COURSE LEASE AGREEMENT

This Lease Agreement ("Lease" or "Agreement") is made and entered into September 20²⁰¹⁹ 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 ("Second Amendment") 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

Swenson Golf Course Lease with KSM Swenson LLC.

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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:

- (i) 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;
- (ii) 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".

Prevailing Wage - Any requirements by the State of California and the Department of Industrial Relations (DIR) by KSM to pay Prevailing Wage rates to all public works contracts as set forth in Labor Codes Section 1720, 1720.2, 1720.3, 1720.4 and 1771.

Security Plan – A confidential report provided by KSM to City regarding emergency procedures referred to in Section 6.18 “Security”.

Utilities - Means all services and public utilities provided to Leased Premises, including without limitation, services such as janitorial, garbage pick-up, natural and propane gas, water, sewer, stormwater, electricity, cable, telephone, and internet.

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 before 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. or 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.

Lease Period	Lease Payment
January 1, 2020 – December 31, 2020	\$1.00
January 1, 2021 – December 31, 2021	\$1.00
January 1, 2022 – December 31, 2022	\$1.00
January 1, 2023 – December 31, 2023	\$1.00
January 1, 2024 – December 31, 2024	\$1.00
January 1, 2025 – December 31, 2025	\$1.00
January 1, 2026 – December 31, 2026	\$1.00
January 1, 2027 – December 31, 2027	\$1.00
January 1, 2028 – December 31, 2028	\$1.00
January 1, 2029 – December 31, 2029	\$1.00
January 1, 2030 – December 31, 2030	10% of Net Operating Profit
January 1, 2031 – December 31, 2031	10% of Net Operating Profit
January 1, 2032 – December 31, 2032	10% of Net Operating Profit
January 1, 2033 – December 31, 2033	10% of Net Operating Profit
January 1, 2034 – December 31, 2034	10% of Net Operating Profit

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 that are applicable to the Leased Premises. 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, provided, however, upon any termination or expiration of the Term, KSM shall remove such carts from the Leased Premises unless otherwise mutually agreed upon in writing by the Parties.

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.

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, sidewalls, 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

To KSM: Attn: Steven K. Skinner, Chief Executive Officer
KemperSports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062

With a copy of legal notices to:
Attn: General Counsel
Kemper Sports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062.

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 from 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](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 purposes 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.

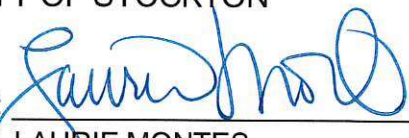
ATTEST:



ELIZAIR. GARZA, CMC
CITY CLERK



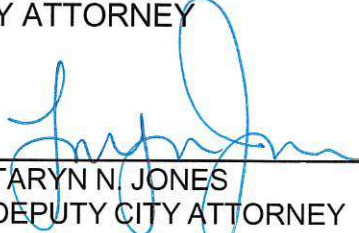
CITY OF STOCKTON

BY: 

LAURIE MONTES
ACTING CITY MANAGER AND
DEPUTY CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

BY: 

TARYN N. JONES
DEPUTY CITY ATTORNEY

KSM SWENSON LLC

BY: 

STEVEN H. LESNIK
CHAIRMAN

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 Alexandra 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:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 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:

- City of Stockton
- 400 E Main Street, 3rd Floor – HR
- Attn: City Risk Services
- 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**

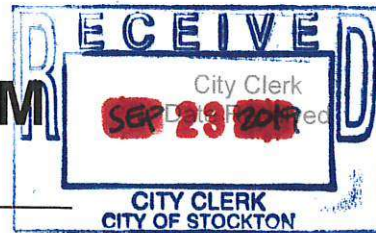
The Cell Tower Lease is maintained by the City of Stockton. A copy is available from the Stockton City Clerk's Office:

**425 N. El Dorado Street
Stockton, CA, 95202
209.937.8458
cityclerk@stocktonca.gov**

RECEIVED

City Manager
Date Requested: SEP 19 2019

CONTRACT ROUTING FORM



CITY MANAGER'S OFFICE
CITY OF STOCKTON

Contract Number 2019-08-20-1401-01 NP
(For Clerk's Use)

CITY CONTRACT TYPE (select one)

Original Amendment/Change Order Grant
 Subdivision Agreement Other _____

CONTRACT INFORMATION Contract Amount: \$ revenue

Contract Title: 2019 Lease for Swenson Golf Course
Vendor/Other Party: KSM Swenson LLC
Contract Start Date: 01/01/2020 Contract End Date: 2035 + option Contract Term: 15+option

COUNCIL APPROVAL REQUIRED? Yes No (provide account # if no) _____

Council approval required for contracts over \$ 75,000 for FISCAL YEAR: FY 2019-20
Motion/Resolution/Ordinance No: 2019-08-20-1401-01 **Must be Attached**

REQUIRED DOCUMENTS (The following documents shall be submitted with the signed contract when required):

Business License Required? Yes No Business License No. 20-001 34729
Bonds Required? Yes No
Insurance Required? Yes No
Notary Required? Yes No Recordation Required? Yes No

↓ **Mandatory Routing Order**

1 DEPARTMENT: Community Services- Library Division

DEPARTMENT HEAD APPROVAL [Signature] date: 9/16/19
Project Mgr: S Jiang ext: 8285 Staff: C Godwin ext: 8298
Forwarded to: Susan Garcia on: 9/16/19 by: C Godwin

2 PROCUREMENT

Approved () Name/Signature: [Signature] date: 9/16/19
Forwarded to: Risk on: 9/16/19 by: S. Wilson

3 VENDOR/OTHER PARTY

Signed () originals on: 09/11/2019
Forwarded to: J Alita on: 09/12/2019 by: C Godwin

4 RISK SERVICES Ins. pending

Insurance on: 9.19.19 by: ma Bonds approved on: _____ by: _____
Forwarded to: CA on: 9.19.19 by: M. [Signature] RM #: 20-090

5 CITY ATTORNEY

Approved as to Form and Content on: 9/19/19 by: [Signature]
Forwarded to: CM on: 9-19-19 by: [Signature]

6 CITY MANAGER

Signed by City Manager on: 9/20/19 Forwarded to: _____ on: _____ by: _____

7 CITY CLERK

City Clerk attested on: 9/23/19 Returned () original(s) to dept. on: 9/23/19 by: [Signature]
Retained () original(s) for City's file. Hard Copy on file? Yes No OB # _____

8 ORIGINATING DEPARTMENT: _____

Requisition No. _____ Original sent to vendor on: _____ by: _____
Copy of contract to be retained by department. Original on file in the Clerk's office.
Copy of contract sent to Purchasing on: _____ by: _____

9 PROCUREMENT: Purchase Order No. _____ PUR No. _____

2019-08-20-1401-01 NP



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JAN 10 1911

RECEIVED

1911

1911

1911

HUMAN RESOURCES DEPT.
2019 SEP 16 PM 2:49

MEMORANDUM

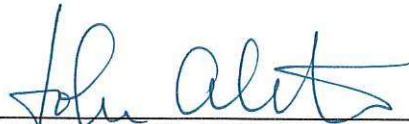
September 13, 2019

TO: Laurie Montes, Acting City Manager/Deputy City Manager II

FROM: John Alita, Director of Community Services

**SUBJECT: 2019 SWENSON GOLF COURSE LEASE & 2nd AMENDMENT TO
MANAGEMENT AGREEMENT**

On August 20, 2019, the above items were approved by City Council by resolution 2019-08-20-1401-01 and resolution 2019-08-20-1401-02. The contents of these items remain substantially in the forms as provided at adoption by City Council. With the action taken by the City Council, the City Manager is authorized to execute the attached documents.



JOHN ALITA, DIRECTOR
COMMUNITY SERVICES DEPARTMENT

JA:CG:cg

Attachments

Resolution No. 2019-08-20-1401-01

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.

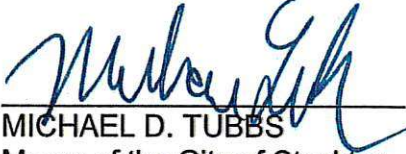
3. The City Manager, agents, and employees of the City of Stockton are hereby authorized and directed to take such further actions deemed necessary in his reasonable and appropriate to ensure that the Lease is accurate; and execute such other documents, certificates, and instruments as may be necessary 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).

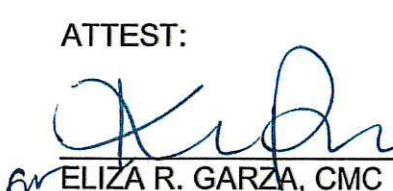
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5. The City Manager is authorized to take all other actions that are necessary and appropriate to carry out the purpose and intent of this Resolution.

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



The seal of the City of Stockton is circular. The outer ring contains the text "STOCKTON FOUNDED JUNE 1849" at the top and "INCORPORATED JULY 1850" at the bottom, separated by two stars. The inner circle features a landscape scene with a building, a tree, and a body of water.

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:

- (i) 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;
- (ii) Marketing, advertising, and promotional expenses;

EXHIBIT 1

- (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".

Prevailing Wage - Any requirements by the State of California and the Department of Industrial Relations (DIR) by KSM to pay Prevailing Wage rates to all public works contracts as set forth in Labor Codes Section 1720, 1720.2, 1720.3, 1720.4 and 1771.

Security Plan – A confidential report provided by KSM to City regarding emergency procedures referred to in Section 6.18 “Security”.

Utilities - Means all services and public utilities provided to Leased Premises, including without limitation, services such as janitorial, garbage pick-up, natural and propane gas, water, sewer, stormwater, electricity, cable, telephone, and internet.

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. or 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.

Lease Period	Lease Payment
January 1, 2020 – December 31, 2020	\$1.00
January 1, 2021 – December 31, 2021	\$1.00
January 1, 2022 – December 31, 2022	\$1.00
January 1, 2023 – December 31, 2023	\$1.00
January 1, 2024 – December 31, 2024	\$1.00
January 1, 2025 – December 31, 2025	\$1.00
January 1, 2026 – December 31, 2026	\$1.00
January 1, 2027 – December 31, 2027	\$1.00
January 1, 2028 – December 31, 2028	\$1.00
January 1, 2029 – December 31, 2029	\$1.00
January 1, 2030 – December 31, 2030	10% of Net Operating Profit
January 1, 2031 – December 31, 2031	10% of Net Operating Profit
January 1, 2032 – December 31, 2032	10% of Net Operating Profit
January 1, 2033 – December 31, 2033	10% of Net Operating Profit
January 1, 2034 – December 31, 2034	10% of Net Operating Profit

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.

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, sidewalls, 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

To KSM: Attn: Steven K. Skinner, Chief Executive Officer
KemperSports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062

With a copy of legal notices to:
Attn: General Counsel
Kemper Sports Management, Inc.
500 Skokie Boulevard, Suite 444
Northbrook, Illinois 60062.

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 from 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](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 purposes 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: _____
ELIZA R. GARZA, CMC
CITY CLERK

BY: _____
LAURIE MONTES
ACTING CITY MANAGER and
DEPUTY CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

KSM SWENSON LLC

BY: _____
TARYN N. JONES
DEPUTY CITY ATTORNEY

BY: _____
STEVEN K. SKINNER
CHIEF EXECUTIVE OFFICER

**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 Alexandra 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:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 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:

- City of Stockton
- 400 E Main Street, 3rd Floor – HR
- Attn: City Risk Services
- 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**



City of Stockton

Legislation Text

File #: 19-5761, Version: 1

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

	18-19 actual	19-20 est.	20-21 est.	21-22 est.
Swenson				
Operational Subsidy	\$ 294,408	\$ 145,000	\$ -	\$ -
One-Time Capital Contribution		\$ 350,000	\$ -	\$ -
Van Buskirk				
Operational Subsidy	\$ 483,347	\$ 85,000	\$ -	\$ -
Landscaping		\$ 200,000	\$ 238,000	\$ 238,000
Security		\$ 150,000	\$ 180,000	\$ 180,000
Contingency		\$ 120,000	\$ -	\$ -
City Admin	\$ 85,368			
Total	\$ 863,123	\$ 1,050,000	\$ 418,000	\$ 418,000

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

**ANNOTATED AGENDA
CITY COUNCIL/SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY/PUBLIC FINANCING AUTHORITY/PARKING AUTHORITY
CONCURRENT - REVISED
MEETING OF AUGUST 20, 2019**

1. CLOSED SESSION CALL TO ORDER/ROLL CALL - 4:00 PM

Roll Call

Present:

Jesus Andrade

Christina Fugazi

Sol Jobrack

Susan Lenz

Michael Tubbs

Daniel Wright

Absent:

Paul Canepa.

NOTE: Councilmember Canepa arrived to Closed Session at 4:01 PM

2. ADDITIONS TO CLOSED SESSION AGENDA

None

3. ANNOUNCEMENT OF CLOSED SESSION

3.1 19-5735 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Number of Cases: Four

Name of Case: Wells Fargo Bank v. City of Stockton (San Joaquin County Superior Court Case No. 39-2012-00277662)

Name of Case: Wells Fargo Bank, National Association, as Indenture Trustee v. City of Stockton (San Joaquin County Superior Court Case No. 39-2012-00280741)

Name of Case: In re City of Stockton, California - Debtor (United States Bankruptcy Court, Eastern District of California Case No. 2012-32118)

Name of Case: Richard Price, et al. v. City of Stockton, Redevelopment Agency, et al. (United States District Court, Eastern District Case No. CIV.S-02-0065 LKK JFM)

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code.

Legislation Text

3.2 19-5736 CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Acting City Manager Laurie Montes

Employee Organizations: Unrepresented Units, Stockton City Employees' Association, Operating Engineer's Local 3, Mid-Management/Supervisory Level Unit, Unrepresented Management/Confidential, Law Department, Stockton Police Management Association, Stockton Firefighters Local 456 International Association of Firefighters, Stockton Fire Management, Stockton Police Officers' Association (SPOA)

This Closed Session is authorized pursuant to Section 54957.6(a) of the Government Code.

Legislation Text

3.3 19-5737 PUBLIC EMPLOYEE APPOINTMENT, EMPLOYEE EVALUATION OF PERFORMANCE, DISCIPLINE, OR DISMISSAL:

City Manager This Closed Session is authorized pursuant to Government Code section 54957.

Legislation Text

3.4 19-5738 CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Number of Cases: One Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code section 54956.9(b).

Legislation Text

3.5 19-5781 CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Number of Cases: One Based on existing facts and circumstances, there

is significant exposure to litigation pursuant to Government Code section 54956.9(c).

Legislation Text

4. PUBLIC COMMENT

None

5. RECESS TO CLOSED SESSION

The Council recessed to Closed Session at 4:01 PM. The Council returned from Closed Session and recessed at 5:20 PM.

6. REGULAR SESSION CALL TO ORDER/ROLL CALL - 5:33 PM

Roll Call

Present:

Jesus Andrade

Paul Canepa

Christina Fugazi

Sol Jobrack

Susan Lenz

Michael Tubbs

Daniel Wright

7. INVOCATION/PLEDGE TO FLAG

The Pledge of Allegiance was led by Councilmember Andrade. Pastor Renee Bennett of First Church of the Nazarene provided the Invocation.

8. REPORT OF ACTION TAKEN IN CLOSED SESSION

City Attorney John M. Luebberke announced that there was no reportable action taken during Closed Session this evening.

9. ADDITIONS TO REGULAR SESSION AGENDA

None

10.

RECOGNITIONS, ANNOUNCEMENTS, OR REPORTS

None

11. CONSENT AGENDA

Steven Turner - public comment agenda placement

Approve the Consent Agenda with a single vote, save item 11.4 which was considered separately

Moved by: Paul Canepa, seconded by Susan Lenz.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

11.1 19-5714 ACCEPT THE QUARTERLY INVESTMENT REPORT FOR QUARTER ENDED JUNE 30, 2019

Motion 2019-08-20-1101 accepting the Quarterly Investment Report for the quarter ended June 30, 2019.

Legislation Text

Attachment A - Quarterly Investment Report - 6-30-2019

Attachment B - Certification of Quarterly Investment Report - 06-30-2019

11.2 19-5790 ADOPT THE FISCAL YEAR 2019-20 INTERNAL AUDIT PROGRAM

Motion 2019-08-20-1102 adopting the Fiscal Year (FY) 2019-20 Internal Audit Program.

Legislation Text

Attachment A - Fiscal Year 2019-20 Internal Audit Program

11.3 19-5803 APPROVAL OF CITY COUNCIL MINUTES

Motion 2019-08-20-1103 approving the minutes from the City Council meeting of June 18, 2019.

Legislation Text

11.4 19-5791 RESOLUTION TO APPROPRIATE FUNDS FOR A COMMUNITY CHOICE AGGREGATION FEASIBILITY STUDY

Legislation Text

Proposed Resolution - CCA Feasibility Study

Approved Resolution 2019-08-20-1104

Approve Resolution 2019-08-20-1104:

1. Appropriating \$100,000 of Air Quality Mitigation Public Facility Fee funds to determine the feasibility of the City of Stockton developing a Community Choice Aggregation program.
2. Authorizing the receipt and appropriation of any awarded grant funds for the purpose of completing a Community Choice Aggregation feasibility study.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of the resolution.

Moved by: Michael Tubbs, seconded by Daniel Wright.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

11.5 19-5695 FINAL MAP AND SUBDIVISION AGREEMENT FOR CANNERY PARK UNIT NO. 3, (VILLAGE G1), TRACT NO. 3523 PROJECT

Resolution 2019-08-20-1105:

1. Approving the final map for Cannery Park, Unit No. 3, (Village G1), Tract No. 3523.
2. Authorizing the City Manager to execute the subdivision agreement, accept on behalf of the public all offers of dedication, and record the final map for Cannery Park, Unit No. 3, (Village G1), Tract No. 3523.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of the resolution.

Legislation Text

Attachment A - Vicinity Map

Proposed Resolution - Cannery Park Unit No. 3

Exhibit 1 - Subdivision Agreement

Exhibit 2 - Subdivision Map

Approved Resolution 2019-08-20-1105

11.6 19-5720 MOTION TO AUTHORIZE THE CITY MANAGER TO SIGN A VOLUNTARY REDUCTION LETTER TO U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FROM A FUTURE YEAR GRANT ALLOCATION

Motion 2019-08-20-1106:

1) Authorizing the City Manager to sign a letter agreeing to a voluntary reduction in future allocation of \$147,277.72, from the HOME Investment Partnership Program (HOME) Entitlement funds; and

2) Authorizing the City Manager or his designee to take the appropriate and necessary actions to carry out the purpose and intent of the motion.

Legislation Text

Attachment A - Voluntary Reduction Letter

Attachment B - Resolution 2018-08-21-1104

Attachment C - Resolution 2019-02-05-1108

11.7 19-5600 APPROVE LEASE AMENDMENT WITH QUINN & KRONLUND, LLP AT 509 WEST WEBER AVENUE

Resolution 2019-08-20-1107:

1) Approving a Lease Amendment to the lease with Quinn & Kronlund, LLP for office space in the Waterfront Towers (509 West Weber Avenue); and

2) Authorizing the City Manager, or his designee, to take all the necessary and appropriate actions to carry out the purpose and intent of this resolution.

Legislation Text

Attachment A - Current Lease

Proposed Resolution - Quinn and Kronlund Lease

Exhibit 1 - Lease Amendment - Quinn and Kronlund

Approved Resolution 2019-08-20-1107

11.8 19-5664 MOTION APPROVING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING TO LOCAL ORGANIZATIONS THAT SUPPORT BUSINESS START-UPS AND ENTREPRENEURS

Motion 2019-08-20-1108:

1. Approving Community Development Block Grant funding to local organizations that provide support to business start-ups and entrepreneurs in Stockton.
2. Authorizing the City Manager, or his designee, to take appropriate and necessary actions to carry out the purpose and intent of the motion.

Legislation Text

11.9 19-5676 APPROVE AMENDMENT OF OPTION AGREEMENT WITH 1501 S. AIRPORT WAY, LLC

Resolution 2019-08-20-1109:

1. Authorizing an amendment to extend the Option Agreement with 1501 S. Airport, LLC for City-owned property at 1501 S. Airport Way and 1670 Union Street; and
2. Authorizing the City Manager to take necessary and appropriate actions to carry out the purpose and intent of the resolution.

Legislation Text

Attachment A - Resolution 2018-02-27-1111

Attachment B - Vicinity Map

Attachment C - Option Agreement

Proposed Resolution - 1501 Airport Option Agreement

Exhibit 1 - Amendment to 1501 Airport Option Agreement

Approved Resolution 2019-08-20-1109

11.10 19-5481 ADOPT FINDINGS APPROVING AN EXCEPTION TO THE COMPETITIVE BID PROCESS TO ENTER INTO AN AGREEMENT FOR

**PURCHASE OF EMERGENCY REPORTING RECORDS
MANAGEMENT SYSTEM FOR THE FIRE DEPARTMENT**

Motion 2019-08-20-1110:

1. Adopting findings approving an exception to the competitive bid process and authorize the City Manager to enter into a five-year agreement with Backdraft OpCo, LLC, DBA Emergency Reporting (ER) in the amount of \$197,263 for the purchase, installation, and maintenance of Emergency Reporting software.
2. Authorizing the City Manager to take all appropriate and necessary actions to carry out the purpose and intent of this motion.

Legislation Text

Attachment A - Emergency Reporting Service Agreement

11.11 19-5717 AWARD A FIVE-YEAR CONTRACT WITH EVOQUA WATER TECHNOLOGIES FOR RENTAL OF HYDROGEN PEROXIDE STORAGE TANK, SERVICE SOFTWARE, AND PURCHASE OF HYDROGEN PEROXIDE

Motion 2019-08-20-1111:

1. Approving findings pursuant to Stockton Municipal Code Section 3.68.3070 in support of an exception to the competitive bidding process.
2. Awarding a five-year contract between the City of Stockton and Evoqua Water Technologies of Sarasota, Florida, for a total not-to-exceed amount of \$1,648,150 for rental of Hydrogen Peroxide storage tank, service software, and purchase of Hydrogen Peroxide.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of the motion.

Legislation Text

Attachment A - Evoqua Contract

11.12 19-5634 ADOPT A RESOLUTION ACCEPTING A LAW ENFORCEMENT ASSISTANCE PROGRAM GRANT FROM THE STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, AUTHORIZE THE EXECUTION OF STANDARD AGREEMENT 19G-LA46, AND AMEND THE FISCAL YEAR 2019-20 ANNUAL BUDGET

Resolution 2019-08-20-1112:

1. Authorizing the City Manager to accept \$100,000 in Fiscal Year 2019-

20 Police Grant Funds from the State of California Department of Alcoholic Beverage Control Grant Assistance to Local Law Enforcement Agencies Project for the Stockton Police Department's ABC public education and enforcement program;

2. Amending the Fiscal Year 2019-20 Annual Budget to increase the Police Grants and Special Programs expenditure and revenue appropriation by \$100,000; and

3. Authorizing the City Manager to execute all required contracts or agreements with the granting agency, provide additional information and furnish such documents as may be required, execute all documents and amendments or extensions pertaining to the grant project, make all required appropriations in compliance with and for the purposes stated in the project Agreement.

4. It is further recommended that the City Manager be authorized to take appropriate and necessary actions to carry out the purpose and intent of the resolution.

Legislation Text

Proposed Resolution - 2019 ABC Grant

Exhibit 1 - 2019 ABC Grant - 19G-LA46

Approved Resolution 2019-08-20-1112

11.13 19-5663 CITYWIDE SECURITY SERVICES CONTRACT

Motion 2019-08-20-1113:

1. Authorizing the City Manager to execute a four-year Professional Services Agreement between the City of Stockton and Securitas Security Services USA, Inc. for citywide security services for a total contract amount not to exceed \$6,145,923.

2. It is further recommended that the City Manager is hereby authorized and directed to make any and all expenditures and appropriations on behalf of the City as appropriate and necessary to carry out the purpose and intent of this motion.

Legislation Text

Attachment A - Securitas Security Services

11.14 18-4885 APPROVE MOTION TO INCREASE THE AMOUNT FOR DESIGN SERVICES FOR THE FRENCH CAMP ROAD/I-5 INTERCHANGE LANDSCAPING PROJECT

Motion 2019-08-20-1114 authorizing the City Manager to increase the Design Professional Purchase Order for Services with Derivi Castellanos Architects of Stockton, CA, in the amount of \$19,510, for the French Camp Road/I-5 Interchange Landscaping, Project No. PW1418.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of this motion.

Legislation Text

Attachment A - Vicinity Map

Attachment B - Design Professional Purchase Order for Services

11.15 19-5151 APPROVE A RESOLUTION FOR THE PURCHASE AND INSTALLATION OF NEW PLAYGROUND EQUIPMENT AT HARRY CORREN PARK THROUGH A COOPERATIVE PURCHASING AGREEMENT WITH PLAYPOWER, INC. THROUGH SOURCEWELL

Resolution 2019-08-20-1115:

1. Approving findings pursuant to Stockton Municipal Code section 3.68.070 in support of an exception to the competitive bidding process.
2. Approving a Cooperative Purchasing Agreement in an amount not to exceed \$200,000 to provide the City access to preferential pricing programs from PlayPower, Inc. and its associated vendors, including Miracle Recreation Equipment Company, that was awarded through a competitive process by Sourcewell (formerly National Joint Powers Alliance).
3. Authorizing the purchase and installation of new playground equipment at Harry Corren Park, which is part of the North Stockton Open Space Improvements, Project No. PW1803, through the above Sourcewell contract with Miracle Playsystems, Inc. of Alamo, CA, in the amount of \$128,180.85.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of this resolution.

Legislation Text

Attachment A - Vicinity Map

Proposed Resolution - Harry Corren Park Playground Equipment

Exhibit 1 - Cooperative Purchasing Agreement

Approved Resolution 2019-08-20-1115

11.16 19-5666 RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND SUBMIT THE TRANSPORTATION DEVELOPMENT ACT CLAIM FOR FISCAL YEAR 2019-20

Resolution 2019-08-20-1116:

1. Authorizing the City Manager or his Designee to execute and submit a claim to the San Joaquin Council of Governments for Fiscal Year 2019-20 Transportation Development Act funds.

2. Authorizing the City Manager or his Designee to deposit the proceeds in the Transportation Development Act Fund 034 pursuant to State of California requirements.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of this resolution.

Legislation Text

Proposed Resolution - TDA Claim 2019

Approved Resolution 2019-08-20-1116

12. ADMINISTRATIVE MATTERS

None

13. UNFINISHED BUSINESS

None

14. NEW BUSINESS

- 14.1 19-5761 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**

Legislation Text

Attachment A - 2011 KemperSports Operations and Management Agreement

First Proposed Resolution for KSM Swenson LLC lease (1)

Exhibit 1 - Swenson Golf Course Lease Agreement

Proposed Resolution 2 - 2nd Amendment to KSM Management Agreement

Exhibit 1 - 2nd Amendment to KSM Management Agreement

Proposed Resolution 3 - Brightview Contract Change Order

Exhibit 1 - Change Order No. 5

Approved Resolution 2019-08-20-1401-01

Approved Resolution 2019-08-20-1401-02

Approved Resolution 2019-08-20-1401-03

PowerPoint presentation - Lease of Swenson Golf Course and Interim Plan for Van Buskirk Golf Course

The following person(s) spoke to the item - Pandora Crowder, Conway Homes Resident Council President (document filed); Mark Stebbins; John Obagoban

Document filed by Pandora Crowder - Recommendations to Improve Pedestrian & Bicycle Safety for the Conway Community in Stockton

Approve **Resolution 2019-08-20-1401:**

1. 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. 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. 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.

Moved by: Michael Tubbs, seconded by Paul Canepa.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.2 19-5621 DESIGNATING VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE TO BE HELD OCTOBER 16-18, 2019

Legislation Text

Attachment A - League of CA Cities Correspondence

Approve **Motion 2019-08-20-1402** designating two members to serve as a voting delegates representing the City at the League of California Cities Annual Conference to be held October 16-18, 2019, Vice Mayor Dan Wright as delegate and Councilmember Christina Fugazi as alternate.

Moved by: Michael Tubbs, seconded by Paul Canepa.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.3 19-5707 APPROVE RESPONSE TO THE 2018-19 CIVIL GRAND JURY REPORT RELATED TO COLD CASES, CASE NO. 0318, AND APPROVE RESPONSE TO THE 2016-17 CIVIL GRAND JURY FOLLOW UP REPORT CONCERNING COUNTY WIDE DISPATCH FOR FIRE, CASE NO. 0616

Legislation Text

Attachment A - Grand Jury Report - Case No. 0318

Attachment A1 - City of Stockton Response Letter - Case No. 0318

Attachment B - Follow-up to Grand Jury Report - Case No. 0616

Attachment B1 - City of Stockton Response Letter - Case No. 0616

Exhibit 1 to Attachment B1 - Radio Infrastructure Plan

Exhibit 2 to Attachment B1 - CAD Requirement Changes

Attachment C - Grand Jury Report - Case No. 0117

Attachment D - Grand Jury Report - Case No. 0817

Attachment E - Grand Jury Report - Case No. 0917

The following person(s) spoke to the item - Steven Turner

Approve **Motion 2019-08-20-1403** adopting the City's responses to the 2018-2019 Civil Grand Jury Report for Cold Cases in San Joaquin County - "On the Back Burner," Case No. 0318 and a follow up investigation report related to the 2016-2017 Civil Grand Jury Report "County Wide Dispatch for Fire," Case No. 0616, and directing the City Manager to sign the response on behalf of the City Council and to transmit the response to the Presiding Judge of the San Joaquin County Superior Court.

Moved by: Paul Canepa, seconded by Daniel Wright.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.4 19-5795 AUTHORIZE FUNDING FOR A REGIONAL STRATEGIC HOMELESSNESS PLAN, A CITY STRATEGIC HOMELESSNESS PLAN, AND APPLICATIONS FOR HOMELESS HOUSING, ASSISTANCE AND PREVENTION PROGRAM FUNDS

Legislation Text

Proposed Resolution - Strategic Homelessness Plan and Funding Application

Approved Resolution 2019-08-20-1404

PowerPoint presentation - Authorize Funding for a Regional Strategic Homeless Plan

The following person(s) spoke to the item - Kathleen Gapusan; Brenda Vasquez; Delfina Martinez; Wesley Wristman; Denise Friday (document filed); Steven Turner; James; Aaron Paradiso; Dionne Smith Downs

Document filed by Denise Friday - 2019 Schedule of Events

Approve **Resolution 2019-08-20-1404:**

1. Budgeting revenue from anticipated state Homeless Housing, Assistance, and Prevention Program funds in the amount of \$125,000.
2. Appropriating \$125,000 from the state Homeless Housing, Assistance, and Prevention Program funds to complete the following deliverables:
 - a. San Joaquin Continuum of Care strategic homelessness plan,
 - b. City of Stockton strategic homelessness plan,
 - c. City of Stockton application for state Homeless Housing, Assistance, and Prevention Program funds as required by the state, and
 - d. San Joaquin Continuum of Care application for state Homeless Housing, Assistance, and Prevention Program funds as required by the state.
3. Authorizing the receipt of reimbursements from the San Joaquin Continuum of Care via the County of San Joaquin as the administrative agent for strategic homelessness planning when funds become available.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of the resolution and motion.

Directing staff to work with Central Valley Low Income Housing and the Housing Authority of San Joaquin to better utilize funds with existing programs.

Moved by: Christina Fugazi , seconded by Sol Jobrack.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.5 19-5804 CONSIDER DEVELOPMENT OVERSIGHT COMMISSION RECOMMENDATION TO AMEND THE STOCKTON ECONOMIC STIMULUS PROGRAM

Legislation Text

Attachment A - Resolution 2015-11-17-1602

Attachment B - Resolution 2018-07-17-1302

Attachment C - SESP Summary Unit Counts

NOTE: The meeting went into Recess at 7:49 PM

NOTE: The meeting reconvened at 8:09 PM

The following person(s) spoke to the item - John Beckman, Chair, Development Oversight Commission (document filed); Steve Herum

PowerPoint presentation - Development Oversight Commission Meeting of July 31, 2019

Approve **Motion 2019-08-20-1405** amending the Stockton Economic Stimulus Plan to eliminate the residential permit cap and removing the local hire requirement from multi-family developments until such time as the fees proposed and approved by Council in the following Nexus report are affective.

Moved by: Michael Tubbs, seconded by Christina Fugazi .

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.6 19-5779 MOTION TO APPROVE A FORMAL RESPONSE FROM CITY STAFF TO THE MAYOR'S TASK FORCE ON AFFORDABLE AND WORKFORCE HOUSING RECOMMENDATIONS

Legislation Text

Attachment A - Mayors Task Force Affordable and Workforce Housing Report

Attachment B - City Response to Task Force Recommendations

Around the Bench Memo - Amended Title to Item 14.6

PowerPoint presentation - Response to the Mayor's Task Force on Affordable and Workforce Housing Recommendations

The following person(s) spoke to the item - John Beckman, Building Industry Association (BIA)

Approve **Motion 2019-08-20-1406** accepting staff recommendations, with recommendation number twenty-five referred to the Legislation/Environmental Committee.

Moved by: Michael Tubbs, seconded by Daniel Wright.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

14.7 19-5796 ALLOCATE CITY COUNCIL DISCRETIONARY FUNDING AND AMEND THE FISCAL YEAR 2019-20 ANNUAL BUDGET

Legislation Text

Attachment A - FY 2019-20 Park and Tree Projects for Funding Consideration

Proposed Resolution - FY 2019-20 Discretionary Funding

Approved Resolution 2019-08-20-1407

PowerPoint presentation - Allocate FY 2019-20 City Council Discretionary Funding

Approve **Resolution 2019-08-20-1407** amending the FY 2019-20 Annual Budget to appropriate and allocate the \$150,000 of unrestricted discretionary funding.

Authorizing the City Manager to take appropriate and necessary actions to carry out the purpose and intent of the resolution.

Moved by: Daniel Wright, seconded by Michael Tubbs.

Vote: Motion carried 5-2

Yes: Jesus Andrade, Paul Canepa, Susan Lenz, Michael Tubbs, and Daniel Wright.

No: Christina Fugazi , and Sol Jobrack.

15. HEARINGS

15.1 19-5716 PUBLIC HEARING TO ACCEPT THE 2019 PUBLIC HEALTH GOALS REPORT

Legislation Text

Attachment A - 2019 Public Health Goals Report

PowerPoint presentation - 2019 Public Health Goals Report

Approve **Motion 2019-08-20-1501** accepting the 2019 Public Health Goals Report.

It is also recommended that the City Manager be authorized to take necessary and appropriate actions to carry out the purpose and intent of this motion.

Moved by: Paul Canepa, seconded by Sol Jobrack.

Vote: Motion carried 7-0

Yes: Jesus Andrade, Paul Canepa, Christina Fugazi , Sol Jobrack, Susan Lenz, Michael Tubbs, and Daniel Wright.

16. PUBLIC COMMENTS - MATTERS NOT ON THE AGENDA

Brenda Vazquez - 209 Cares, Founder Nancy Lamb

Melinda Kadow - Waste Management issues across from her home; trash trucks

Rikki Kadow - Waste Management issues (document filed)

Document filed by Rikki Kadow - Stockton Scavengers Association

Charlene Byrd, African American Chamber of Commerce - Black Family Day at Weber Point, Monday, September 2, 2019; advocate for the homeless

Document filed by Charlene Byrd - Sleeping Bag Drive

Kathleen Gapusan - Pride Flag; recent shootings

Steven Turner - experience with Stockton Police Department

17. COUNCIL COMMENTS

Councilmember Canepa - thanked people for Swenson support; coordinating homeless clean-ups; Shot-Spotter

Councilmember Fugazi - United Airlines Flights available at Stockton Airport; thanked community for Outreach Events; Stockton Tequila Festival, August 17, 2019; Stockton 209 CARES (Community Accessing Resources Empowerment and Sustainability); lights out in Stribley Park bathroom

Vice Mayor Wright - thanked Council for approving item 11.4, Community Choice Aggregate; thanked Councilmember Andrade and San Joaquin

County LAFCO (Local Agency Formation Commission)
members for approving CARMAX location; Pride Flag

Councilmember Lenz - thanked City of Stockton and community
members for National Night Out participation

Vice Mayor Wright - National Night Out at Polo Run Apartments

Councilmember Fugazi - National Night Out Event at Yosemite Street
Village

Councilmember Lenz - National Night Out event at Kentfield Park, Oak
Park Senior Center

18. ADJOURNMENT - 9:55 PM

INFORMATIONAL ITEMS

**1. 19-5637 RECOMMENDATION FROM THE STRONG COMMUNITIES
ADVISORY COMMITTEE TO PRIORTIZE NORTHWEST STOCKTON
LIBRARY AND RECREATION SERVICES**

This item is an information item communicating a recommendation from
the Strong Communities Advisory Committee to prioritize Strong
Communities (Measure M) funding for Northwest Stockton library and
recreation services.

Legislation Text