

CONCESSION AGREEMENT AND AGREEMENT FOR GOLF COURSE OPERATIONS AT
AIRWAYS GOLF COURSE

BETWEEN

CITY OF FRESNO, CALIFORNIA
(A Municipal corporation)

and

SIERRA GOLF MANAGEMENT, INC.,
A California Corporation

August, 2016

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CONCESSION AGREEMENT AND AGREEMENT FOR GOLF COURSE OPERATIONS AT AIRWAYS GOLF COURSE

This Concession Agreement for Golf Course Facility at Fresno Yosemite International Airport ("Airport") (herein referred to as the "Concession Agreement"), by and between the City of Fresno, a California municipal corporation (herein referred to as "City") and SGM, Inc. (herein referred to as "Concessionaire") (City and Concessionaire herein together referred to as the "Parties"), is made and entered into on this 31st day of August, 2016 (the "Effective Date"), and evidences the following:

RECITALS

WHEREAS, City owns and operates Yosemite International Airport, hereinafter referred to as "Airport", located in the City of Fresno, County of Fresno, State of California; and

WHEREAS, City hereby desires to Concession Agreement to Concessionaire, and Concessionaire hereby desires to accept from City the Premises (as defined in Section 1 of this Concession Agreement), for the purposes set forth in this Concession Agreement; and

WHEREAS, on September ____, 2016, the City Council awarded Concessionaire the Agreement for Concessions and Golf Course Operations; and

WHEREAS, Concessionaire agrees to use the improvements on the Premises in the manner provided for in this Concession Agreement; and

WHEREAS, Concessionaire represents it has the necessary experience and qualifications to provide all of the services involved in the operation of Airways Golf Course.

NOW, THEREFORE, in consideration of the rent herein to be paid by Concessionaire, and such other mutual covenants and consideration as herein provided, City does hereby grant, Concession Agreement and let to Concessionaire the Premises upon the following terms and conditions:

SECTION 1. PREMISES

1. 01 City shall provide to Concessionaire that certain parcel of real property, improved with an 18-hole golf course, pro shop, restaurant, and various structures and nonbuilding improvements, commonly known as Airways Golf Course, hereinafter referred to as "Premises" which parcel is more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof.
1. 02 The Premises shall be used for the purpose of conducting a public golf course thereon together with a pro shop, driving range, restaurant, and such businesses which the City determines are reasonably related thereto.
- 1.03 Concessionaire acknowledges personal inspection of the Premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the golf course operation. Concessionaire accepts the Premises in its "as is" present physical condition and agrees to make no demands upon City for any improvements or alteration thereof.

- 1.04 Concessionaire hereby acknowledges the title of City, and/or any other public agencies having jurisdiction thereover, in and to the Premises and the improvements located thereon, and covenants and agrees never to assail, contest, or resist said title.
- 1.05 Ownership of all structures, buildings, or improvements constructed by Concessionaire upon the Premises and all alterations, additions, or betterments thereto, shall vest to City, without compensation being paid therefor, and such structures, buildings and improvements shall be surrendered with the Premises, unless demand for the removal thereof shall be given by the City at least ninety (90) calendar days prior to the date of termination of this Agreement. Should Concessionaire fail to remove said structures, buildings and improvements, the same may be sold, removed or demolished, and Concessionaire shall reimburse City for any reasonable cost or expense incurred by City in connection therewith, less any value received by the City as part of such sale, removal or demolition.

SECTION 2. TERM

- 2.01 The term of this Agreement shall be for a period of seven (7) months commencing on the first day of October, 2016 and shall end on midnight April 30, 2017 unless terminated earlier in the manner and under conditions herein provided.
- 2.02 In the event Concessionaire holds over beyond the term herein provided with the consent, express, or implied of City, such holding over shall be from month to month only, subject to the conditions of this Agreement; shall not be a renewal thereof; and shall be at the monthly rent provided herein.

SECTION 3. RENT

- 3.01 Rent.

Concessionaire shall pay to the City during the life of the Agreement rent based on the following:

Rent: Six percent (6.00%) of Total monthly Green Fee Receipts.

Green Fee

A Green Fee is the set fee golfers must pay at the pro shop or clubhouse in order to gain access to the course.

Arts, Parks, & Entertainment Surcharge

The Arts, Parks, & Entertainment Surcharge shall be considered a pass-through charge collected per round and does not factor into gross revenue. Collection of this surcharge will continue under the new Concession Agreement. Use of the surcharge revenue is the City's discretion and limited to capital improvements at Airways Golf Course and Swimming Pool facility. This fee is set by the Fresno City Council through the Master Fee Schedule and shall change from time to time.

3.02 Intentionally Left Blank.

3.03 Late Payment Charge.

Any payment not received by the due date shall be deemed delinquent and shall accrue interest at the lesser of the rate of eighteen percent (18%) per year calculated on a daily basis at the rate of five-hundredths of a percent (0.05%) per day from the due date until paid in full, or the maximum rate allowed by law.

All payments due and payable herein shall be paid in lawful money of the United States of America, without set off, by check or wire transfer made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City by service of written notice upon Airline, may otherwise direct the payment thereof from time to time during the term hereof:

Via Mail/Express:
City of Fresno
Fresno Yosemite International Airport
Attn.: Airport Accounting
4995 East Clinton Way
Fresno, CA 93727-1504

Via Wire Transfer:
City of Fresno - Airports
Bank of America
ABA #121000358
Account: 1499610645

3.04 Definition of "Green Fee Receipts".

"Green Fee Receipts" shall be defined as the set fee golfers must pay at the pro shop or clubhouse in order to gain access to the course.

SECTION 4. USE

4.01 Use.

Subject to the other terms and conditions set forth in this Agreement, Concessionaire intends to operate a golf course as the primary use. Authorization to conduct business on the Premises is strictly dependent upon Concessionaire maintaining a golf course related business as the primary use which is a material term as defined. Should Concessionaire cease these operations, or reduce it to a level which is incidental to the Concessionaire's operation on the Premises, that will constitute a default of this agreement. Concessionaire shall use the Premises and any Improvements only for those uses specifically set forth in this section, unless Concessionaire obtains the prior written consent of the City's Director of Aviation (the "Director of Aviation"). Concessionaire agrees to comply with applicable grant assurances given by the City to the Federal Aviation Administration ("FAA") as depicted on Exhibit "E" and periodically updated by the FAA.

4.02 Golf Professional Services.

A. Use Granted.

Concessionaire is hereby authorized and required to sell and/or rent golf equipment; sell golf related clothing and supplies; provide instructional services

in the playing of golf; rent golf mobiles and golf carts; and operate a driving range.

Prices charged for new equipment shall not be greater than fair trade or manufacturer's suggested prices for new equipment and shall be competitive with prices charged for golf equipment and supplies of comparable quality sold at other public golf courses in Fresno County.

B. Practice Driving Range.

Concessionaire shall during reasonable business hours supervise, operate, and manage the practice driving range in an efficient, orderly, and business-like manner. Incident thereto, Concessionaire shall furnish, at Concessionaire's own expense, practice balls in good condition to persons who pay the prescribed driving range fee and shall provide, manage, and operate the necessary golf ball retrieving equipment. Charges for use of the driving range shall be comparable to and competitive with charges for range use at other comparable public golf courses and golf ranges in Fresno County.

C. Practice Putting Green.

Concessionaire shall supervise all activities and putting conducted on the practice green in order that the practice green shall not be damaged through improper or excessive use and that practice putting conducted thereon will be in an orderly and peaceful manner. Incident thereto, Concessionaire may reasonably limit the number of persons using said putting green at any one time and shall prohibit the use of the green when necessary to prevent excessive wear, tear, and damage.

4.03 Food and Beverage Services.

A. Use Granted.

Concessionaire shall sell food and beverages, soft drinks, beer, and wine, but no other alcoholic beverages. Concessionaire may have the right to sell other alcoholic beverages only with the prior written approval of the Airport Director. City grants to Concessionaire the exclusive right to provide food and beverage services on the Premises.

B. Concessionaire's Staff.

Concessionaire shall file and maintain current with the City a certificate for each member of its food and beverage staff showing that within the last 12 calendar months such person has been examined and has been found to be free of communicable disease. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the State Business and Professions Code or a notice from a public health agency.

C. Existing Furnishings and Equipment.

All of the City-owned furnishings and equipment in the restaurant on the

Premises as described in the inventory list as Exhibit B, attached hereto and by this reference made a part hereof, may be used by Concessionaire if Concessionaire so desires and so stipulates in writing to the City. Should Concessionaire elect to utilize any or all of such furnishings and equipment, Concessionaire shall, at Concessionaire's own cost and expense, maintain and repair such furnishings and equipment so utilized throughout the term of this Agreement and shall replace same as the necessity arises. All such furnishings and equipment which Concessionaire elects not to use shall be removed by City.

D. Permits and Licenses.

The operation by Concessionaire of a food and beverage concession on the Premises is contingent upon Concessionaire's obtaining and maintaining the necessary licenses and permits allowing the sale of food and beverage in the concession area. Concessionaire shall, at Concessionaire's own cost and expense, proceed in accordance with applicable statutes, ordinances, codes, regulations and rules to obtain the issuance of such licenses and permits. If any license or permit is denied or revoked, or is unable to be procured Concessionaire shall have a reasonable time not to exceed thirty (30) calendar days to obtain said licenses and permits. If Concessionaire cannot obtain said licenses or permits, all rights of Concessionaire shall terminate and City shall be relieved from any and all obligations under this Agreement.

E. Food and Beverage Products.

Concessionaire shall provide and maintain the necessary inventory of food and beverage products required to satisfy the public demand. Therefore, all such products sold or kept for sale by Concessionaire shall be of the highest quality, wholesome and pure, and shall conform to the Federal, State, and County food laws, statutes, ordinances, codes, rules, and regulations in all respects. No adulterated, misbranded, or impure articles shall be sold or kept for sale by Concessionaire and all food and beverage products kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. In the event that Concessionaire's food and beverage products are deemed by the City to be less than the highest quality, the City shall have the right to order the improvement of the quality of any such product kept or offered for sale.

4.04 Golf Course Starter Services.

A. Use Granted.

Concessionaire shall render and provide golf course starter services. Said services are to include, but not be limited to, opening and closing the golf course; collecting green fees; collecting golf tournament fees; recording reservations from the telephone and from patrons at the course and recording same on starter sheets; placing golfer's names on a call sheet as necessary; sending golfers to the tee and starting them off at proper intervals; receiving requests from groups for tournaments, booking tournaments and collecting appropriate fees; taking all actions as necessary to speed play on course; entering all golfers' names on the starter's sheet and issuing a cash register receipt to each golfer as he or she pays the green fee; totaling golf starter sheets at end of each day's play and reconciling them with fee category totals on the cash register detail tape; and

recording in the daily log book the number of rounds of play and total amount of cash collected by fee category.

Concessionaire shall accept starting time reservations on a "first-come, first-serve" basis from persons desiring to play golf on the Premises, shall register such persons before allowing their play on the course, shall coordinate the starting of play by such persons, and shall supervise the play and activities of all players and persons on said golf course.

Concessionaire acknowledges that tournaments are currently and customarily held on the Premises and agrees to accommodate and encourage such tournaments and favorably consider suggestions for additional events intended to accommodate the public, increase golf play at the Premises, and otherwise mutually benefit the parties hereto.

B. Recordkeeping

Concessionaire shall keep complete records of account with regard to all monies collected hereunder. Concessionaire shall also be responsible for and shall keep neat, readable starting sheets. Concessionaire shall handle and account for all monies collected hereunder in a manner acceptable to the City, and all accounting records and starting sheets shall at all times be completely available for examination by the City.

4.05 Building and Equipment Maintenance Services.

A. Concessionaire shall, at Concessionaire's expense, keep and maintain the Premises and all buildings, structures, improvements, fixtures, trade fixtures, equipment, and utility systems which may now or hereafter exist thereon in good, operable, usable, and sanitary order and repair and maintenance in a good, safe condition throughout the term of this Agreement, providing for such repairs, replacements, rebuilding, and restoration as may be required by the City to comply with the requirements hereof. All such repairs and/or any modifications or additions to the facilities shall have the prior written approval by the Director prior to their implementation by Concessionaire.

B. Should Concessionaire fail after ten (10) calendar days' notice from City of the need thereof to perform Concessionaire's obligations required under this Section 3.04, City, in addition to all other available remedies may, but shall not be obligated to, exercise City's Right of Entry as provided hereinafter in Section 21, enter upon the Premises and perform Concessionaire's failed obligations, using any equipment or materials on the Premises suitable for such purposes. Concessionaire shall forthwith on demand reimburse City for City's costs so incurred including direct and indirect overhead costs as determined by the City.

C. It is hereby understood and agreed by Concessionaire that City does not have any duty nor shall City be called upon to make any improvements, replacements, or repairs whatsoever to the Premises and any structures, improvements, fixtures, trade fixtures, equipment, and utilities during the term of this Agreement.

4.06 Grounds Maintenance Services.

A. Concessionaire shall provide grounds maintenance services including, but not limited to, the obligation to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, topdress, raise divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder, as well as provide weed, disease, and pest control; tree maintenance; maintenance of irrigation systems including mainlines, pumps, boosters, and controllers; keep swales in good repair; and to provide the necessary maintenance of any structures and equipment, and other duties as set forth in Exhibit C, attached hereto and by this reference made a part hereof.

B. In regard to the level of maintenance, all work shall be performed in accordance with Exhibit C so as to maintain the aesthetic level and proper playing condition of the golf course. Standards and frequencies may be modified from time to time as deemed reasonably necessary by the City for the proper maintenance of this course.

- i. Regularly scheduled inspections of the Premises and of Concessionaire's operations authorized herein shall be made by the City. The report of such inspections shall be recorded, retained for reference, and forwarded to Concessionaire for corrective action if necessary.
- ii. Concessionaire shall provide and maintain in its employ a golf course superintendent and maintenance crew at the Premises daily during reasonable business hours. Concessionaire must employ sufficient maintenance personnel to perform all work as scheduled and required by the City. All maintenance personnel shall be reasonably clean and neat at all times in consideration of their job responsibilities.
- iii. Whenever play must be temporarily suspended on the golf course facility due to inclement weather conditions or other unsafe conditions, the decision on when to allow play to resume and when to allow golf carts to go out on the course will be made by Concessionaire.
- iv. The Concessionaire, at Concessionaire's sole cost and expense, shall furnish all necessary equipment, supplies, and materials of good quality and in sufficient quantity to fulfill the maintenance requirements of this Agreement and to accomplish an acceptable and, to the extent economically feasible, professional level of maintenance.

4.07 Parking Lot.

Concessionaire understands that the golf course shares its vehicle parking area with the Operator of the Airways Swimming Pool and agrees to keep said parking lot available to the users of the Swimming Pool. Concessionaire also understands that the golf course patrons contribute to a majority of the parking surface wear and tear.

SECTION 5. FINANCIAL REPORTING

5.01 Monthly & Annual Financial Statements.

- A. Monthly Reports/Statements: Concessionaire shall, in a timely manner, prepare a "Monthly Report/Statement of Gross Receipts", using such a form(s) acceptable to City, with such receipts broken down into such categories and subcategories as shall be required so as to clearly evidence Concessionaire's Gross Receipts (as defined in 3.05) and the source(s) thereof (for the calendar month immediately preceding the month during which the particular Monthly Report/Statement of Gross Receipts is prepared and submitted), and shall be submitted with the monthly rent payment on or before the twentieth (20th) calendar day of the month during which the report is prepared. Monthly Report attached hereto and incorporated herein as Exhibit "G".
- B. Final Reports/Statements: At the end of the Agreement, Concessionaire shall, in a timely manner, prepare a "Report/Statement Of Gross Receipts", for the preceding year, in a format acceptable to City, which shall clearly evidence Concessionaire's Gross Receipts and each line of business (as defined below). Such statement shall be reviewed by a Certified Public Accountant, with such statement reflecting the following language:

"I have examined the definition of Gross Receipts in the Agreement between _____ and the City of Fresno, California, dated _____, all relevant financial statements and income tax returns of the Concessionaire, and the Concessionaire's system of recording Gross Receipts. In my opinion, the attached statement of Gross Receipts for (give time period) was compiled using a system that adequately reflects the Concessionaire's Gross Receipts (in accordance with the definition in the Agreement) for the aforementioned period."

Concessionaire shall deliver such annual reports/statements to City so as to be received thereby in the month of following the end of the agreement on or before 30 calendar days of the end of each calendar year. This subsection shall survive expiration or termination of the agreement.

5.02 Sales Records.

All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. Said cash register shall in all cases have locked-in sales totals and transactions counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted including time of sale. Beginning and ending cash register readings shall be made a matter of daily record and shall be provided to the City upon request. In the event of a technical or electrical failure of the cash register, Concessionaire shall record by hand all collections and issue a sequentially pre-numbered customer's receipt in like manner.

5.03 Accounting Standard.

Concessionaire shall be required to maintain a method of accounting, to the satisfaction of the City, which correctly and accurately reflects the gross receipts, disbursements, constructions, and construction financing of the Concessionaire in connection with the entire operation of the Premises. The method of accounting, including bank accounts established for the operation of the Premises, shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

- i. Regular books of accounting such as general ledgers.
- ii. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- iii. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown.
- iv. Any other reporting records that the City deems necessary for proper reporting of receipts.

5.04 City Inspection of Financial Records.

All documents, books, and accounting records shall be open for inspection and re-inspection by the City at any reasonable time during the term of this Agreement and for four (4) years thereafter. In addition, the City reserves the right to perform financial and compliance audits of the Concessionaire and Concessionaire's operations. These audits will be conducted to confirm the accuracy of the above mentioned records. The results of any audits conducted by the City shall be made available to Concessionaire for Concessionaire's inspection.

This Section 5 shall survive expiration or termination of the Agreement.

SECTION 6. CAPITAL IMPROVEMENTS

Concessionaire shall invest, at a minimum, one thousand five hundred dollars (\$1,500.00) during each month of this agreement, for the repair and replacement of irrigation heads, valves or controllers and the cost of repairing or replacing defective irrigation infrastructure.

SECTION 7. OPERATING RESPONSIBILITIES

7.01 Compliance with Laws.

Concessionaire shall conform to and abide by all laws, ordinances, statutes, codes, rules and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the golf course operation hereunder and/or any construction authorized herein, the same must first be obtained from the regulatory agency having jurisdiction thereover.

7.02 Disorderly Persons.

Concessionaire shall exercise every reasonable effort not to allow any loud, boisterous, or disorderly persons to loiter about the Premises.

7.03 Illegal Activities.

Concessionaire shall not knowingly permit any illegal activities to be conducted upon the Premises.

7.04 Signs.

All exterior signs on the Premises shall comply with the pertinent ordinances of the City of Fresno, and also shall be approved prior to installation by the Director of Aviation. Unless otherwise specifically authorized, all exterior signs on the Premises shall conform in general appearance to the existing signs displayed at the Airport.

7.05 Public Use.

Concessionaire shall use its best efforts to maximize the public use of Airways Golf Course and the facilities thereon.

7.06 Concessionaire's Staff.

- A. Concessionaire and Concessionaire's staff shall at all times maintain a high standard of services to the public without rudeness but rather with dignity and courtesy.
- B. Concessionaire shall maintain a staff of adequate number and sufficient training. The City may at any time give Concessionaire written notice to the effect that the conduct or action of a designated employee of Concessionaire is, in the reasonable belief of the City, detrimental to the interest of the public patronizing the Premises. Following City's written notice, Concessionaire shall, meet with representatives of the City to consider the appropriate course of action with respect to such matter and Concessionaire shall take reasonable measures under the circumstances to assure the City that the conduct and activities of Concessionaire's employee will not be detrimental to the interest of the public patronizing the Premises.
- C. Concessionaire shall establish an identification system for personnel assigned to the golf course starter service which clearly indicates to golf course patrons the name of the person(s) on duty and responsible for collecting green fees. The identification system shall be furnished at the Concessionaire's expense and shall include appropriate attire, name badges and/or name plates.

7.07 Utilities.

- A. Concessionaire shall provide and pay for any necessary utilities at the golf course.
- B. All existing telephone numbers that identify Airways Golf Course to the public shall be placed in the name of the Concessionaire and shall not be changed or be transferable to any other location. Concessionaire waives any and all claims against City for compensation for loss or damage caused by a defect,

deficiency, or impairment of any utilities system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the Premises.

7.08 Sanitation.

No offensive matter or refuse or substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health shall be permitted to remain on the Premises, and Concessionaire shall prevent any accumulation thereof from occurring.

7.09 Toxic Material/Hazardous Substances.

Concessionaire agrees to indemnify, defend and hold City harmless from and against any and all liabilities, including but not limited to, losses, claims, actions, damages, penalties, fines, attorneys' fees, expert fees, court costs, remediation costs, investigation costs or other expenses, whether administrative or judicial, arising from or in any way related to hazardous substances contamination caused by, or alleged to be caused by, Concessionaire, its principles, officers, employees, agents, persons under the supervision of Concessionaire, vendors, suppliers, invitees, consultants, sub-consultants, contractors, subcontractors, or anyone employed directly or indirectly by any of them during the occupancy and use of the Premises.

The term "Hazardous Substances," as used in this Concession Agreement, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum byproducts, or substances defined as hazardous substances, hazardous materials, toxic substances, pollutants, or contaminants under the Clean Water Act (33 USC SS 12-1387), the Comprehensive Environmental Response, Compensation and Liability Act of 1990 (42 USC SS6921-6987), the California Porter-Cologne Water Quality Control Act (Cal. Water Code SS 1300014076), those substances defined as hazardous under the California Health and Safety Code (or any successor statutes thereto), all regulations promulgated pursuant to the above statutes, or any substance the presence of which causes or threatens to cause a nuisance upon the adjacent property or the health and safety of persons on or about the Premises or in the general vicinity.

If at any time during the term of this Concession Agreement, Hazardous Substances are discovered by either party to be on the Premises, said party shall immediately notify the other party in writing of such occurrence. City and Concessionaire each further agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Substances or the violation of any law or regulation that related to such substances.

Concessionaire shall not use, handle, store, transport, generate, nor dispose of any Hazardous Substances on, under, or about the Premises. In the event of any Concession Agreement of Hazardous Substances caused or permitted by Concessionaire on the Premises during the term of this Concession Agreement, City shall have the right to cause Concessionaire to immediately take all reasonable

steps City deems necessary or appropriate, at Concessionaire's sole cost and expense, to remediate such Concession Agreement and prevent any similar Concession Agreement to the satisfaction of any applicable federal, state, or local regulatory agency.

Upon discovery of Hazardous Substances on the Premises (i) within fifteen (15) days from such discovery, the City and Concessionaire shall meet and confer and City shall provide to the Concessionaire time estimates for City to remove the Hazardous Substances or otherwise to make the Premises safe and lawful under this Concession Agreement: (ii) if City is unable at the meeting required under (iii) to assure removal of the Hazardous Substances within sixty (60) days thereof, then Concessionaire may, at its sole discretion, terminate this Concession Agreement within ten (10) days after said meeting upon prior written notice to City. Said termination shall be subject to Section 11 of this Agreement.

This section shall survive any termination or expiration of this Concession Agreement.

7.10 Security Device.

Concessionaire may provide any reasonable, safe and legally permissible devices, mechanisms, or equipment designed for the purpose of protecting the Premises from theft, burglary or vandalism. All purchases and installation thereof shall be at Concessionaire's expense. During the last thirty (30) calendar days preceding the termination of this Agreement, Concessionaire shall remove same from the Premises other than those items which cannot be accomplished without damage to the realty as determined by the City.

7.11 Safety.

Subject to Section 7.09, Concessionaire shall immediately correct any unsafe condition or practice noted by Concessionaire and/or reported thereto by City, City's officers, agents, or employees, or any other person whomsoever; and Concessionaire shall:

- A. Obtain emergency medical assistance for any member of the public in need thereof because of illness or injury occurring anywhere on the Premises;
- B. Report any instance of serious injury or death occurring on the Premises to City, in writing, within twenty-four (24) hours after any such occurrence; and
- C. Upon request by City, cooperate fully with City or any authorized officer/employee/representative/agent thereof, in the investigation of any injury or death occurring on the Premises during the life of the Agreement.

7.12 Days and Hours of Operation.

Concessionaire shall keep the Premises open every day, including Saturdays, Sundays and holidays, except Christmas. The minimum hours of operation shall be the same as for the golf course starter office on each day said operation is required to be open. Any changes in the days and hours of operation heretofore prescribed

shall be subject to prior expressed written approval by the Director.

7.13 Prices.

A. Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods and services, or combinations thereof, supplied to the public on or from the Premises. Said prices shall be fair and reasonable based upon the following considerations: that said operation is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied at comparable public golf courses in the Fresno County area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this Agreement. In the event the City notifies Concessionaire that the prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the City to justify the prices. Following reasonable conference and consultation, Concessionaire shall make such price adjustments as may reasonably be ordered by the City.

B. City hereby reserves the right to establish the green fees schedule, surcharges and other fees for patrons using the golf course under the Master Fee Schedule.

C. Green Fee Adjustment:

Effective each and every year of this Agreement, green fees may, at the discretion of Concessionaire, be adjusted in an amount not to exceed the 12 month percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) Urban Wage Earners and Clerical Workers (all items, U.S. city average), for the most current month that data is available (the "CPI Increase"). The CPI Increase shall be calculated by adding the total sum of CPI increases from all green fee categories.

This adjustment computation shall be annually accomplished by the Concessionaire in the manner illustrated and using the methodology/ guidelines set forth within Exhibit "D", "Illustration Of Annual Green Fee Adjustment Computation", attached hereto and made a part hereof. A copy of such computation shall be provided to the Concessionaire within thirty (30) calendar days following the completion thereof, and City shall then amend City's Master Fee Schedule during the annual Citywide fee update process, so as to cause the new green fees to go into effect on a date deemed mutually acceptable by City and Concessionaire of the year during which said computation shall be completed.

This provision shall be effective in this manner as long as the index mentioned above is published by Government authorities in the same form and based on the same type data being used on the commencement date of the term hereof and shall be redefined by City, in the event of any change in form and/or basis of indices, to a reasonably comparable standard.

7.14 Quality of Goods and Services.

Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to City and is considered a part of the consideration for this Agreement. Therefore, Concessionaire agrees to operate and

manage, during the entire term of this Agreement, the golf course services and facilities in a manner comparable to other golf courses providing similar facilities and services. Where such facilities are provided, Concessionaire shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of other comparable establishments in Fresno County and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Concessionaire, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the City based on findings that the provision of such goods or services are harmful to the public welfare.

7.15 Reporting.

The Concessionaire or his representative shall meet with the City at least quarterly to review Concessionaire's performance under this Agreement and to discuss any problems or matters as determined by the City.

7.16 Trade Fixtures.

Concessionaire, at Concessionaire's own expense, shall provide and install all appliances, furniture, fixtures, equipment, door locks and padlocks that are required for the golf course operation. During the last thirty (30) calendar days preceding the termination of this Agreement, Concessionaire shall remove same from the Premises, other than those items which have been furnished by City or so affixed that their removal therefrom cannot be accomplished without damage to the realty. Should Concessionaire fail to remove the appliances, furniture, fixtures, equipment, door locks and padlocks within the thirty (30) calendar day period, Concessionaire shall lose all right, title and interest in the same, and City may elect to keep the same upon the Premises or to sell, remove or demolish the same. Concessionaire shall reimburse City for any cost incurred in excess of any consideration received from the sale, removal or demolition of such items.

SECTION 8. DESTRUCTION OF PREMISES

- 8.01 In the event the Premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, Concessionaire shall either restore the Premises or terminate this Agreement. City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. If the destruction is from a risk for which insurance coverage is not required or provided under said policy of insurance, City shall either restore the Premises or terminate this Agreement. Said insurance proceeds, if any, shall be held for the benefit of Concessionaire only in the event of an election by Concessionaire to restore the Premises and shall be disbursed installments as construction progresses for payment of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the City and Concession Agreement of mechanic's liens by all persons furnishing labor and materials thereon. If Concessionaire elects to restore said premises and the proceeds of insurance are insufficient to pay the actual costs of restoration, Concessionaire shall deposit the amount of the deficiency with the City upon demand therefor by the City, and said sums shall be held for payment of said costs and disbursed in the manner heretofore provided. Any undistributed funds shall be

retained by City and credited to the rent reserved over the remaining term of this Agreement. If Concessionaire elects to restore the Premises, plans, specifications, and construction cost estimates for the restoration thereof shall be prepared by Concessionaire and forwarded to City for approval prior to the performance of any work thereon. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance by City. The required construction shall be performed by Concessionaire and/or licensed and bondable contractor(s) thereof who shall be required to carry comprehensive liability and property damage insurance, workers' compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by the City. Said construction shall be commenced promptly following the approval thereof by the City, issuance of permits therefor by governmental agencies having jurisdiction thereover, and posting of the construction site by City with notice of nonresponsibility, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes therein are approved in advance thereof by City. Concessionaire agrees that City may have on the site at any time during the construction period an inspector who shall have the right to access the Premises and the work occurring thereon. Concessionaire, at the commencement of the construction work, shall notify City in writing of the identity, place of business, and telephone number of responsible person(s) in charge of the construction to be occurring thereon. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, Concessionaire shall immediately record a notice of completion with the City Manager or his/her designee.

- 8.02 If the Premises are restored, this Agreement shall continue in full force and effect, except that the payment to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the City may determine the damage and/or restoration interferes with the golf course operation provided a claim therefor is filed with the City within one hundred (100) calendar days of notice of election to restore the Premises. Any such claim shall be denied if the destruction of the Premises is reasonably found by the City to have been caused by the fault or neglect of Concessionaire. Concessionaire agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the golf course operation, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 8.03 Concessionaire shall cooperate in the restoration of the Premises by vacating and removing therefrom all items of inventory, trade, fixtures, equipment and furnishings for such periods as are required for the restoration thereof.
- 8.04 The aforesaid provisions for abatement and/or other relief shall also be applicable to a total or partial destruction of the Premises by the aforementioned causes, except that the relief to be provided shall be based upon the extent the City may reasonably determine that the reduction in the public's use of the Premises due to the partial or total closure thereof has affected the golf operation.

SECTION 9. CONSTRUCTION BY CITY AFFECTING PREMISES

- 9.01 In the event City shall construct or cause to be constructed a new facility on the

Premises, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the City may determine the construction interferes with the golf course operation, provided a claim therefor is filed with the City within one hundred (100) calendar days of commencement of construction.

- 9.02 Concessionaire agrees to cooperate with City in the event the construction affects the Premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 9.03 Following completion of the new facility, Concessionaire shall resume golf course operations within thirty (30) calendar days of written notice from the City that the Premises are tenantable.
- 9.04 The aforementioned provisions of this Section 9 shall also be applicable in the event of performance of work on the Premises that requires a partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the City may reasonably determine that the reduction in the public's use of the Premises due to the partial or total closure thereof, has affected the golf course operation.
- 9.05 In the event that during the course of this Agreement and following the completion of a detailed analysis of the feasibility and financial viability of such a project, City decides to substantially renovate or rebuild the clubhouse (the "Clubhouse Development") on the golf course such that it is capable of providing expanded food and beverage catering services for large banquets and events (defined as serving more than 150 people), the following procedures shall apply:

The parties shall negotiate exclusively in good faith for a period of 90 business days from the date of notice by the City to the Concessionaire of its desire to negotiate an amendment to the Agreement to include, without limitation, the following provisions:

- a) An adjustment to the Food and Beverage Fixed Rent Percentage, as set forth in Article III, to reflect the Clubhouse Development and the changed food and beverage services
- b) An adjustment to the Golf Revenue Fixed Rent Percentage, as set forth in Article III, to reflect the Concessionaire's participation in the construction and/or financing of the Clubhouse Development
- c) The term of the Agreement
- d) Other provisions effected by the Clubhouse Development.

If there is no agreement reached following the exclusive negotiating period, City will submit its last offer ('Last Offer') to Concessionaire. If Concessionaire rejects said Last Offer, City is free to negotiate with third parties only on the terms of a good faith, market-rate agreement for participation in the construction and/or financing of the Clubhouse Development and the food and beverage operations (defined as an offer

that is substantially similar to percentage rents at like-sized facilities in the local market), subject to the matching rights of Concessionaire set forth below.

1. If City wants to offer the food and beverage operations to a third party Concessionaire has 60 business days to match such terms.
2. If Concessionaire decides not to match the third party offer and City enters into an agreement with the third party to provide the food and beverage services at the golf course, Concessionaire shall receive a share of the City's revenues equal to the average net operating profit (defined as gross food and beverage revenues less gross food and beverage expenses) it received from food and beverage operations over the preceding five (5) years, increased by the applicable CPI each year thereafter.

SECTION 10. INDEPENDENT CONTRACTOR

- 10.01 This Agreement is by and between the City of Fresno and Concessionaire as an independent contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between City and Concessionaire.
- 10.02 Concessionaire understands and agrees that all persons furnishing services to City pursuant to this Agreement are, for purposes of Worker's Compensation liability, employees solely of Concessionaire and not of City.
- 10.03 Concessionaire shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries from or connected with services performed on behalf of Concessionaire pursuant to this Agreement.

SECTION 11. SECURITY DEPOSIT

- 11.01 Within ten (10) days of the commencement of this Agreement, Concessionaire shall provide City, and shall thereafter [maintain during the term of this Agreement], a valid Surety instrument or surety amount, in an amount of Five Thousand Dollars (\$5,000.00), guaranteeing Concessionaire's fully and faithfully undertaking, observing, keeping and performing any and all of the terms, covenants, conditions, warranties, agreements, undertakings, and/or provisions hereof to be observed, kept, performed, and/or undertaken by Concessionaire.
- 11.02 Form of Surety. The surety instrument shall be in one of the following forms:
 1. A Surety Bond issued by an insurance company lawfully admitted and doing business in good standing in the State of California and authorized to write such bonds in said State; or
 2. An Irrevocable Letter Of Credit established in favor of Concessionaire for the account of City by a federally chartered bank located in the State of California and lawfully doing business in said State; or
 3. An Automatically Renewable Certificate Of Deposit in the name of Concessionaire issued by a federally chartered Bank or Savings and Loan Association located in the State of California and lawfully doing business in said State (Interest may accrue to City [Depositor]; or

4. A Cash Deposit (Concessionaire shall not be obligated or required to pay and shall not pay any interest whatsoever).
- 11.03 Return/Surrender/Release of Surety by Concessionaire. Except as provided within this Article, at the end of the term hereof, such surety as shall have been provided by City and which is then currently being held by Concessionaire shall be returned/surrendered/released by Concessionaire, provided that there are no outstanding claims against City.
- 11.04 Liquidated Damages. If this Lease is terminated early by Concessionaire pursuant to the default provisions, hereof, as a result of City's failure to keep, observe, or perform any of the terms, covenants, conditions, warranties, agreements, or provisions hereof to be kept, observed, or performed by City, the entire amount of such surety instrument may be claimed, retained and used by Concessionaire as liquidated damages.

SECTION 12. INDEMNIFICATION AND RELEASE

To the furthest extent allowed by law, Concessionaire shall indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Concessionaire or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Concessionaire's: (i) occupancy, maintenance and/or use of the Premises, including use of any public facilities and improvements, upon which the Premises is located; or (iii) performance of, or failure to perform, this Agreement. Concessionaire's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City.

If Concessionaire should contract any work on the Premises or subcontract any of its obligations under this Agreement, Concessionaire shall require each consultant, contractor and subcontractor to enter into a Side Agreement, at the discretion of the City's Risk Manager or their designee, to indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Concessionaire's occupancy, maintenance and use of the Premises shall be at Concessionaire's sole risk and expense. Concessionaire accepts all risk relating to Concessionaire's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of that Premises, including use of any public facilities and improvements, upon which the Premises is located; and (iii) the performance of, or failure to perform, this Agreement. City shall not be liable to Concessionaire or Concessionaire's insurer(s) for, and Concessionaire and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises

including any public facilities and improvements, upon which the Premises is located, in any way related to the Concessionaire's operations and activities. Concessionaire shall immediately notify City of any occurrence on the Premises including any public facilities and improvements, upon which the Premises are located, resulting in injury or death to any person or damage to property of any person.

The provisions of this Section A shall survive termination or expiration of this Agreement.

SECTION 13. INSURANCE

13.01 (a) Throughout the life of this Agreement, Concessionaire shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Concessionaire shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Concessionaire of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of Concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation,

indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE CONCESSIONAIRE

Concessionaire, or any party the Concessionaire subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY :**
 - (i) \$2,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$2,000,000 per occurrence for personal and advertising injury;
 - (iii) \$4,000,000 aggregate for products and completed operations; and,
 - (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY :**
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
4. **LIQUOR LIABILITY INSURANCE** for alcoholic beverages that are to be sold, served or furnished, Liquor Liability coverage is required with limits of liability of not less than:
 - (i) \$2,000,000 per occurrence;
 - (ii) \$4,000,000 aggregate for bodily injury and property damage;
5. **PROPERTY:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of CONCESSIONAIRE'S business property.

UMBRELLA OR EXCESS INSURANCE

In the event Concessionaire purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City of Fresno and each of its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Concessionaire shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Concessionaire shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Concessionaire shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Concessionaire is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Concessionaire shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Concessionaire shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed to name The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds.

Concessionaire shall establish additional insured status for the CITY and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

The Commercial General, Liquor Liability and Automobile Liability policies of insurance shall be endorsed so Concessionaire's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to The City of Fresno and each of its officers, officials, employees, agents and volunteers. If

Concessionaire maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Concessionaire.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to The City of Fresno and each of its officers, officials, employees, agents and volunteers.

The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. Full replacement value of any permanent improvements on the Leased Premises, with the City named as a Loss Payee.
2. The coverage shall contain:
 - (i) No coinsurance penalty.
 - (ii) No limitations or exclusions for vacancy of any part of the Premises.
 - (iii) No special limitations on the scope of protection afforded to City.

PROVIDING OF DOCUMENTS - Concessionaire shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Concessionaire shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Concessionaire shall also be required to provide all documents noted herein.

Documents shall be sent to the following address:

City of Fresno – Airports Department
Attn.: Properties Division
4995 E. Clinton Way
Fresno, CA 93727

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, Concessionaire or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Concessionaire of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without

limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Concessionaire shall not be deemed to release or diminish the liability of Concessionaire, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire, its principals, officers, agents, employees, persons under the supervision of Concessionaire, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If Concessionaire should subcontract all or any portion of the services to be performed under this Agreement, Concessionaire shall require, at the discretion of the CITY, their subcontractor to enter into a separate Side Agreement in order to provide indemnification and insurance protection to City. Concessionaire shall verify that all subcontractors maintain insurance meeting all the requirements stated herein and Concessionaire shall ensure that City and each of their officers, officials, agents, employees and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Concessionaire and City prior to the commencement of any work by the subcontractor.

This section shall survive termination or expiration of this Agreement.

SECTION 14. WAIVER OF SUBROGATION

14.01 Concessionaire and its insurers hereby waive all rights of recovery against City and each of its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Concessionaire, its principals, officers, agents, employees, persons under the supervision of Concessionaire, vendors, suppliers, invitees, consultants, sub-consultants, contractors, or anyone employed directly or indirectly by any of them, or its property or the property of others under its care, custody and control, to the extent that such injury, loss or damage is insured against under any insurance policy which may have in force at the time of the injury, loss or damage. Concessionaire shall, upon obtaining the policies of insurance required under this Concession Agreement, give notice to its insurers insurance carrier or carriers that this waiver of subrogation is contained in this Concession Agreement.

14.02 This requirement shall survive termination or expiration of this Concession Agreement.

SECTION 15. TAXES AND ASSESSMENTS

15.01 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment-levying body upon the Premises and any improvements located thereon.

15.02 Concessionaire shall also pay all taxes, assessments, fees and charges on goods,

merchandise, fixtures, appliances and equipment owned or used therein.

- 15.03 Other than those taxes, assessments, fees or charges presently being levied upon said property, and all increases in the taxes, assessments, fees or charges presently being levied, the Concessionaire shall not be financially liable for any new and additional assessments not presently levied against the property. To the extent there is such a levy, the City shall be financially responsible. For purposes of this Agreement, an assessment is defined as any levy on the Premises for purposes of raising money for any public improvement benefitting the Premises.

SECTION 16. TRANSFERS

- 16.01 Concessionaire shall not, without the prior written consent of the City, assign, hypothecate, or mortgage this Agreement or license any portion of the Premises. Any attempted assignment, hypothecation, mortgage, or license without the consent of the City shall render this Agreement null and void.
- 16.02 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.
- 16.03 The golf course operation shall not be transferable by testamentary disposition or the State laws of intestate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X and XI of the Bankruptcy Act.
- 16.04 Shareholders and/or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Concessionaire to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, prior City approval thereof shall be required. Consent to any such transfer shall be at the City's discretion, which consent shall not be unreasonably withheld.
- 16.05 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the City.
- 16.06 In reference to Section 15.05 hereinabove, the City's consent with regard to successive transfers of this Agreement arising from the exercise of a power to sale or judicial foreclosure or the assignment of the Agreement in lieu of foreclosure, pursuant to the terms of a deed of trust previously approved by the City, shall not be unreasonably withheld.

- 16.07 In the event Concessionaire shall request the prior written consent of City to give, assign, transfer or grant control of this Agreement, and subsequently City gives written consent to the assignment, a transfer fee equal to one percent (1%) of the gross sales price shall be paid to City. Said sum shall be payable to City in full either within thirty (30) calendar days after said consent is given or prior to the close of any escrow, whichever occurs first. Prior to City's consent to such assignment, the assignor shall:
- A. Deliver to assignee a written schedule of all sums due and owing to City from the assignor with such schedule being in form and content subject to the approval of the City in all respects; and
 - B. Deliver to City, as part of the acceptance of the assignment, a written acknowledgment by the assignee that the assignee:
 - 1. Affirms the sums due and owing to City; and
 - 2. Accepts responsibility for payment of such sums directly to City.

SECTION 17. NONDISCRIMINATION AND CIVIL RIGHTS COMPLIANCE

17.01 GENERAL CIVIL RIGHTS PROVISIONS

The Concessionaire agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Concessionaire from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

17.02 CIVIL RIGHTS ACT OF 1964, TITLE VI

During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

A. Compliance with Regulations: The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

B. Non-discrimination: The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractor, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by

the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

D. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Concessionaire under the contract until the Concessionaire complies; and/or
2. Cancelling, terminating, or suspending a contract, in whole or in part.

F. Incorporating Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

17.03 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

17.04 FEDERAL FAIR LABOR STANDARDS ACT (MINIMUM WAGE)

All contracts and subcontracts resulting from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

17.05. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this agreement incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

SECTION 18. EASEMENTS

- 18.01 City reserves the right to establish, grant or utilize easements or rights-of-way over, under, along and across the Premises for utilities and/or public access to the Premises provided City shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive Concessionaire of the use of a portion of the Premises, an abatement or payments shall be provided in an amount proportional to the total area of the Premises in the before and after conditions.

SECTION 19. TERMINATION OF AGREEMENT

- 19.01 Upon the occurrence of any one or more of the events of default described in Section 19 of this Agreement, this Agreement shall be subject to termination following any applicable cure periods. As a condition precedent thereto, the City shall give Concessionaire ten (10) calendar days' notice by registered or certified mail of the date set for cancellation thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made therefor.
- 19.02 Upon termination, City shall have the right to take possession of the Premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.
- 19.03 Action by City to effectuate a termination and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.
- 19.04 Any trustee, beneficiary, mortgage or lender (hereinafter called "Lender") under a hypothecation or mortgage previously approved by the City shall have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a termination of this Agreement and a forfeiture of the operation. Accordingly, the City shall send a copy of any intended termination of this Agreement to any of the aforementioned parties whose security would be affected

thereby; and upon request thereof for postponement, extend the date set therefor by such time as the City finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new Concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the City.

19.05 In reference to Section 18.04 of this Agreement, the City shall provide a notice of default to Lender, provided that such Lender shall have previously registered with the City by written notice specifying the name and address of said Lender, at the same time the City provides such notice to the Concessionaire. With regard to monetary defaults and other nonmonetary defaults which are curable by Lender, the City shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and within a reasonable time after the expiration of the Concessionaire's curative periods to cure the defaults as provided in Section 19, commences promptly to payor to institute foreclosure proceedings to foreclose the deed of trust and proceeds with the due diligence thereafter to prosecute such proceedings to a conclusion or to cure the defaults. With regard to defaults which cannot be cured by Lender, the City shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and within a reasonable time after the expiration of the Concessionaire's curative periods to cure the defaults as provided in Section 19, institutes promptly foreclosure proceedings to foreclose the deed of trust and proceeds with due diligence thereafter to prosecute such proceedings to a conclusion. In the event that this Agreement is rejected by a trustee in bankruptcy due to Concessionaire's bankruptcy, the City shall provide to Lender or its assignee an option to enter into a new Concession Agreement with the City upon the same terms and conditions as are contained in this Agreement and for the balance of the term thereof.

19.06 Concessionaire understands that Premises is located on an Airport with obligations under FAA-administered airport financial assistance programs. Priority of use will always be for aviation purposes and City may terminate this agreement with a proper 12-month notice if there is a confirmed opportunity for the Premises to be used for aviation purposes. Any damages resulting from early termination will be for monies already spent by Concessionaire on capital projects (not paid for through the Capital Improvement Fund) and not future earnings.

SECTION 20. EVENTS OF DEFAULT

20.01 The occurrence of any of the following events shall constitute a material default and breach of the Agreement by Concessionaire:

- A. The abandonment, vacation or discontinuance of golf course facilities/operations/activities/services on the Premises as authorized and required by the Agreement for more than twenty-four (24) consecutive hours by the Concessionaire unless such abandonment, vacation or discontinuance is due to a Force Majeur event or City action.
- B. The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than ten (10) calendar days after written notice from the City to correct or to make diligent efforts to correct,

the condition therein specified.

- C. The failure to maintain the Premises as required in the Specific Maintenance Standards and Requirements for Airways Golf Course where such failure continues for more than ten (10) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- D. The failure to reasonably maintain the improvements constructed thereon in the state of repair required hereunder and in a clear, sanitary, safe, and satisfactory condition, where such failure continues for more than ten (10) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- E. The failure of Concessionaire to keep, perform and observe all other promises, covenants, conditions and terms set forth in this Agreement, when such failure continues for more than thirty (30) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) calendar days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- F. The occurrence of any of the following:
 - 1. Concessionaire's becoming insolvent, or the making by Concessionaire of any general arrangement or any assignment for the benefit of creditors;
 - 2. The filing by or against Concessionaire of a petition to have Concessionaire adjudged a Bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy (UNLESS, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) calendar days) ;
 - 3. The appointment of a receiver to take possession of substantially all of Concessionaire's assets located in or on the Premises or of Concessionaire's interest in the Agreement, where possession is not restored to Concessionaire within thirty (30) calendar days; or
 - 4. The attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located in or on the Premises or of Concessionaire's interest in the Agreement, where such seizure is not discharged within sixty (60) calendar days.

- G. Determination by the City, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of State and/or Federal laws thereon.
 - H. Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this Agreement without prior approval thereof by the City, said approval not to be unreasonably withheld.
 - I. The inability of and/or failure by Concessionaire to obtain, pay for, and maintain in full force and effect at all times during the life of the Agreement, without any lapse in coverage, such insurance as shall be required of Concessionaire thereunder.
 - J. The discovery by City that any financial statement provided City by Concessionaire, any assignee of Concessionaire, any successor in interest of Concessionaire, or any guarantor of Concessionaire's obligations under the Agreement, and/or anyone or more of such persons or entities, was materially false.
 - K. The failure by Concessionaire to make any payment of rent or any other required payment, when due under the Agreement and when not subject to a good faith dispute, where such failure shall continue for a period of ten (10) calendar days following service of notice thereof upon Concessionaire by City.
 - L. The failure by Concessionaire to provide and/or submit financial records and reports as required under Section 4 and Section 5 of this Agreement.
- 19.02. The occurrence of the following events shall constitute a material default and breach of the Agreement by City: the failure of City to keep, perform and observe all other promises, covenants, conditions and terms set forth in this Agreement, when such failure continues for more than thirty (30) calendar days after written notice from the Concessionaire for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) calendar days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Concessionaire.

SECTION 21. WAIVER

- 21.01 Any waiver by City of any breach of anyone or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping City from enforcing the full provisions thereof.

- 21.02 No delay, failure, or omission of City to re-enter the Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.
- 21.03 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by City of any default.
- 21.04 No option, right, power, remedy or privilege of City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, privileges and remedies given City by this Agreement shall be cumulative.

SECTION 22. RIGHT OF ENTRY

- 22.01 Should Concessionaire be deemed deficient, as reasonably determined by City, in Concessionaire's performance of Concessionaire's material obligations required hereunder, City in addition to all other available remedies may, but shall not be so obligated, enter upon the Premises and correct Concessionaire's deficiencies using City forces, and equipment and materials on such premises suitable for such purposes, or by employing a separate private contractor. City's costs so incurred, including direct and indirect overhead costs as determined by City, shall be reimbursed to City by Concessionaire and/or Concessionaire's sureties within thirty (30) calendar days of demand thereof.
- 22.02 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours unless caused by a Force Majeure event or City action, Concessionaire hereby irrevocably appoints City as an agent for continuing operation of the services granted herein, and in connection therewith authorizes the officers and employees thereof to:
- A. Take possession of the Premises, including all improvements, equipment, and inventory thereon; and
 - B. Remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; and
 - C. Sub-Agreement or license the Premises; and
 - D. After payment of all expense of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this Agreement.

Entry by the officers and employees of City upon the Premises for the purpose of exercising the authority conferred thereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

- 22.03 Aramark Uniform & Career Apparel, LLC. (herein after "Aramark") and its authorized agents shall have access to the monitoring well located on the golf course for the purpose of running tests at the monitoring well location. Access shall only be granted during the term of the agreement that Aramark holds with the City of Fresno for the purpose of the monitoring well.

SECTION 23. SURRENDER

- 23.01 Upon expiration of the term hereof, or termination or cancellation thereof as herein provided, Concessionaire shall peaceably vacate the Premises and any and all improvements located thereon and deliver up the same to City in a reasonably good condition, ordinary wear and tear excepted, subject to the right of City to demand removal thereof to the extent that paragraph 1.05 may be applicable thereto.

SECTION 24. INTERPRETATION

- 24.01 This Agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code, commencing Section 1635.
- 24.02 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.
- 24.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

"State" - the State of California.

"Golf Course Operation" -the privilege of engaging in the activities authorized herein on the public property designated therefor.

- 24.04 In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule or inconsistency shall be resolved by giving precedence in the following priority order: first to the Agreement; then to Exhibit "C", entitled Specific Maintenance Standards and Requirements for Airways Golf Course.

SECTION 25. ENFORCEMENT

- 25.01 The City's Director of Aviation shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of City having duties in connection with the administration thereof.
- 25.02 Any officers and/or authorized employees of City may enter upon the Premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of City within the Premises.
- 25.03 Attorney's Fees and Costs. In the event of any action, suit or proceeding brought by either party as against the other to enforce compliance with any of the covenants or conditions of this Agreement the prevailing party shall be entitled to have and to recover from the losing party reasonable attorney's fees and costs of litigation.

SECTION 26. NOTICES

Notices hereunder shall be sufficient if sent and received by certified or registered mail, postage fully prepaid, to:

CITY:
City of Fresno – Airports Department
Attn. Director of Aviation
4995 East Clinton Way
Fresno, CA 93727

CONCESSIONAIRE:
Sierra Golf Management, Inc.
Attn.: Jeff Christensen, PGA
P.O. Box 788
Chowchilla, CA 93610

or to such other respective addresses as the parties may from time to time designate to each other in writing. Notice will be deemed delivered to the party to whom addressed on the third (3rd) business day following the date on which the same is deposited, postage fully prepaid, in the U.S. mail, by certified or registered mail.

SECTION 27. OBSERVATION OF GOVERNMENTAL REGULATIONS

- 27.01 City reserves the right to adopt, amend and enforce reasonable rules and regulations governing the Airport, including the Parking Facilities and Contractor's activities therein and thereon, and the public areas and facilities used by Concessionaire in connection therewith. Such rules and regulations shall be consistent with the safety, security and overall public utility of the Airport and with the rules, regulations and orders of the Federal Aviation Administration (FAA), or such other successor agency as may hereafter be designated by the Federal Government, with respect to aircraft and airport operations, and such rules and regulations shall not be inconsistent with the provisions of this Agreement or the procedures prescribed and approved from time to time by the FAA with respect to the operation of aircraft at the Airport. Contractor agrees to observe, obey and abide by all such rules and regulations heretofore and hereafter adopted or amended by City, including compliance with FAA and Airport security rules, regulations and plans. Concessionaire shall be fully liable to City for any and all claims, demands, damages, fines, and/or penalties of any nature whatsoever which may be imposed upon City by the United States Government as a result of any unauthorized entry by Contractor, Contractor's officers, employees, agents, representatives, servants, or any vehicle operated by any of these into any area of the Airport to which access by persons or vehicles is restricted/controlled pursuant to FAA Airport Security Rules and Regulations.
- 27.02 In providing the services required under this Agreement, Contractor shall at all times comply with all applicable rules, regulations, laws, ordinances, statutes or orders of any Federal, State, County and City now in force and as they may be enacted, issued or amended during the term of this Agreement. Contractor shall comply with all applicable regulations promulgated by Federal, State, Regional, or Local Administration or regulatory agencies lawfully exercising authority over the Airport and/or Contractor's conduct of its business or activities hereunder, including, but not limited to, any and all business license and permit requirements.
- 27.03 Those provisions set forth within Section B of Exhibit "E", "Assurances Required by the Federal Aviation Administration", attached hereto and made a part hereof, are specific provisions required by the FAA to be appropriately included within agreements (including, without limitation, leases, licenses, permits and contracts) between the City of Fresno, California and any and all entities who use or perform work or conduct activities on City owned airport premises for aeronautical or non-aeronautical purposes. Contractor, by its signature(s) hereunto affixed, acknowledges that it has reviewed the aforesaid Exhibit "B", in its entirety, and fully understands the meaning, purpose and intent thereof. Contractor hereby expressly

agrees that, throughout the life hereof, it shall fully and faithfully comply with, abide by and/or adhere to, as applicable and appropriate, each and every one of the numbered provisions contained within Section B of said Exhibit "B" (as said numbered provisions are reflected therein or as same may be amended, from time to time, during the life hereof, by City, as the FAA requirements thereon imposed may so dictate), which, pursuant to the guidelines established within paragraphs 2 through 4 of Section A of said Exhibit "B", shall either be applicable to Contractor on the stated date of the term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to Contractor, hereunder, during the life hereof.

- 27.04 City shall not be liable to Contractor for any diminution or deprivation of possession or of its rights hereunder, on account of the exercise of any such right or authority as is in this Article provided, nor shall Contractor be entitled to terminate the whole or any portion of this Agreement, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the Contractor's herein authorized uses, occupancies, and/or operations of/at the Airport so as to constitute a termination in whole or in part of this Agreement by operation of law in accordance with the laws of the State of California.

SECTION 28. ENTIRE AGREEMENT

- 28.01 This document, documents incorporated by reference herein, and exhibits attached hereto, constitutes the entire agreement between the City and Concessionaire for the Airways Golf Course operations and use granted herein. All other agreements, promises, and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises, and covenants relating to the golf course operation and the Premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid or illegal.
- 28.02 This document may be modified only by further written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of City, until approved by the City Council and executed by an authorized City agent.

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SECTION 29. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed by their duly authorized representatives this Concession Agreement on the day and year first above written.

CITY:
City of Fresno
A Municipal Corporation

By: _____
Kevin R. Meikle,
Director of Aviation

Address for Notice:

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: Amanda B. Freeman
Amanda B. Freeman, Date 8/31/16
Deputy City Attorney

CONCESSIONAIRE:
Sierra Golf Management, Inc.
A California Corporation

By: _____
Name: JEFF CHRISTENSEN
Title: PRESIDENT

(if corporation or LLC, must be
CEO/President of Board/Vice
President of Board (circle one))

By: _____
Name: Kimberly Christensen
Title: SECRETARY

(if corporation or LLC, must be
CFO/Treasurer/Secretary (circle
one))

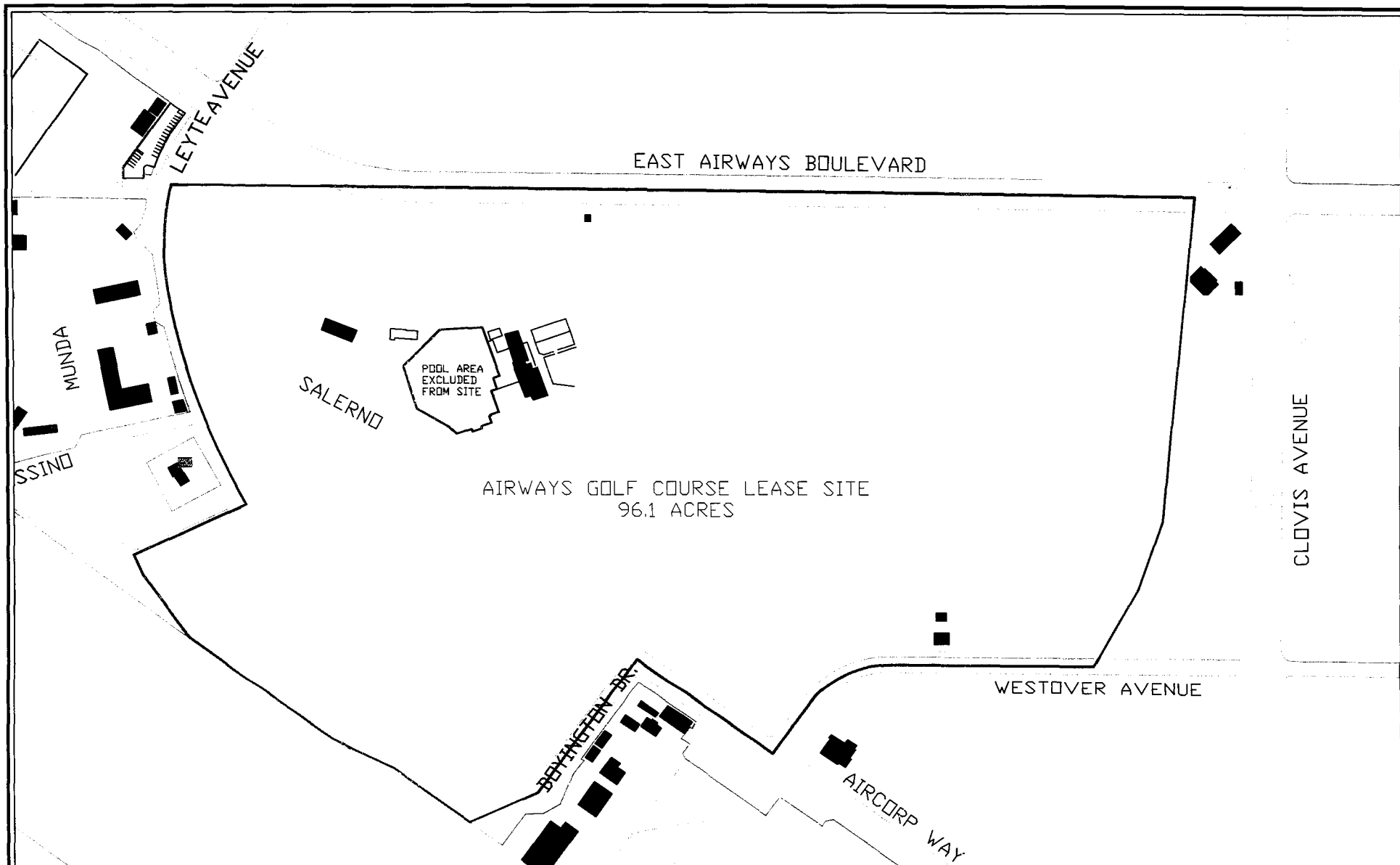
Address for Notice:

Sierra Golf Management, Inc.
Attn.: Jeff Christensen, PGA
P.O. Box 788
Chowchilla, CA 93610
Phone: 559-665-4462
Fax: 559-665-4367

LIST OF EXHIBITS

EXHIBIT A: Depiction of Premises
EXHIBIT B: Inventory List
EXHIBIT C: Specific Maintenance Standards and Requirements
EXHIBIT D: Illustration of Annual Green Fee and Base Rent Adjustment Computation
EXHIBIT E: FAA Grant Assurances
EXHIBIT F: Conflict of Interest Form
EXHIBIT G: Monthly Report

EXHIBIT “A”



AIRPORTS DEPARTMENT

DIRECTOR OF AVIATION
KEVIN R. MEIKLE, ARCHITECT



FRESNO YOSEMITE

CITY OF FRESNO
AIRPORTS DEPARTMENT
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

FRESNO YOSEMITE INTERNATIONAL AIRPORT AIRWAYS GOLF COURSE LEASE SITE

J:\ARCHIVE\25A\25A0453.DWG

KRA NO. _____
FUND NO. _____
ORG NO. _____
ACTIVITY _____
PROJECT I.D. _____

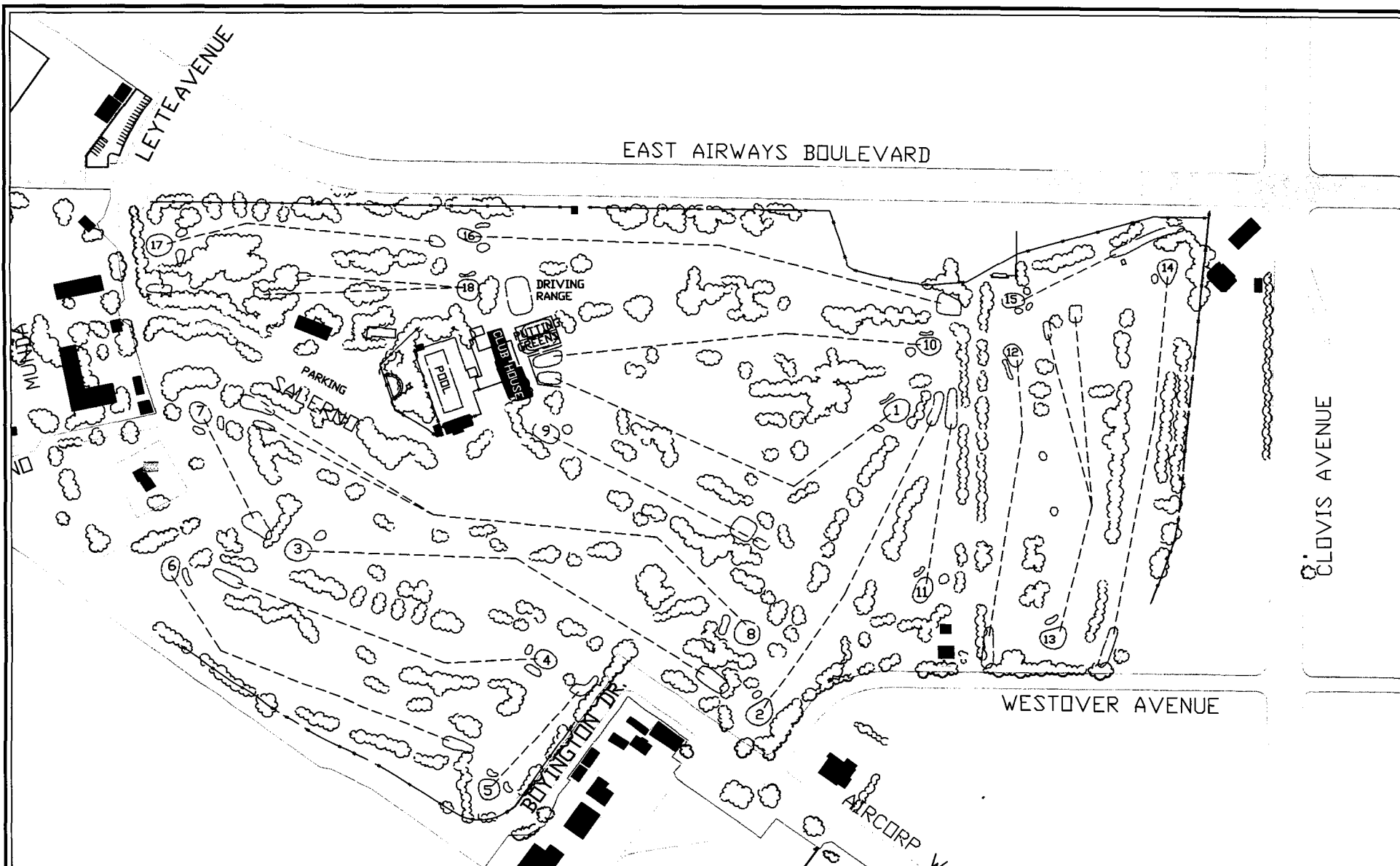
REVISIONS/REFERENCE
REV NO.

CONST. ENG. _____
CITY DESIGN ENG. _____

DR. BY: JSG
CH. BY: MWD
DATE: 05/23/2016
SCALE: N/A

APPROVED
OFFICE ENG. _____
CITY DRAWING NO. 25-A-453
SHEET NO. 1

OF 2 SHEETS



AIRPORTS
DEPARTMENT

DIRECTOR OF AVIATION
KEVIN R. MEIKLE, ARCHITECT



FRESNO YOSEMITE

CITY OF FRESNO
AIRPORTS DEPARTMENT
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

AIRPORTS DEPARTMENT

FRESNO YOSEMITE INTERNATIONAL AIRPORT
AIRWAYS GOLF COURSE
LAYOUT

J:\ARCHIVE\25A\25A0453.DWG

KRA NO. _____
FUND NO. _____
ORG NO. _____
ACTIVITY _____
PROJECT I.D. _____

[illegible]

APPROVED
CONST. ENG. _____ OFFICE ENG. _____
CITY DESIGN ENG. _____

DR. BY: JSG
CH. BY: MWD
DATE: 05/23/2016
SCALE: N/A

CITY DRAWING NO. 25-A-453
SHEET NO. 2
OF 2 SHEETS

EXHIBIT “B”

GCM Equipment:

This inventory list of maintenance equipment is approximate:

- 1- Fairway mower
- 3- Triplex mowers (for both greens and teeing areas)
- 3- Walking greens mowers
- 2- 72" rotary deck units for roughs
- 2- Chemical spray units
- 2- Utility vehicles (one heavy duty and one light duty)
- 1- Front loading tractor

Also various other small equipment and tools associated with GCM practices.

Kitchen Equipment:

- 1- Gas grill (24"x48") with two gas burners
- 1- Deep fry machine
- 1- Sandwich prep refrigerator
- 1- Dishwasher
- 1- Stand-alone freezer
- 1- Stand-alone refrigerator
- 2- Beer storage units
- 1- Ice maker
- 1- Beer tap unit (can house up to four kegs)
- 1- Soda dispenser

Also additional refrigerators on the premises

Additional Items:

- 2 - 500 gallon fuel storage unit (two separate tanks for diesel and gas)
- 2 – Material storage bins for storage of sand, gravel or other golf course related bulk material.

EXHIBIT “C”

EXHIBIT "C"

SPECIFIC MAINTENANCE STANDARDS AND REQUIREMENTS FOR AIRWAYS GOLF COURSE

MAINTENANCE SERVICES

- 1) The Concessionaire shall perform the following maintenance services at no less than the frequencies indicated in these specifications; however, the City shall have the right to determine the extent and frequency of any additional "as-needed" services. Standards and frequencies may be modified from time to time as deemed necessary by the City for the proper maintenance of the golf course facilities.
- 2) Greens Maintenance. Maintain all greens according to accepted playability and golf industry-wide standards as determined by the City at all times, observing the following minimum requirements.
 - a. Change cups no less than five (5) times per week and repair ball marks daily.
 - b. Mow greens (not less than 1/8 inch and not more than 1/4 inch) five (5) times per week from October through May and a minimum of four (4) times per week (Saturday, Sunday, Tuesday, and Thursday) from June through September. Greens shall be mowed with a reel-type mower with no less than seven (7) blades per reel. Mower shall be designed specifically for mowing golf greens and shall be of the type, make, and model accepted by the golf industry. More frequent mowing may be required by the City.
 - c. Verticut all greens from March through October should thatching occur.
 - d. Aerate greens at least two (2) times per year no sooner than the second week in March and no later than the second week in May, and no sooner than the first week in September and no later than the first week in November. Remove all plugs the same day. Top dress with approved material as to type and quantity following each aerification of greens.
 - e. Concessionaire shall have the soil analyzed within thirty (30) days after the start of the "Maintenance Standards Program" and once a year thereafter. Apply fertilizer in the quantity and type recommended by soil analysis to provide uniform growth of turf throughout the year.
 - f. Treat greens with proper chemicals to control insects, disease, weeds, and other pests as approved by the City.
- 3) Tee Maintenance. Maintain tees according to accepted playability and golf industry-wide standards as determined by the City at all times, observing the following minimum requirements:
 - A. Service tees daily by moving tee markers and benches. Change tee towels weekly and keep ball washers filled to proper level with water and cleaning agent.
 - B. Mow tees at least three (3) times weekly during warm weather months with reel-type mower at 9/16 inch or less as required by the City or weather conditions.
 - C. Aerate tees at least two (2) times per year, once in the spring and again in the fall. Concessionaire may aerate more frequently if conditions dictate. Remove or destroy all plugs the same day. Top dress with

- approved material if needed.
 - D. Repair worn and damaged turf areas as they occur by overseeding or resodding to ensure playable tees at all times.
 - E. Treat tees for control of insects, disease, weeds, and other pests as necessary to maintain healthy turf.
 - F. Apply fertilizer in the quantity and type recommended by the soil analysis to provide uniform growth, color, and root strength of the turf. Fertilize no less than six (6) times per year.
- 4) Fairway Maintenance (including Driving Range Area). Maintain all fairways according to accepted playability and golf industry-wide standards as determined by the City at all times, observing the following minimum requirements:
 - a. Mow all fairways with a reel-type mower at 3/4 inch or less depending on the type of grass and time of year.
 - b. Aerate all fairways between the months of June and August when the turf/grass is actively growing, and then on an as-needed basis.
 - c. Overseed and top dress (or resod) worn or bare areas of fairways as necessary.
 - d. Treat turf to control weeds, diseases, insects, and other pests as necessary to maintain weed-free and healthy turf.
 - e. Apply fertilizer in the quantity and type recommended by the soil analysis to provide uniform growth, color, and root strength. Apply a minimum of four (4) pounds of actual nitrogen per 1,000 square feet between March and September.
 - f. Keep all fairways free of gopher holes and other conditions which may hinder play at all times.
- 5) Maintenance of Other Turf Areas. Maintain turf and landscaped lawn areas according to acceptable golf industry-wide standards as determined by the City at all times, observing the following minimum requirements:
 - a. Mow at least twice per week from May through October and as growth requires from November through April.
 - b. Overseed and top dress (or resod) worn or bare areas in turf as necessary.
 - c. Treat turf to control weeds, disease, insects, and other pests as necessary to maintain a healthy turf.
 - d. Apply fertilizer in the quantity and type recommended by the soil analysis.
- 6) Maintenance of Nurserv. Maintain sod nurseries for greens at all times:
 - a. Greens -Bent grass
 - (I) Maintain according to greens maintenance specification as stated in Item 2 above.
 - (II) Following removal of sod, replace soil and reseed.
- 7) Maintenance of Accessory Equipment. Maintain all golf course accessory equipment in clean, safe, and functioning condition at all times, replacing with City-approved equipment and/or materials as necessary, including but not limited to the following:
 - a. All signs
 - b. Tee benches
 - c. Tee markers
 - d. Ball washers, including tee towels and soap

- e. Out-of-bounds markers
- f. Directional flags and poles
- g. Distance markers (150 yards, etc.)
- h. Greens flags, poles, and cups
- i. Practice green markers and cups
- j. Trash receptacles
- k. Cleat brushes

8) Irrigation. Irrigate as required to maintain adequate moisture for proper growth and appearance. The City may require a change in the irrigation schedule should the need require. Adequate soil moisture shall be determined by visual observation, plant resiliency, examining cores removed by soil probe, and moisture sensing devices.

- A. Consideration shall be given to soil texture, structure, porosity, water holding capacity, drainage, compaction, precipitation rate, run off, infiltration rate, evapotranspiration, seasonal temperatures, prevailing wind condition, time of day or night, type of grass plant, and root structure.
- B. In areas where wind creates problems of spraying onto private property or road rights-of-way, the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night.
- C. The Concessionaire shall be responsible for monitoring all systems within the Premises and correct for: coverage, adjustment, clogging of lines, and removal of obstacles, including plant materials which obstruct the spray.
- D. Check system daily and adjust and/or repair any sprinkler heads causing excessive runoff, including slope area or which throw directly onto roadway paving or walks within rights-of-way.
 - a. All controllers shall be inspected on an appropriate schedule and adjusted or repaired when needed, considering the water requirements of each remote control valve (sprinkler station).
 - b. A soil probe or tensionmeter (measuring the surface tension of liquid) or other approved measures shall be used to determine the soil moisture content in various areas.
 - c. The Concessionaire shall observe and note deficiencies occurring from the original design and review these findings with the City so necessary improvements can be considered.
 - d. In the event of a reduction of the volume of water supplied to a golf course during peak demand periods, the priority of water distribution by Concessionaire shall be as follows:
 - i. Greens
 - ii. Tees
 - iii. Fairways
 - iv. Other turf and landscape areas

9) Tree Maintenance: Maintain all trees on the Premises in a safe, healthy, structurally sound and aesthetically pleasing condition at all times. Implement an ongoing maintenance program to trim, shape, prune, thin out, treat, and generally promote growth in all such trees. Said program shall generally employ acceptable arboricultural practices as determined by the City. Concessionaire's program shall include, but not be limited to the following:

- a. Prune trees to maintain and stimulate proper health and growth by cutting out dead, diseased, weak, insect-infected, and damaged limbs.
- b. Regularly prune trees to maintain a clearance of seven (7) feet in all

areas of pedestrian traffic and areas accessible to golf cart traffic. Maintain clearance of fourteen (14) feet in all areas of vehicular traffic such as parking lots, driveways, and tree extensions over and through fencelines and into roadways and adjacent streets. Such pruning shall provide safe vehicular and pedestrian visibility and clearance in order to prevent or eliminate hazardous situations.

- c. Trim and shape trees to provide a symmetrical appearance typical of the species.
- d. Remove and dispose, any downed trees whether caused by natural causes or otherwise. Stumps shall be removed to twelve (12) inches below grade and wood chips removed and the resultant hole backfilled to grade, unless otherwise authorized by the City.
- e. Keep surrounding turf mowed and trimmed to the trunks of trees on the premises. The use therefor of any herbicides or contact sprays of any kind shall have the prior approval of the City.
- f. Shall not remove trees from the Premises, except fallen trees or trees in an otherwise hazardous condition, without the prior written consent of the City. All trees so removed shall be replaced in close proximity of the original location or that specified by the City. All dead trees shall be removed and replaced. Replanting shall take place in the spring or fall during optimal replanting conditions (not to be performed in the hot summer months).

10) Other Required Duties

- a. Remove and properly dispose of all litter daily from golf course grounds including the golf course property, maintenance yard, landscaped areas, and driving range. Remove all trash and debris resulting from golf course maintenance as it occurs. Clean, repair, and replace trash receptacles as necessary to maintain clean, safe, and sanitary conditions at all times.
- a. Maintain all shrub and ground cover and lawn areas in a manner to promote proper health growth and an aesthetically pleasing appearance at all times.
- b. Maintain all bunkers in raked, edged, and weed-free condition at all times, replacing sand and rakes as necessary, and provide at least two (2) rakes per sand trap.
- c. Take whatever preventive steps are necessary to protect all slope area
- d. Control rodent and other animal pests as necessary to prevent erosion and destruction of plantings on golf course property.
- e. Maintain and repair as necessary surface flow lines swales, catch basins, grates, sub-surface drainage system, and other drainage structures in clear, weed-free, and properly functioning condition at all times.
- f. Observe all legal requirements and safety regulations in the use and storage of chemicals, hazardous materials, supplies, and equipment at all times according to OSHA requirements.
- g. Maintain golf maintenance storage room and yard in a clean, orderly, and safe condition at all times, conforming to all applicable laws and regulations.
- h. Maintain walkways, steps, handrails on walkways, headerboards, and

- cart paths in clean, edged, safe, weed-free condition at all times.
- i. Maintain and repair all fencing, netting, and fence lines in safe, secure, and aesthetically pleasing condition at all times.
- j. Maintain parking lots and driveways in clean, safe, and weed-free condition at all times.
- k. Maintain the interior, unpaved service roads in safe and useable condition at all times.
- l. Inspect the following frequently and repair as needed
 - 1. All area lighting system for safe and functioning condition.
 - 2. All golf course buildings, including restrooms and locker facilities, and accessory structures for clean, safe, secure, and sanitary condition.
 - 3. All golf course parking lots, walkways, and interior paved and/or unpaved service roads.
- m. Maintain irrigation system in proper working condition at all times, including timely repair and replacement of worn irrigation equipment.

EXHIBIT “D”

**ANNUAL GREEN FEE ADJUSTMENT COMPUTATION
ADJUSTMENT FOR FISCAL YEAR BEGINNING JULY 1, 2015**

Line No.

1 **CPI Jan. - Dec. 2013** 229.324

2 **CPI Jan. - Dec. 2014** 232.771

3 **AMOUNT OF CHANGE:** 3.45
(subtract line 1 from 2)

Note: (IF AMOUNT ON LINE 3 IS LESS THAN 0.00, STOP HERE. NO ADJUSTMENT OF FEES IS REQUIRED, AND FURTHER CALCULATION IS UNNECESSARY.)

4 **Adjustment Factor:** 3.45 / 229.324 = 0.015031
(divide line 3 by line 1)

	Weekdays	Weekend/ Holiday	Twilight	Junior	Senior	Tournament	Junior Golf Team	Junior Card	Senior Card	Surcharge	Regular Players (RP)	RP Surcharge Weekdays	RP Surcharge Weekends/ Holidays
5 GREEN FEE ADJUSTMENT AMOUNT (multiply existing green fee by amt. on line 4, unless amount set by contract)	0.30438	0.38329	0.24426	0.18413	0.18413	0.38329	0.06388	0.72149	0.72149	0.06012	1.20249	0.08267	0.11273
6 ART, PARK, ENTERTAINMENT & SPORTS (City of Fresno Master Fee Schedule 7/2010)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
7 CARRY OVER PRIOR YR. ADJUSTMENT: (see line 12, prior yr.'s adjustment)	\$0.05	\$0.26	\$0.24	\$0.06	\$0.06	\$0.19	\$0.15	\$0.12	\$0.12	\$0.09	\$0.16	\$0.14	\$0.20
8 CURRENT GREEN FEE	\$20.25	\$25.50	\$16.25	\$12.25	\$12.25	\$25.50	\$4.25	\$48.00	\$48.00	\$4.00	\$80.00	\$5.50	\$7.50
9 FEE ADJUSTMENT AMOUNT (round amt. on line 5)	\$0.30	\$0.38	\$0.24	\$0.18	\$0.18	\$0.38	\$0.06	\$0.72	\$0.72	\$0.06	\$1.20	\$0.08	\$0.11
10 CALCULATED GREEN FEE: (add lines 7,8,9)	\$20.61	\$26.15	\$16.74	\$12.49	\$12.49	\$26.07	\$4.47	\$48.84	\$48.84	\$4.15	\$81.37	\$5.73	\$7.82
11 ADJUSTED GREEN FEE*	\$20.50	\$26.00	\$16.50	\$12.25	\$12.25	\$26.00	\$4.25	\$48.75	\$48.75	\$4.00	\$81.25	\$5.50	\$7.75
12 CARRY OVER - FOLLOWING YEAR (subtract line 11 from line 10)	\$0.11	\$0.15	\$0.24	\$0.24	\$0.24	\$0.07	\$0.22	\$0.09	\$0.09	\$0.15	\$0.12	\$0.23	\$0.07

* Round calculated green fee, line 10, down to the nearest even \$0.25 increment. Any discarded cents due to rounding shall be accrued to calculate the green fee adjustment the following year. To accomplish this, subtract the ADJUSTED GREEN FEE from the CALCULATED GREEN FEE and insert on line 12, "CARRY OVER-FOLLOWING YEAR". This amount shall be inserted on line 7 when accomplishing the ANNUAL GREEN FEE ADJUSTMENT COMPUTATION for the following year.

PREPARER'S NAME Richard Duncan

DATE PREPARED July /9/2015



FRESNO YOSEMITE
INTERNATIONAL AIRPORT

NOTICE OF ANNUAL RENTAL ADJUSTMENT
(Based on Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average))

July 25, 2016 11:46 AM

RE: CONCESSION AGREEMENT
AIRWAYS GOLF COURSE

The rental adjustment calculation shown to the right was completed in keeping with the intent of the lease for base rent as defined the the Conecssion Agreement at Fresno Yosemite International Airport,

between

THE CITY OF FRESNO, CALIFORNIA

And

EFFECTIVE: January 1, 2017

**** MONTHLY RENTAL WILL BE: \$6,840.94**

If you have any questions concerning this matter, please contact the undersigned at (559) 621-4500.

Very truly yours,

Melissa A. Garza-Perry
Airports Properties Specialist II
City of Fresno - Airports Administration

**FRESNO YOSEMITE INTERNATIONAL AIRPORT
CONCESSION AGREEMENT
AIRWAYS GOLF COURSE**

DATE: July 25, 2016 11:46 AM

=====

ANNUAL RENTAL ADJUSTMENT COMPUTATION
FOR LEASE YEAR COMMENCING:
January 1, 2017

=====

USDLBLS CPI - JAN-DEC.,	2014	251.985 *
USDLBLS CPI - JAN-DEC.,	2015	258.572 *
AMOUNT OF CPI CHANGE		6.6
PERCENTAGE CPI CHANGE		2.6140%
CURRENT MONTHLY RENTAL		\$6,666.67

AMOUNT OF MONTHLY ADJUST \$174.27

NEW MONTHLY RENTAL	\$6,840.94
NEW ANNUAL RENTAL	\$82,091.24
EFFECTIVE:	January 1, 2017

=====

Prepared by:

CITY OF FRESNO
DEPARTMENT OF AIRPORTS
PROPERTIES SECTION
4995 EAST CLINTON WAY
FRESNO, CA 93727-1504

TELEPHONE: (559) 621-4500
FACSIMILE: (559) 251-4825

NOTES:

* PER USDLBLS

**Actual monthly amount billed may be different than shown on this spreadsheet due to rounding.

EXHIBIT “E”



**FAA
Airports**

ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

EXHIBIT “F”

Exhibit "F"
DISCLOSURE OF CONFLICT OF INTEREST

Concession Agreement and Agreement for Golf

Course Operations at Airways Golf Course between City of Fresno ("Fresno")

Sierra Golf Management, Inc. ("SGM or Sierra Golf Management")

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☒
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☒
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☒

* If the answer to any question is yes, please explain in full below.

Explanation: _____

Additional page(s) attached.

Signature

8-31-16

Date

Jeff Christensen
(name)

Sierra Golf Mgmt, Inc.
(company)

P.O. Box 788
(address)

Chowchilla, CA 93610
(city state zip)

EXHIBIT “G”

AIRWAYS GOLF COURSE MONTHLY REPORT

Company Name: _____

For Period: _____ Through: _____

(A) Total Monthly Gross Receipts (All business): _____

(B) Total Number of Rounds: _____

(C) Total Monthly Gree Fee Receipts: _____

(A)	Gross Receipts for the Month (All Income)	Fee Rate	Total Receipts Airports Gross Reported
	\$0.00	x 10%	= \$0.00
(B)	Number of Rounds	APES FEE	Total Arts, Parks, & Entertainment Surcharge
	\$0.00	x \$ 1.00	= \$0.00
(C)	Total Monthly Green Fee Receipts:	Fee Rate	Total Capital Improvement Fund Contribution
	\$0.00	x 6%	= \$0.00

Payment Due for Current Month: _____ \$0.00

I, _____, do hereby certify that I am the _____, of _____, and that in accordance with the terms of our concession agreement, there is set forth below, a true statement of our revenues received from our operations.

Prepared By _____ Title _____

Signature of Preparer _____

Date _____ Phone _____

Instructions:

- 1: Complete report, leaving **no** space blank.
- 2: Please make check payable to **City of Fresno**, and remit with this originally signed report to:

City of Fresno
Airport Department
4995 E. Clinton Way
Fresno, CA 93727

Phone (559) 621-4500
Fax (559) 251-4825

- 3: Submit report and fees by the **20th** day of the month, for the prior month. **Note: An originally signed copy of your report must be remitted to the address above in accordance with the terms of your concession agreement.*