

Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Agenda reports are also on the City of Oxnard web site at www.oxnard.org.



AGENDA
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
Council Chambers, 305 West Third Street
June 11, 2019
Regular Meeting - 11:00 AM to 12:15 PM

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

At this time, the legislative body will consider public comments for a maximum of fifteen minutes. A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. Speaker cards will not be accepted after the beginning of the general public comment period. Based on the number of speaker cards submitted, the presiding officer may impose time limits per speaker. Typically, speakers are limited to two minutes, but shorter time may be established as deemed necessary. A person not able to address the legislative body at this time because the fifteen minutes expires may do so just prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take action on any items presented during public comments at this time. Such items may only be referred to the City Manager for administrative action or scheduled on a subsequent agenda for discussion.

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Public Works and Transportation Committee approve the minutes of the May 28, 2019 regular meeting as presented.

Contact: Michelle Ascencion, (805) 385-7805

D. REPORTS

1. Public Works Department

SUBJECT: Award Contract A-8145 to GI Endurant, LLC for OWTP Cogeneration Engine Refurbishment Phase II. (10/5/5)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that City Council:

1. Award and authorize the Mayor to execute Agreement A-8145 to GI Endurant, LLC in the amount of \$499,632 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

Agenda Item time estimates: (Staff Presentation / Committee Discussion / Public Comment)

2. Approve \$49,963 for Project contingency for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;
3. Approve \$49,963 for engineering, inspection, survey and project management for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42; and
4. Approve an appropriation of \$358,349 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project No. 186610.

Contact: Rosemarie Gaglione, (805) 385-8055

2. Public Works Department

SUBJECT: Award Agreement with American Golf Corporation to Operate the River Ridge Golf Course. (10/5/5)

RECOMMENDATION: That the Public Works and Transportation Committee recommend the City Council:

1. Approve the fee-for-service management agreement between American Golf Corporation (AGC) and the City of Oxnard (City) for the management, operation and maintenance of River Ridge Golf Club (RRGC) with no City subsidy for a three-year term with options to renew for two additional one-year terms, exercised at the sole discretion of the City, and
2. Exempt the golf course from the City's Living Wage Policy.

Contact: Rosemarie Gaglione, (805) 385-8055

E. ITEMS FOR FUTURE AGENDAS

F. ADJOURNMENT

DRAFT

MINUTES OXNARD CITY COUNCIL PUBLIC WORKS AND TRANSPORTATION COMMITTEE Regular Meeting May 28, 2019

A. ROLL CALL / POSTING OF AGENDA

At 11:00 a.m., Chair Perello called to order the regular meeting of the Oxnard City Council Public Works and Transportation Committee in the City Hall Council Chambers, 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Members Tim Flynn, Bryan MacDonald, and Chair Bert Perello were present.

Staff members present were Alexander Nguyen, City Manager; Stephen Fischer, City Attorney; Erik Garwick, Parks Manager; Rosemarie Gaglione, Public Works Director; Jeffrey Lambert, Community Development Director; Elizabeth Rubalcava, Assistant City Clerk; and Michelle Ascencion, City Clerk.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (None received.)

C. CONSENT AGENDA

City Clerk Department

1. SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Public Works and Transportation Committee approve the minutes of the May 14, 2019 Regular Meeting as presented.

It was moved by Member Flynn, seconded by Member MacDonald, to approve the minutes as presented. VOTE: Flynn, MacDonald, and Perello voted in favor; the motion carried 3-0.

D. REPORTS

Public Works Department

1. SUBJECT: Budget Appropriation to Leverage Grant for Funding for Dead Tree Removal.

RECOMMENDATION: That the Public Works and Transportation Committee recommend City Council approve a budget appropriation in the amount of \$87,500 from Measure O funds to be used to leverage \$262,500 grant dollars for dead tree removal (called the "Tree Mortality Event Response").

The Parks Manager gave a report. Discussion ensued among the Committee and staff.

It was moved by Member MacDonald, seconded by Member Flynn, to approve the recommended action as presented. VOTE: Flynn, MacDonald, and Perello voted in favor; the motion carried 3-0.

Community Development Department

2. SUBJECT: Award of Trade Services Agreement for New Custodial Services for Oxnard Transit Center (OTC).

RECOMMENDATION: That the Public Works and Transportation Committee recommend to the City Council:

1. Award of a trade services agreement to Joranda Marketing Inc. doing business as (dba) Jan-Pro Central Coast in the amount of \$375,000 for three years of custodial services at the Oxnard Transit Center at 201 E. Fourth Street (Agreement No. 8646-19-CD); and
2. Approve the appropriation of \$9,790 from TDA Transportation Fund 213 to fund the trade services agreement for the balance of the fiscal year 2018-2019.

The Community Development Director gave a report. Discussion ensued among the Committee and staff.

It was moved by Member MacDonald, seconded by Member Flynn, to approve the recommended action as presented. VOTE: Flynn, MacDonald, and Perello voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS

The City Manager announced an upcoming item on the city's overall irrigation plan. Member Flynn requested a future item on evaluating existing contracts to determine whether they can be renegotiated to achieve cost savings.

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 11:21 a.m.

MICHELLE ASCENCION, CMC
City Clerk

BERT E. PERELLO
Chair



**PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT**

**REPORTS
AGENDA ITEM NO. D.1.**

DATE: June 11, 2019

TO: Public Works and Transportation Committee

FROM: Rosemarie Gaglione, Public Works Director, (805) 385-8055, rosemarie.gaglione@oxnard.org

SUBJECT: Award Contract A-8145 to GI Endurant, LLC for OWTP Cogeneration Engine Refurbishment Phase II. (10/5/5)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that City Council:

1. Award and authorize the Mayor to execute Agreement A-8145 to GI Endurant, LLC in the amount of \$499,632 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;
2. Approve \$49,963 for Project contingency for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;
3. Approve \$49,963 for engineering, inspection, survey and project management for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42; and
4. Approve an appropriation of \$358,349 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project No. 186610.

BACKGROUND

The Oxnard Wastewater Treatment Plant (OWTP) Cogeneration Engine Refurbishment project is part of the Wastewater Division five year capital improvements program. Power supply to the OWTP comes from two sources - Southern California Edison (SCE) and an on-site cogeneration power facility. The existing cogeneration facility produces up to 35% of the energy necessary to operate the OWTP. The energy budget for the plant is approximately \$1 million per year.

Power is produced at the OWTP facility through three generator (cogen) units installed in 1975. The units produce power from a combination of digester gas (produced on-site) and natural gas purchased off the grid. In addition to providing plant power, heat generated by the cogen units is recovered and used to maintain the operating temperature of the anaerobic digesters.

Because of their age, the units require increased maintenance and have become unreliable. On two occasions in 2017, the OWTP lost SCE power while the cogen facility was off-line due to failures. The SCE power outage and cogen failure caused plant flow to bypass the secondary treatment process resulting in regulatory permit violations.

Two of the existing three cogen engines are currently undergoing the final stages of refurbishment. This

contract will be for the second phase overhaul, of the third and final cogen engine. This work will include in-frame overhaul and on-site inspection of the engines and generators.

DISCUSSION

The notice inviting formal bids (NIFB) on the Project was published on April 11, 2019, and all bids were due on April 30, 2019. The NIFB required bidders to be qualified to work on GE Waukesha Engines and Emerson/Kato Generators in order to bid on this Project. Due to the amount of service hours on the cogens, and based on lessons learned from the current cogen refurbishments, this contract includes supplemental work allowance for additional items that may arise once the cogen is being taken apart, such as ignition coils, ignition wiring, and gaskets.

Cogeneration service and repair is not very common. It is a specialty type of work, particularly the Waukesha Engines and Emerson/Kato generators. Only one bid was received for this project from GI Endurant, LLC in the amount of \$499,632 and its bid is responsive to the City's NIFB. It is unlikely that rebidding the project will result in additional bids due to the specialty of the work.

Following this determination, procurement staff reviewed all documentation received from GI Endurant and its subcontractor. Staff verified possession of required currently valid licenses, reviewed the federal Occupational Safety and Health Administration (OSHA) website for safety violations, and verified registration with the California Department of Industrial Relations (DIR). Staff has no reason at this time to believe that either the contractor or its subcontractor is not legally responsible, which means trustworthy and fit and capable to satisfactorily complete the Project. GI Endurant is currently under contract for refurbishment of other cogeneration engines at the OWTP and staff is satisfied with their work. Thus, staff recommends that the City Council award the contract for this Project to GI Endurant, LLC.

Additionally, funds estimated in the amount of \$99,926 are necessary for the completion of the Project. \$49,963 is required for construction contingency (10% of the contract value) and \$49,963 for the cost for engineering services and City staff time (10% of the contract value) to perform engineering, inspection, survey and project management services specific to this project during construction. The total estimated cost of this phase of the Project is \$599,558 (Base bid of \$499,632 + contingency \$49,963 + support services \$49,963).

STRATEGIC PRIORITIES

This item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to establish, preserve and improve the City's infrastructure and natural resources through effective planning, prioritization, and efficient use of available funding. This item supports the following goals and objectives:

Goal 4. Ensure proper construction and maintenance of infrastructure to provide maximum benefit with lowest life cycle cost following CIP plans.

FINANCIAL IMPACT

The project will require an appropriation in the amount of \$358,349 for the third and final phase from the Wastewater Operating Fund 621 Fund Balance, which has an FY2018-19 projected ending unassigned fund balance of \$7 million, net of this appropriation request. Funding for the contract will be provided from the following sources:

ACCOUNT	CURRENTLY IN PROJECT	ADDED BY ADMIN BA	TO BE APPROPRIATED	TOTAL
621-6631-821-8605	\$144,998	\$81,948	\$312,625	\$539,631
621-6631-821-8802	\$54,202	0	\$45,724	\$99,926
TOTAL	\$199,200	\$81,948	\$358,349	\$639,557

** Additional \$39,938 is being appropriated as the project is over budget from the previous contract.

Prepared by: Tatiana Arnaout, Interim City Engineer

ATTACHMENTS

1. A-8145 GI Endurant OWTP Cogen PW 19-42
2. PW 19-42 GI Energy Bid Package
3. Budget Appropriation - A-8145
4. GI Endurant PowerPoint

CITY OF OXNARD CONTRACT FOR
OXNARD WASTEWATER TREATMENT PLANT COGENERATION
ENGINE REFURBISHMENT PROJECT
SPECIFICATION NO. PW 19-42

THIS CONTRACT ("Contract") is made and entered this _____ day of _____, 20____ ("Effective Date"), by and between the CITY OF OXNARD, a California municipal corporation ("City") and GI ENDURANT, LLC dba GI ENERGY ("Contractor"). Contractor's license number is 1015648.

In consideration of the covenants set forth herein, the parties hereto agree as follows:

Incorporation. The Contract consists of all Contract Documents, which shall include the Notice Inviting Bids, Instructions to Bidders, General Provisions, Special Provisions, Plans, Standard Plans, Greenbook, Reference Specifications, Bid (including documentation accompanying the Bid and post-Bid documentation submitted before the notice of award), insurance documentation, Bonds, the City business license, permits from regulatory agencies, Addenda, Change Orders and Supplemental Agreements. These documents are incorporated herein by reference.

2. Scope of Services. Contractor shall perform the Work in a good and workmanlike manner for the project identified as Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Project Specification No. PW 19-42 ("Project"), as described in this Contract and in the incorporated Contract Documents.

3. Compensation. In consideration of the services rendered hereunder, City shall pay Contractor a not to exceed amount of four hundred ninety nine thousand six hundred thirty two dollars (\$499,632.00) in accordance with the prices as submitted in the Bid, attached hereto as Exhibit "B" and incorporated herein by this reference.

4. Antitrust Claims. In entering into this Contract, Contractor assigns to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time City tenders final payment to Contractor without further acknowledgment by the parties.

5. Prevailing Wages. City and Contractor acknowledge that the Project is a public work to which prevailing wages apply. Copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file with the Project Coordinator at City Hall and will be made available to any interested party on request. Contractor and all Subcontractors are not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5 at the time of Bid submission.

6. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance

in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.”

7. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

8. Authority. Any person executing this Contract on behalf of Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

9. Entire Agreement. This Contract, including all incorporated documents, constitutes the entire agreement between the parties hereto with respect to the Project, and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties regarding the subject matter.

10. Amendment. No Contract modification, amendment or supplement to this Contract other than Change Orders will be binding unless written and signed by the parties’ duly authorized representatives.

11. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signed copy of this Contract transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract for all purposes.

[signatures continue on following page]

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

CITY OF OXNARD

GI ENDURANT, LLC dba GI ENERGY

☒ Tim Flynn, Mayor¹ _____ Date _____
☐ Alexander Nguyen, City Manager _____
☐ Lisa Boerner, Purchasing Manager _____
☐ [name] , Buyer _____

Thomas Chadwick, Manager² _____ Date _____

Greg Grosvenor, Manager _____ Date _____

ATTEST:

Michelle Ascencion, City Clerk (only if Mayor signs) _____ Date _____

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney (always required) _____ Date _____

¹ The City Council must authorize and the Mayor must sign any agreement over \$200,000 annually. The City Manager may authorize and sign any agreement over \$100,000 but up to \$200,000 annually. The Purchasing Manager may authorize and sign any agreement up to \$100,000 annually. A Buyer may authorize and sign any agreement up to \$25,000 annually.

² The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

Exhibit INS-G
INSURANCE REQUIREMENTS FOR CONSTRUCTION PROJECTS
(WITHOUT BUILDER'S RISK REQUIREMENT)

1. Contractor shall obtain and maintain during the performance of any services under this Contract the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Contractor, its agents, representatives, employees or subcontractors.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$2,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project location or shall be twice the occurrence amount;

b. Business Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. If architectural, engineering, or electrical work will be performed under the Contract, Professional Liability/Errors and Omissions Insurance appropriate to the work being done in an amount not less than \$1,000,000, with neither Contractor nor listed subcontractors having less than \$500,000 individually. The Professional Liability/Errors and Omissions Insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City.

2. Contractor shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-G. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email (or fax if necessary) to the Risk Manager, addressed as follows (do not send hard copies):

City of Oxnard
Insurance Compliance
Reference No. A-8145
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

3. Contractor agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Contractor agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-G or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Contractor shall also be applicable to Contractor's subcontractors. Contractor agrees to maintain appropriate agreements with subcontractors and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

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INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for general liability and automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-G.doc

ACORD CERTIFICATE OF INSURANCE

ISSUE

DATE

(MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODESUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY
LETTER ASPECIFY COMPANY NAMES IN THIS SPACE

COMPANY
LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR. ☒ OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$2,000,000 PRODUCTS COMP/OP AGG. \$2,000,000 PERSONAL & ADV. INJURY \$2,000,000 EACH OCCURRENCE \$2,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER Errors and omissions insurance or malpractice insurance available for the insured's profession; if architectural, engineering or electrical work will be performed under the Contract				Minimum coverage \$1,000,000 Each consultant/ \$500,000 & listed sub-consultant

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

CITY OF OXNARD

Attn: Insurance Compliance

Reference No. A-8145

P.O. Box 100085 – OX

Duluth, GA 30096

Via Email: cityofoxnard@ebix.com

Via Fax: 678-259-1007

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the aCity@)		SUBMIT IN DUPLICATE	
		ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)
PRODUCER		POLICY INFORMATION: Insurance Company: Policy No.: Policy Period: (from) (to) LOSS ADJUSTMENT EXPENSE ☐ Included in Limits ☐ In Addition to Limits	
Telephone:		☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____ with an Aggregate of \$ _____ applies to _____ coverage. ☐ Per Occurrence ☐ Per Claim (which)	
NAMED INSURED		APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered: CITY AGREEMENTS/PERMITS	
TYPE OF INSURANCE			
GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ Claims Made ☐ COMPREHENSIVE GENERAL LIABILITY Retroactive Date _____ ☐ OWNERS & CONTRACTORS PROTECTIVE ☐ Occurrence		OTHER PROVISIONS	
COVERAGES		LIABILITY LIMITS IN THOUSANDS \$	
		EACH OCCURRENCE	AGGREGATE
☐ GENERAL ☐ PRODUCTS/COMPLETED OPERATIONS ☐ PERSONAL & ADVERTISING INJURY ☐ FIRE DAMAGE ☐ _____ ☐ _____			CLAIMS: Underwriter=s representative for claims pursuant to this insurance. Name: _____ Address: _____ Telephone: (_____)
In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:			
1. INSURED. The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.			
2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured=s scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.			
3. SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company=s limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.			
4. CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.			
5. PROVISIONS REGARDING THE INSURED=S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.			
6. SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as: 2.1 Insurance Services Office Commercial General Liability Coverage, aoccurrence@ form CG0001; or 2.2 If excess, affords coverage which is at least as broad as the primary insurance form CG0001.			
Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.			
ENDORSEMENT HOLDER			
CITY OF OXNARD Attn: Insurance Compliance Reference No A-8145 P.O. Box 100085 – OX Duluth, GA 30096 Via Email: cityofoxnard@ebix.com Via Fax: 678-259-1007		AUTHORIZED REPRESENTATIVE ☐ Broker/Agent ☐ Underwriter ☐ _____ I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. Signature _____ (original signature required) Telephone: (_____) Date Signed _____	

Bond No. _____

PAYMENT BOND
(LABOR AND MATERIALS)

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Oxnard ("Agency"), State of California, has awarded to _____

(Name and address of Contractor) _____ ("Principal")

a contract (the "Contract") for the Work described as OXNARD WASTEWATER TREATMENT PLANT COGENERATION ENGINE REFURBISHMENT PROJECT SPECIFICATION NO. PW 19-42.

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of any Work, to file a good and sufficient Payment Bond with the Agency to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

a corporation organized and existing under the laws of the State of _____
 ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, and
 our heirs, assignees, successors, executors and administrators are held and firmly bound,
 jointly and severally, unto the Agency and all Contractors, Subcontractors, laborers, material
 suppliers, and other persons employed in the performance of the Contract and referred to in
 Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum
 of _____ Dollars (\$ _____), this
 amount being not less than a hundred percent (100%) of the total Contract Price in lawful
 money of the United States of America, for materials furnished or labor thereon of any kind, or
 for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that
 the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and
 also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs
 and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Agency in
 successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as
 costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its Subcontractors, or both the principal and its Subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the

principal, any of its Subcontractors, or both the principal and its Subcontractors pursuant to Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, including all incorporated documents, shall in any manner affect its obligations on this Bond. The Surety hereby waives notice of any such change, extension, alteration, or addition. Additionally, the Surety hereby waives California Civil Code 2845 and 2849 as well as any statutes of limitation, statutes of repose and laches as they may apply to an action on this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety, on the date set forth below, the name of each party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____

By: _____

Its: _____

Its: _____

By: _____

By: _____

Its: _____

Its: _____

(Seal)

(Seal)

Notes: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. Date of Bond must not be before the Effective Date of the Contract. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of California.

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Oxnard ("Agency"), has awarded to _____

____ (“Principal”)

(Name and address of Contractor)

a contract (the "Contract") for the Work described as OXNARD WASTEWATER TREATMENT PLANT COGENERATION ENGINE REFURBISHMENT PROJECT SPECIFICATION NO. PW 19-42.

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

a corporation organized and existing under the laws of the State of _____
 ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are
 held and firmly bound unto the Agency in the penal sum of _____

Dollars (\$ _____), this amount being not less than a hundred percent (100%) of the total Contract Price in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, assignees, successors, executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Agency, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void one (1) year from the date of recordation of the Notice of Completion for the Project; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statutes of limitation, statutes of repose and laches as they may apply to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, including all incorporated documents, or of the Work to be

performed thereunder or the Specifications accompanying the same shall in any way affect the Surety's obligations under this Bond. The Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications. Surety hereby waives California Civil Code 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety, on the date set forth below, the name of each party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____

By: _____

Its: _____

Its: _____

By: _____

By: _____

Its: _____

Its: _____

(Seal)

(Seal)

Notes: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. Date of Bond must not be before the Effective Date of the Contract. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of California.

EXHIBIT B

CITY OF OXNARD

**BID SHEETS FOR OXNARD WASTEWATER TREATMENT PLANT COGENERATION
ENGINE REFURBISHMENT PROJECT
SPECIFICATION NO. PW 19-42**

Bidder's Name: GI ENERGY

To the Honorable Mayor and Members of the City Council:

In compliance with the Notice Inviting Bids, the undersigned hereby agrees to execute the Contract to furnish all labor, materials, equipment and supplies for the Project in accordance with the Contract Documents to the satisfaction and under the direction of the Project Manager at the following prices:

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	EXTENDED AMOUNT
1.	Mobilization and demobilization (5% maximum of Total Bid Amount)	Lump Sum	\$ 22,982
2.	Inspection of Cogeneration Engine and Generator	Lump Sum	\$ 25,000
3.	Refurbishment of Cogeneration Engine including reassemble with generator, testing, start-up, and recommissioning	Lump Sum	\$ 411,650
4.	Cogeneration Engine post inspection recommended additional repairs and replacements	Allowance	\$20,000
5.	Cogeneration Generator post inspection recommended repairs and replacements	Allowance	\$20,000
TOTAL BID AMOUNT:			\$ 499,632

Note: Several items may be adjusted or deleted. Any changes to the quantities for these items shall not classify as a substantial change as stipulated in Greenbook Section 3-2.2.1. Regardless of total actual volume compared to estimated quantities, the unit prices provided above shall be applied to the final quantity when payment is calculated for these items. No adjustment in the unit prices will be allowed. The City reserves the right to not use any of the estimated quantities, and if this right is exercised, the Contractor will not be entitled to any additional compensation. The cost of all labor, materials, export of material shall be included in the above unit costs; no additional compensation will be granted for such expenses.

TOTAL BID PRICE IN DIGITS: \$ 499,632

TOTAL BID PRICE IN WORDS: FOUR HUNDRED NINETY NINE THOUSAND SIX HUNDRED THIRTY TWO

Contractor must complete all Work within ninety (90) Calendar Days of the City's Notice to Proceed.

Bidder acknowledges receipt of all addenda

Addendum: Date Received:
#01 _____
#02 _____

Addendum: Date Received:
#03 _____
#04 _____

Bidder's Name (Company): GI ENERGY

Signature: [Signature] Title: CEO

Print: TD CHADWICK Date: 4/30/19

BID PACKET

CITY OF

OXNARD

CALIFORNIA

FOR

OXNARD WASTEWATER TREATMENT PLANT COGENERATION ENGINE REFURBISHMENT PROJECT

SPECIFICATION NO. PW 19-42

Submitted by:

Contractor's Name: GI ENERGY

Address: 1196 N GROVE ST. UNIT B

City: ANAHEIM State: CA Zip Code: 92806

Contact Person: NORTH HEFLEY Phone: 714-715-3185

Email: NHEFLEY@GIENERGYUS.COM Date: 04/26/2019

B 1

**BID FOR OXNARD WASTEWATER TREATMENT PLANT COGENERATION ENGINE
REFURBISHMENT PROJECT SPECIFICATION NO. PW 19-42**

The undersigned, as Bidder, declares that:

1. The Bidder has carefully examined the Contract Documents, all Addenda, and the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Project ("Project") site and is satisfied as to the conditions, character, quality and quantities of Work to be performed, and the materials to be furnished.
2. The Bid includes all taxes, fees and costs, and as such is the total amount required for the Bidder to complete this Project in accordance with the Contract Documents.
3. The Bidder is properly licensed by the State as a contractor to perform this type of Work.

The undersigned, as Bidder, agrees to the following:

1. The submission of this Bid shall be conclusive evidence that the Bidder has examined and investigated the surface, subsurface and other conditions affecting the Work, including also the groundwater conditions, transportation, the disposal, handling and storage of materials, and the availability of labor, water, electric power, roads and the equipment and facilities needed for the Work. No information derived from an inspection of records or investigation will relieve the Bidder from its obligations under the Contract Documents nor entitle the Bidder to any additional compensation. The Bidder shall not make any claim, including for additional compensation, against the City based upon ignorance or misunderstanding of any condition of the Project site or of the Contract Documents' or any Addendum's requirements.
2. Accompanying this Bid is a permissible form of Bid security in an amount equal to at least ten percent (10%) of the total Bid price submitted. The Bid security is given as a guarantee that, if selected, the Bidder will execute the Contract in conformity with the Contract Documents, provide evidence of all required insurance, provide a copy of its City business license and furnish the Performance and Payment Bonds (as well as a photocopy of each Bond)—each in the amount of one hundred percent (100%) of the Contract Price—within fourteen (14) Calendar Days of the date of delivery of the Contract to the Bidder. If the Bidder refuses or fails to do so, the City may award the Contract to the next lowest responsible Bidder, and this Bid security may be forfeited to the City as permitted by law.
3. In the event the Contract is awarded to the Bidder, the Bidder shall execute the Contract to perform the Project in accordance with the Contract Documents. Should the undersigned be awarded the Contract and thereafter fail or refuse to execute the Contract and provide the required evidence of its City business license, insurance and Bonds (plus photocopies) within fourteen (14) Calendar Days after the Contract award, then the Bid Bond, cash, cashier's check or certified check shall be forfeited to the City to the extent permitted by law.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 4/30/19 [date], at Chicago [city], Illinois [state].

Bidder's Name (Company): GI ENERGY
Signature: [Signature] Title: CEO
Print: JO CHARNICK Date: 4/30/19

CITY OF OXNARD

**BID SHEETS FOR OXNARD WASTEWATER TREATMENT PLANT COGENERATION
ENGINE REFURBISHMENT PROJECT
SPECIFICATION NO. PW 19-42**

Bidder's Name: GI ENERGY

To the Honorable Mayor and Members of the City Council:

In compliance with the Notice Inviting Bids, the undersigned hereby agrees to execute the Contract to furnish all labor, materials, equipment and supplies for the Project in accordance with the Contract Documents to the satisfaction and under the direction of the Project Manager at the following prices:

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	EXTENDED AMOUNT
1.	Mobilization and demobilization (5% maximum of Total Bid Amount)	Lump Sum	\$ 22,982
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3.	Refurbishment of Cogeneration Engine including reassemble with generator, testing, start-up, and recommissioning	Lump Sum	\$ 411,650
4.	Cogeneration Engine post inspection recommended additional repairs and replacements	Allowance	\$20,000
5.	Cogeneration Generator post inspection recommended repairs and replacements	Allowance	\$20,000
TOTAL BID AMOUNT:			\$ 499,632

Note: Several items may be adjusted or deleted. Any changes to the quantities for these items shall not classify as a substantial change as stipulated in Greenbook Section 3-2.2.1. Regardless of total actual volume compared to estimated quantities, the unit prices provided above shall be applied to the final quantity when payment is calculated for these items. No adjustment in the unit prices will be allowed. The City reserves the right to not use any of the estimated quantities, and if this right is exercised, the Contractor will not be entitled to any additional compensation. The cost of all labor, materials, export of material shall be included in the above unit costs; no additional compensation will be granted for such expenses.

TOTAL BID PRICE IN DIGITS: \$ 499,632

TOTAL BID PRICE IN WORDS: FOUR HUNDRED NINETY NINE THOUSAND SIX HUNDRED THIRTY TWO

Contractor must complete all Work within ninety (90) Calendar Days of the City's Notice to Proceed.

Bidder acknowledges receipt of all addenda

Addendum: Date Received:
#01 _____
#02 _____

Addendum: Date Received:
#03 _____
#04 _____

Bidder's Name (Company): GI ENERGY

Signature: [Signature] Title: CEO

Print: TD CHADWICK Date: 4/30/19

QUESTIONNAIRE FORM

Fill out all of the following information. Attach additional sheets if necessary. Do not leave any question blank. If the question does not apply, write "N/A."

- (1) Bidder's Name: GI ENERGY
- (2) If the Bidder's name is a fictitious name, what is the full name of the registered owner?
GI ENDURANT LLC
* If you are doing business under a fictitious name, provide a copy of the filed valid Fictitious Business Name Statement with your submitted Bid.
- (3) Business Address: 1196 N. GRIFFIN ST UNIT B
ANAHIM, CA 92806
Phone 1: 714-715-3185 Phone 2: 714-493-8743
Email: NHEFLEY@GIENERGYUS.COM
- (4) Type of Firm (Partnership, LLC, Corporation, S-Corp, etc.): LLC
Organized under the laws of the State of: DELAWARE
- (5) California State Contractor's License Number and Class: 1015648 A CLASS
Original Date Issued: 06-30-2016 Expiration Date: 06-30-2020
- (6) DIR Contractor Registration Number: 1000011629
- (7) Does the Bidder have a minimum of three (3) consecutive years of current experience in the type of Work related to the Project, and is this experience in actual operation of the Bidder with permanent employees performing a part of the Work as distinct from a firm operating entirely by subcontracting all phases of the Work? Circle one: YES NO
- (8) List the names, titles, addresses and phone numbers of all individuals, members, partners, joint venturers and company officers having a principal interest in this Bid:
THOMAS CHADWICK CEO 312-894-4646 EXT 2004
DAN McDEVITT CTO 312-894-4646 EXT 2000
150 N. MICHIGAN AVE STE 1250, CHICAGO IL 60601
- (9) List all current and prior aliases, and provide all filed fictitious business names ("doing business as"), for any principal having interest in this Bid:
GI ENERGY
GI ENDURANT LLC

- (10) List the dates of any voluntary and involuntary bankruptcy judgments against any principal having an interest in this Bid:

NONE

- (11) For all arbitrations, lawsuits, settlements and the like (in/out of court) that the Bidder or any principal with an interest in this Bid has been involved with in the past five (5) years:

- a. List the names, addresses and phone numbers of the parties' contact persons:

NONE

- b. Briefly summarize the parties' claims and defenses:

N/A

- c. State the tribunal (e.g., Superior Court, American Arbitration Association, etc.), the matter number, and the outcome:

N/A

- (12) If the Bidder or any principal having an interest in this Bid has ever had a contract terminated by the owner or agency, explain below:

NONE

- (13) If the Bidder or any principal having an interest in this Bid ever failed to complete a project, explain below:

NONE

- (14) If the Bidder or any principal having an interest in this Bid has ever been terminated for cause, even if it was converted to a "termination of convenience," explain below:

NONE

For the final questions, the word "you" and "your" shall refer to the Bidder and all individuals, members, partners, joint venturers and company officers having a principal interest in this Bid.

(15) For projects that the Bidder or any principal having an interest in this Bid has been involved with in the last five (5) years, did you have any claims or actions:

- | | |
|--|---|
| a. By you against the owner? | Circle one: Yes ☐ No ☒ |
| b. By the owner against you? | Circle one: Yes ☐ No ☒ |
| c. By any agency or individual for labor compliance? | Circle one: Yes ☐ No ☒ |
| d. By Subcontractors? | Circle one: Yes ☐ No ☒ |
| e. Are any such claims/actions unresolved/outstanding? | Circle one: Yes ☐ No ☒ |

If your answer is "yes" to any part or parts of this question, explain.

N/A

(16) List the last three (3) projects, if any, you have worked on or are currently working on for the City of Oxnard:

1. PROJECT PW 18-03, CONTRACT A-8043
2. _____
3. _____

Upon request of the City, the Bidder shall furnish evidence showing a notarized financial statement, financial data, construction experience or other additional information.

The Bidder certifies under penalty of perjury under the laws of the State of California that the information provided in this Questionnaire Form is true and correct.

Signature: [Signature]

Title: CEO

Date: 4/30/19

This Questionnaire Form must be notarized below.

State of ~~California~~ Illinois)

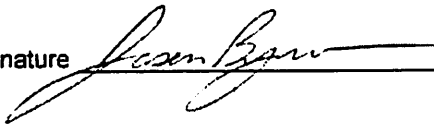
County of Cook) ss

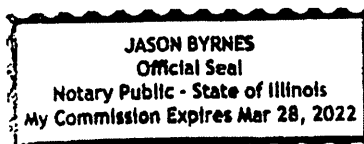
City of Chicago)

On April 30, 2019 before me, Tom Chodwick, CEO

(insert name and title of the officer) personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature 
(Seal)



REFERENCES FORM

For all like work that the Bidder is currently working on or has worked on for public agencies in the past two (2) years, provide the information requested below. If this information does not fit on this page, attach another page listing all information for all other such work. You may, but are not obligated to, attach a separate page to explain why a final contract amount differed from an original contract amount (e.g., change orders, extra work, or other circumstances) or if you or the agency filed any claims against each other and the substance and outcome of those claims.

<i>REFURBISHMENT</i>		
Project 1 Description: <u>WASTEWATER TREATMENT PLANT COGEN. ENGINE</u>		
Construction Dates	From: <u>04/09/2018</u>	To: <u>05/21/2019</u>
Agency Name: <u>CITY OF OXNARD</u>		
Project Manager:	<u>FRANK LUTAN</u>	Telephone: <u>805-300-5293</u>
Original Contract Amount: \$ <u>637,394.00</u> Final Contract Amount: \$ <u>717,342.00</u>		
Did you file any claims against the Agency? Circle one: Yes No		
Did the Agency file any claims against you? Circle one: Yes No		

<i>REHABILITATION</i>		
Project 2 Description: <u>MEDICAL CENTER COGENERATION FACILITY</u>		
Construction Dates	From: <u>11/06/2017</u>	To: <u>05/31/2019</u>
Agency Name: <u>RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY</u>		
Project Manager:	<u>TINA YORK</u>	Telephone: <u>951-955-2065</u>
Original Contract Amount: \$ <u>1,433,839.00</u> Final Contract Amount: \$ <u>1,433,839.00</u>		
Did you file any claims against the Agency? Circle one: Yes <u>(No)</u>		
Did the Agency file any claims against you? Circle one: Yes <u>(No)</u>		

Project 3 Description: FLOODSTATION & ENGINE CONTROLLERS UPGRADE

Construction Dates From: 10/23/2017 To: 10/31/2018

Agency Name: ORANGE COUNTY PUBLIC WORKS

Project Manager: GUY BATTERTON Telephone: 714-935-0343

Original Contract Amount: \$ 827,805 - Final Contract Amount: \$ 827,113 -

Did you file any claims against the Agency? Circle one: Yes ☐ No ☒

Did the Agency file any claims against you? Circle one: Yes ☐ No ☒

I hereby give my permission to the City of Oxnard and its officers, employees and agents to contact references of the Bidder and its officers, managers, members, general partners, limited partners and other owners (collectively, the "Owners") and to request information from other agencies in which the Bidder and/or its Owners have worked. This permission includes the City reviewing any criminal records of the Owners and obtaining public records regarding the Owners, such as records of arrests, indictments, convictions, civil judicial actions, tax liens, or outstanding judgments. I have authority to waive, and I do waive, any and all rights and claims the Bidder and its Owners, employees and agents may have against the City, its officers, employees and agents, as well as any agency providing feedback or the mentioned records, and those agencies' officers, employees and agents, regarding any actions taken pursuant to, related to or incidental to, the authorization given in this paragraph.

Bidder's Name: GI ENERGY

Signature: [Signature] Title: CEO Date: 4/30/19

DESIGNATION OF SUBCONTRACTORS

List all Subcontractors who will perform Work or labor or render service to the Contractor in or about the construction of the Work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the Plans and Specifications, in an amount in excess of one-half percent (0.5%) of the Contractor's total Bid or, in the case of Bids or offers for the construction of Streets, highways, or bridges, in excess of one-half percent (0.5%) of the Contractor's total Bid or \$10,000, whichever is greater. If all Subcontractors do not fit on this page, photocopy this page and attach that additional page or those pages listing all other Subcontractors. If there is any change in this list of Subcontractors, Contractor must provide a new list to Project Manager before any unlisted Subcontractor can perform any Work. If Contractor intends to use no Subcontractors, please write "N/A" in the first open box.

Name under which Subcontractor is Licensed and Registered	CSLB License Number(s) and Class(es)	DIR Contractor Registration Number	Address and Phone Number	Type of Work (e.g., Electrical)	Percentage of Total Bid (e.g., 10%) ²
LEVERED INDUSTRIAL	937203	10004544	SCHENCK AVE RED BLUFF 96080 530-527-7390	ELECTRICAL	10%

Bidder's Name: GI EMBLEY Signature: [Signature] Title: CEO Date: 4/30/14

² The percentage of the total Bid shall represent the "portion of the work" for the purposes of Public Contract Code Section 4104(b).

INDUSTRIAL SAFETY RECORD FORM

This Industrial Safety Record Form must include all construction work undertaken in California by the undersigned and any partnership, joint venture corporation or s-corporation that any principal of the undersigned participated in as a principal or owner for the listed years. Separate information must be submitted for each such partnership, joint venture, or corporate or individual. The undersigned may attach any additional information or explanation of data that it would like to be taken into consideration in evaluating the Industrial Safety Record Form. An explanation of the circumstances surrounding any and all fatalities must be attached.

	2019 (so far)	2018	2017	2016	2015	2014	Total
Number of contracts	0	1	1	0	0	0	2
Total dollar amount of contracts (in thousands)	0	717	1,434	0	0	0	2,151
Number of fatalities	0	0	0	0	0	0	0
Number of lost workday cases	0	0	0	0	0	0	0
Number of lost workday cases involving permanent transfer to another job or termination of employment	0	0	0	0	0	0	0

The above information was compiled from the records that are available to me at this time, and I declare under penalty of perjury that the information is true and accurate within the limitations of those records.

Bidder's Name: GI ENERGY

Signature: [Signature] Title: CEO Date: 4/30/19

**NONCOLLUSION DECLARATION
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

The undersigned declare(s):

I/we am/are the T.D. CHADWICK of G1 ENERGY
the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, LLC, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted its, his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, LLC, partnership, company, association, organization, Bid depository, or to any member or agent thereof, or to any individual, to effectuate a collusive or sham Bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person(s) executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 4/30/19 [date], at CHICAGO [city], ILLINOIS [state].

Bidder's Name: G1 ENERGY

Signature: [Signature] Title: CEO Date: 4/30/19

This Noncollusion Declaration must be notarized on the following page.

(Continuation of Noncollusion Declaration)

State of ~~California~~ Illinois)

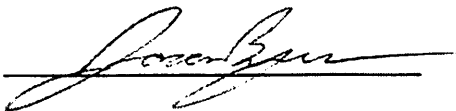
County of Cook) ss

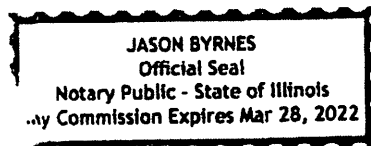
City of Chicago)

On April 30, 2019 before me,

T.D. CHADWICK CEO (insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature 
(Seal)



**PREQUALIFICATION
QUESTIONNAIRE**



FOR

**OXNARD WASTEWATER TREATMENT PLANT
COGENERATION ENGINE REFURBISHMENT
PROJECT**

SPECIFICATION NO. PW 19-42

**SERVICE PROVIDER FOR REFURBISHMENT OF
COGENERATION UNIT**

PREQUALIFICATION FOR SERVICE PROVIDER

The City of Oxnard ("City") is advertising the Refurbishment of Cogeneration Engine Refurbishment Project (PW19-42) for the inspection and refurbishment of one Cogeneration unit at the Oxnard Wastewater Treatment Plant (OWTP). This questionnaire is intended for the proposed Service Provider, who will be responsible for field and shop services associated with this project.

Interested Contractors shall submit the attached Prequalification Questionnaire with supplemental materials (collectively, the "Prequalification Packet") on behalf of their proposed Service Providers with the Contractors' Bids. If two or more business entities intend to submit a bid or bids as part of a joint venture, each entity comprising the joint venture must submit a Prequalification Packet.

CONTACT INFORMATION

Firm Name: GI ENDURANT LLC⁴ Check One: ☐ Corporation/S-Corp
(as it appears on license) ☒ LLC

Fictitious Name, if any: GI ENERGY⁵ ☐ Partnership ☐ Solo Practitioner

Contact Person No. 1: NORTH HEFLEY

Title: VP BUSINESS DEVELOPMENT Phone: 714-715-3125

Address: 1196 N. GROVE ST. UNIT B, ANAHEIM CA 92806

Email: NHEFLEY@GIENERGYUS.COM Fax: 714-776-6012

Contact Person No. 2: EVERT FINK

Title: VP SERVICE Phone: 714-493-8743

Address: 1196 N. GROVE ST. UNIT B, ANAHEIM CA 92806

Email: EFINK@GIENERGYUS.COM Fax: 714-776-6012

If Contractor is a solo practitioner or partnership, owner(s) of Contractor:

⁴ This firm will be referred to as "Contractor" throughout this Prequalification Questionnaire.

⁵ If Contractor is doing business under a fictitious name, provide a copy of the filed valid Fictitious Business Name Statement with your submitted Prequalification Packet.

PART I. ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Contractor will be immediately disqualified if the answer to any of questions 1 through 3 is "no."

1. Does Contractor possess a valid and current California Contractor's C-10 license for the Project?
☒ Yes ☐ No
2. Does Contractor have current workers' compensation insurance policy as required by the Labor Code, or is Contractor legally self-insured pursuant to Labor Code section 3700 *et. seq.*?
☒ Yes ☐ No ☐ Contractor is exempt from this requirement, because it has no employees

Contractor will be immediately disqualified if the answer to any of questions 4 through 7 is "yes."

3. Has Contractor's license been revoked at any time in the last five (5) years?
☐ Yes ☒ No
4. Has a surety firm completed a contract on Contractor's behalf or paid for completion because Contractor was in default on any project within the last five (5) years?
☐ Yes ☒ No
5. At the time of submitting a Prequalification Packet, is Contractor ineligible to bid on or be awarded a construction or repair contract, or perform as a subcontractor on a construction or repair contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?
☐ Yes ☒ No

PART II. ORGANIZATION, HISTORY, PERFORMANCE & COMPLIANCE WITH LAWS

A. Current Organization and Structure of the Business

6. If Contractor is:

- A corporation or s-Corp, what was the date of incorporation?
- An LLC or partnership, what was the date of formation? 12/15/2011
- A solo practitioner, what was the date of commencement of business? _____

7. If Contractor is:

- A corporation or s-Corp, it was incorporated under the laws of what state?
- An LLC or partnership, it was formed under the laws of what state? DELAWARE
(If Contractor is a solo practitioner, write "N/A.") _____

8. a. If Contractor is a sole practitioner, what is his or her social security number or INS-issued alternative identification number?

b. List all of Contractor's current and prior D.B.A.'s, aliases and fictitious business names.

GI ENDURANT LLC

GI ENERGY

B. History of the Contractor and Organizational Performance

9. Is Contractor currently the debtor in a bankruptcy case, or was the Contractor in bankruptcy at any time during the last five (5) years?

☐ Yes ☒ No

If "yes," please attach a copy of the bankruptcy petition showing the case number and the date on which the petition was filed. If the case ended, also attach a copy of the bankruptcy court's discharge order or any other document that ended the case if no discharge order was issued.

Licenses

10. List all California construction license numbers, classifications and expiration dates held by Contractor:

1015648 A CLASS 06/30/2020

11. If one or more of Contractor's license(s) are held in the name of a corporation, s-corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet the experience and examination requirements for each license.

AMUR YANNI

12. Has any CSLB license held by the Contractor, its Responsible Managing Employee (RME) or its Responsible Managing Officer (RMO) been suspended within the last five (5) years?

☐ Yes ☒ No

If "yes," please explain on a separate signed sheet.

Disputes

13. In the last five (5) years, has Contractor been assessed and paid liquidated damages after completion of a project under a construction and/or repair contract with either a public or private owner?

☐ Yes ☒ No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date the project began, the date the project should have been completed, the actual completion date, the amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

14. In the past five (5) years, has any project owner filed any claim regarding a dispute of \$50,000 or more against Contractor concerning its work on a construction and/or repair project in court or arbitration?

☐ Yes ☒ No

If "yes," on a separate signed page identify the claim(s) by providing the project name, date of the claim, name of the claimant, claimant's contact information (phone number, address and email), a brief description of the nature of the claim and any defenses, the court or tribunal (e.g., Superior Court, American Arbitration Association, etc.), the matter number, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

15. In the last five (5) years, has any insurance carrier for any form of insurance refused to renew the insurance policy for Contractor?

☐ Yes ☒ No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of

insurance, the year of the refusal, and the insurance company's explanation if one was provided as to the rationale behind its decision.

Bonding

16. If Contractor was required to pay a premium of more than one percent (1%) for a performance or a payment bond on any project(s) on which Contractor worked at any time during the last three (3) years, state the percentage that Contractor was required to pay. You may provide an explanation explain on a separate signed page for a percentage rate higher than one percent (1%) if you wish to do so.

_____ % N/A

If the answer to the prior question was over one percent (1%), answer the next question. If not, write "N/A."

17. List all other sureties (name and full address) that have written bonds for Contractor during the last five (5) years, including the dates during which each wrote the bonds. If there are more than three (3) sureties, list the remaining ones on a separate signed page.

Bonding company/surety 1: _____ Dates: _____

Surety agent: _____ Phone: _____

Address: _____

Email: _____

Bonding company/surety 2: _____ Dates: _____

Surety agent: _____ Phone: _____

Address: _____

Email: _____

Bonding company/surety 3: _____ Dates: _____

Surety agent: _____ Phone: _____

Address: _____

Email: _____

PART III. COMPLIANCE WITH OCCUPATIONAL SAFETY & HEALTH LAWS AND OTHER LABOR LEGISLATION

18. What is Contractor's DIR registration number? (If you are not yet registered, please write

"not yet registered.") 1000311629

19. Has CAL OSHA or federal OSHA cited and assessed penalties against Contractor for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five (5) years?

NOTE: If Contractor has filed an appeal of a citation and the OSHA Appeals Board has not yet ruled on its appeal, or if there is a court appeal pending, you need not include information about it.

☐ Yes ☒ No

If "yes," attached a separate signed page describing each such citation, including information about the date of the citation, the nature of the violation, the project on which the citation was issued, and the amount of penalty paid, if any. If the citation was appealed to the OSHA Board and a decision has been issued, state the decision, the case number and the date of the decision.

PART IV. RECENT GENERATOR REFURBISHMENT PROJECTS

On a separate signed page, Contractor must list the last four (4) projects it has worked on or is currently working on, as many as possible for work at the City of Oxnard, along with the name of the relevant project manager(s).

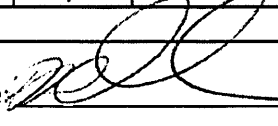
Names and references must be current and verifiable. Use separate signed pages that contain all of the following information:

1. Project name
2. Location
3. Owner entity
4. Owner's contact information: name, current phone number and current email
5. Scope of work
6. Original contract amount
7. Final amount paid
8. What was the schedule for services

You may, but are not obligated to, explain why a final contract amount differed from the original amount (e.g., change orders, extra work, other circumstances), the substance and outcome of any claims you or the Owner filed against each other, or any other relevant information.

Recent Generator Refurbishment Projects		
Item No.		
Project 1		
1	Riverside University Health System Medical Center	
2	26520 Cactus Ave. Moreno Valley, CA 92555	
3	Riverside County	
4	David Boucom Director of Facilities (951) 486-7575 d.boucom@ruhealth.org	
5	Onsite rebuild of 2 Waukesha V-16 cogen engines plus adding system redesign additional ancillary components and redesign the hot water system	
6	\$1,433,839.00	
7	Ongoing	
8	2 days	Drain and contain all fluids and flush hot water system
	10 days	R&R cylinder heads with new OEM and new OEM head gaskets
	5 days	R&R cylinder sleeve kits with new OEM parts
	10 days	R&R main bearings with new OEM
	4 days	Replace connecting rod bushings and check for straightness
	5 days	Install 2 new OEM jacket water pumps
	10 days	Install 2 new catalytic converters
	10 days	Install 2 new air fuel ratio controllers
	40 days	Install 2 new jacket water heat exchangers into redesigned piping system
	5 days	Install 2 new OEM Microspin filters
	10 days	Install 2 new pre/post lube oil pumps and controls
	10 days	Install 2 new OEM detonation sensing modules
	4 days	Install 2 new pilot fuel gas pressure regulators
	6 days	Install 2 new Waukesha OEM air fuel ratio control fuel gas regulators
	4 days	Install 2 new fuel gas filters
	10 days	Install 2 new jacket water surge tanks with level controls
	3 days	Install 3 chemical pot feeders
	10 days	Install 2 new system cooldown pumps and controls
	4 days	Install 4 new thermostat valves
	6 days	Install 2 new circuit setters
5 days	R&R rebuild generator breakers	
10 days	Install new insulation on pipe and exhaust system	
10 days	Recommission cogen plant	
Project 2		
1		St. Bernardine Medical Center
2		2101 N. Waterman Ave. San Bernardino, CA 92404
3		Dignity Health
4		Christine O'Dell Engineering Office Supervisor (909) 475-5068 christine.odell@dignityhealth.org
5		Replace Waukesha V-12 cogen engine crankshaft
6		\$169,746.20
7		Just recently billed

8	1 day	Drain and contain all fluids and refill system
	5 days	Remove cylinder heads, turbochargers, intercoolers, intake and exhaust manifolds
	2 days	Remove engine from enclosure and transport to our shop as a short block
	3 days	Remove pistons, con rods and cylinder sleeves, crankshaft and gears
	5 days	Line bore main bearing fits
	5 days	Install pistons, con rods and cylinder sleeves, crankshaft and gears
	3 days	Transport back to site and install as a short block
	2 days	Install cylinder heads, turbochargers, intercoolers, intake and exhaust manifolds
	2 day	Couple engine to generator and align
	2 days	Recommission cogen plant and tune in all systems
Project 3		
1		Transamerica Building Cogen
2		600 Montgomery St. San Francisco, CA
3		Pyramid Properties
4		Doug Peterson Chief Engineer (415) 829-5334 dpeterson@thepyramidcenter.com
5		Onsite rebuild of 2 Waukesha V-12 cogen engines
6		\$177,323.06
7		\$177,323.06
8	1 day	Drain and contain all fluids and refill system
	4 days	R&R cylinder heads with OEM re-up heads and new OEM head gaskets
	4 days	R&R cylinder sleeve kits with new OEM parts
	2 days	Replace connecting rod bushings and check for straightness
	2 days	Clean Parts
	2 days	Replace 4 turbocharges with new OEM
	2 days	Recommission cogen plant and tune in all systems
Project 4		
1		Mercy Southwest Hospital
2		400 Old River Rd. Bakersfield, CA 93311
3		Dignity Health
4		Ken Stonecipher Director of Engineering (661) 632-5872 kenneth.stonecipher@dignityhealth.org
5		Onsite rebuild of 2 Waukesha cogen engines and generator rebuilds
6		\$107,935.22
7		\$107,935.22
8	1 day	Drain and contain all fluids and refill system
	4 days	R&R cylinder heads with OEM re-up heads and new OEM head gaskets
	3 days	R&R cylinder sleeve kits with new OEM parts
	2 days	Replace connecting rod bushings and check for straightness
	2 days	Clean Parts
	3 days	Remove generators to authorized rebuild shop and replace
	2 days	Rebuild 4 water pumps
	1 day	Install 4 new catalytic converter elements
	2 days	Recommission cogen plant and tune in all systems

Signature: 

Title: CEO

Date: 4/3/19

PART V. CERTIFICATION

I, the undersigned, certify and declare that I have read all the answers and supplemental materials in this Prequalification Packet, and I know its contents. I certify under penalty of perjury that I have provided complete and truthful information to the City regarding all information requested in this Prequalification Questionnaire. I understand that any misrepresentations or material omissions within this Prequalification Packet will be grounds for not prequalifying the Contractor, withdrawing any prior prequalification, or not awarding the contract to Contractor. Additionally, any misrepresentations or material omissions within this Prequalification Packet are considered breaches of the Project's contract (should the Contractor be awarded that contract); the City shall have the right to terminate the contract immediately without consequences, and the City retains all other legal rights available to the City for breach of contract.

I, the undersigned, hereby give permission to the City of Oxnard and its employees, representatives and agents to contact references of Contractor and/or its officers, managers, members, general partners, limited partners and other owners (collectively, the "Owners") and/or request information from other clients for whom Contractor and/or its Owners have worked. This permission includes the City reviewing any criminal records of the Owners and obtaining public records regarding the Owners, such as records of arrests, indictments, convictions, civil judicial actions, tax liens, and outstanding judgments. I have authority to waive, and I do waive, any and all rights and claims Contractor and its Owners, employees, representatives and agents may have against the City, its employees, representatives and agents, as well as any client or its employees, representatives and agents providing feedback or the mentioned records regarding any actions taken pursuant to, related to or incidental to, the authorization given in this paragraph.

I am executing this Prequalification Packet on behalf of Contractor. I warrant and represent that: 1) I am listed in the Contractors State License Board's records for Contractor; 2) I have the authority to execute this Prequalification Questionnaire on behalf of Contractor; 3) I have the authority to bind Contractor to the answers provided in this Prequalification Questionnaire; and 4) if any information provided herein becomes inaccurate, I will immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

(Please sign in ink.)

Date: 4/30/19

GI ENERGY
Contractor's Name

T. D. CHADNICK CEO
Name and Title

[Signature]
Name and Title

The City requires the following: for a corporation or s-corporation, two signatures: (1) the Board President, CEO or Vice President, and (2) the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer; for an LLC, two signatures, both of whom must be managers of the LLC; and for a partnership or limited partnership, the signatures of all partners. If your entity has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind Contractor.

REQUEST FOR BUDGET APPROPRIATION

Department: PUBLIC WORKS **Date:** May 30, 2019
Project/Program
Manager: TATIANA ARNOUT **Phone:** 805-385-9341

Reason for Appropriation:

APPROPRIATE FUNDS TO AGREEMENT A8145 TO GI ENDURANT LLC FOR THE OXNARD
WASTEWATER TREATMENT PLANT PROJECT 186610.

Accounts and Descriptions

AMOUNT

Fund: 621 W/W TREATMENT OPERATING

Expenditures/Transfers Out

COGENERATORS REHAB (Project Number 186610)

621-6631-821-8605	IMP NOT BLDG-MAJOR R	312,625
621-6631-821-8802	CONSTRUCTION OTHER	45,724

Sub-total Expenditures 358,349

Net Change to Fund Balance **(358,349)**

Net Appropriation Change **358,349**

Approvals

Department Director

Chief Financial Officer

OWTP Cogeneration Engine Refurbishment Phase II

**Public Works and Transportation
Committee Meeting of June 11, 2019**

Recommendation

That the Public Works and Transportation Committee recommend the City Council:

1. Award and authorize the Mayor to execute Agreement A-8145 to GI Endurant, LLC in the amount of \$499,632 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;
1. Approve \$49,963 for Project contingency for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42;
1. Approve \$49,963 for engineering, inspection, survey and project management for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project PW 19-42; and
1. Approve an appropriation of \$358,349 for the Oxnard Wastewater Treatment Plant Cogeneration Engine Refurbishment Phase II, Project No. 186610.

Background

- The Oxnard Wastewater Treatment Plant (OWTP) Cogeneration Engine Refurbishment project is part of the Wastewater Division five year capital improvements program.
- Power is produced at the OWTP facility through three generator (cogen) units installed in 1975.
- Because of their age, the units require increased maintenance and have become unreliable.

Background

- On two occasions in 2017, the OWTP lost SCE power while the cogen facility was offline due to failures.
- Power outage and cogen failure caused plant flow to bypass the secondary treatment process resulting in regulatory permit violations.
- This contract will be for the second phase overhaul, of the third and final cogen engine.

Discussion

- The notice inviting formal bids (NIFB) on the Project was published on April 11, 2019, and all bids were due on April 30, 2019.
- The NIFB required bidders to be qualified to work on GE Waukesha Engines and Emerson/Kato Generators in order to bid on this Project.
- Based on lessons learned from the current cogen refurbishments, this contract includes supplemental work allowance for additional items that may arise.

Discussion

- Only one bid was received for this project from GI Endurant, LLC in the amount of \$499,632 and its bid is responsive to the City's NIFB.
- Staff does not believe rebidding the project will result in additional bids because of the specialized nature of the work that needs to be performed.
- Following this determination, procurement staff reviewed all documentation received from GI Endurant and its subcontractor.

Discussion

- Additionally, funds estimated in the amount of \$99,926 are necessary for the completion of the Project.
 - \$49,963 is required for construction contingency
 - \$49,963 for the cost for engineering services and City staff time
- The total estimated cost of the Project is \$599,558 (\$499,632 + \$49,963 + \$49,963).

Financial Impact

- The project will require an appropriation in the amount of \$358,349 from the wastewater operating fund account 621-6631-821-8209.
- The account has an approximate unaudited unencumbered balance of \$2,184,703 net of this appropriation.

Questions?



**PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT**

**REPORTS
AGENDA ITEM NO. D.2.**

DATE: June 11, 2019

TO: Public Works and Transportation Committee

FROM: Rosemarie Gaglione, Public Works Director, (805) 385-8055, rosemarie.gaglione@oxnard.org

SUBJECT: Award Agreement with American Golf Corporation to Operate the River Ridge Golf Course.
(10/5/5)

RECOMMENDATION

That the Public Works and Transportation Committee recommend the City Council:

1. Approve the fee-for-service management agreement between American Golf Corporation (AGC) and the City of Oxnard (City) for the management, operation and maintenance of River Ridge Golf Club (RRGC) with no City subsidy for a three-year term with options to renew for two additional one-year terms, exercised at the sole discretion of the City, and
2. Exempt the golf course from the City's Living Wage Policy.

BACKGROUND

River Ridge Golf Club (RRGC) is the City's municipal golf complex consisting of two 18-hole golf courses. The original Vineyard course opened in 1986 and the second course, Victoria Lakes, opened with nine holes in 2004 and the other nine holes in 2008. Other facilities include two large practice putting greens, electric golf cart storage facility, three-level clubhouse with pro shop, snack bar, banquet room, and administrative offices, a lighted driving range with fifty tee stations, two practice chipping areas, and two practice sand bunkers.

The City has contracted operation of the golf course over the years. The present structure is a "hybrid" management agreement that has been in place with High Tide and Green Grass providing all areas of on-site management for the facility. The agreement with High Tide, last amended in 2009, expires on June 30, 2019, and they are not considering continuing operations beyond the termination date due to retirement.

The following sections will discuss financial aspects, water and irrigation, the bidding process, a summary of the proposed agreement and the financial impact.

DISCUSSION

The City's primary objectives are to make the golf course self-sustaining (meaning operating without any City subsidy) in the short-term and make it profitable in the long-term. Thus, the City needs to commit to a short-term contract that at minimum breaks even, during which time an overall master plan for the long term success of RRGC can be developed.

The tables below provide a summary of RRGC’s revenues, rounds of play and a summary fund analysis covering the past three years.

River Ridge Golf Club Historical Rounds of Play			
Calendar Year	Complimentary	Paid	Total
2016	13,002	70,955	83,957
2017	12,537	70,221	82,758
2018	9,527	67,780	77,307

River Ridge Golf Club Historical Gross Revenue			
Department	2016	2017	2018
Greens Fees	\$2,174,200	\$2,142,000	\$2,014,200
Carts	\$766,300	\$834,300	\$778,700
Practice Range	\$144,600	\$157,400	\$156,000
Merchandise	\$190,600	\$215,500	\$225,800
Snack Bar	\$470,500	\$472,100	\$444,100
Banquets	\$289,000	\$257,000	\$412,300
Miscellaneous	\$41,300	\$39,000	\$39,400
Total	\$4,835,400	\$4,846,400	\$4,926,900

The City’s general fund operating budget (subsidy) for RRGC’s for Fiscal Year 2017/2018 was approximately \$1,317,000, declining to \$922,000 in FY2018/2019.

Although there are several golf course management options, the municipal golf industry has moved almost universally to fee-for-service management agreements. The proposed fee-for-service management agreement provides the municipality with the benefits of a short term agreement, private sector management practices, a high degree of control and the greatest financial upside potential. The option of leasing the golf course to insulate the City from financial risk is not feasible in light of the desire for a short-term agreement. Under a management agreement, the City as the facility owner is responsible for funding all capital improvements, receives all revenue from operations and bears all operating expenses, including the fee to the management company for its services. The RRGC will no longer be subsidized as later discussed in this report.

WATER

Irrigation water at RRGC is supplied from ground water and reclaimed water provided by the City and other water agencies. Annual consumption ranges between 700 to 800 acre feet for the two courses. The courses currently irrigate on a cycle of two months of groundwater, followed by one month of reclaimed water. The

maximum allocation of groundwater from Water Well #18 is 600 acre feet per year at a cost of approximately \$270 per acre foot. The cost of reclaimed water is approximately \$1,455 per acre foot.

The irrigation water situation at River Ridge is complex due to potential savings in consumption, turf reduction, conservation practices, the availability of low-cost groundwater, water quality considerations and the combination of groundwater and reclaimed water. At the current reclaimed water rate of \$1,455 per acre foot, and assuming groundwater will supply two-thirds and reclaimed water one-third of the water requirements, total water costs for River Ridge currently ranges from \$500,000 to \$600,000 per year.

To reduce water operating expenses, the RRGCC will purchase Water Well #27 from the City's Water Utility at a cost of \$126,000, based on the appraisal performed by Hopkins Groundwater Consultants. This will allow for 200 to 250 acre feet of groundwater per year to be purchased at a cost of \$248 per acre foot, rather than \$1,455 per acre foot cost of reclaimed water. The purchase of Water Well #27 will reduce the annual usage of reclaimed water, potentially saving approximately \$300,000 in water expenses.

The Wagon Wheel Development Fees will be used to purchase this well (along with repaying the Water Fund loan (about \$1.05 million) and paying the new management company for the initial infusion of working capital. This development fee was established specifically for RRGCC operations, maintenance and capital when the Wagon Wheel development was approved. Currently, there's approximately \$2.2 million in the Wagon Wheel Development Fees available for the RRGCC.

BIDDING PROCESS

The City issued a request for proposals (RFP) on March 25, 2019, for the operation and management of River Ridge under a fee-for-service management agreement for a three-year term with options to renew for two additional one-year terms, exercised at the discretion of the City. The City received seven proposals from qualified professional golf course management companies. All of the proposals were responsive to the RFP requirements.

An evaluation committee consisting of three individuals (two City of Oxnard Public Works Department employees and the current General Manager of RRGCC) was assembled to review and analyze the proposals. Based on established evaluation criteria, the committee selected the top three rated firms for interviews, which were conducted on May 3, 2019. The three firms were American Golf Corporation (AGC), CourseCo Golf Management and Kemper Sports Management.

After considerable deliberation, the evaluation committee ranked AGC as the top-rated management company, recognizing that all three of the finalists are highly qualified and capable of effectively managing RRGCC. The committee was particularly persuaded by AGC's corporate resources and strong proposed marketing plan for RRGCC. In particular, AGC has proposed introduction of its Players Club, which is a monthly membership that attempts to increase utilization of the golf course at non-peak periods and creates a stable income source. RRGCC appears to be an excellent candidate for this concept because of the existing substantial unused golf course capacity and under-utilized golf practice range. AGC's extensive corporate resources, which are provided under the management fee, allow minimum on-site general and administrative support staff, thus reducing on-site operating expenses.

SUMMARY OF PROPOSED AGREEMENT

American Golf Corporation is a major golf management firm headquartered in Southern California and is the

largest operator of golf courses in the State. AGC has nearly fifty years of experience operating golf courses and a proven track record with numerous long-term agreements. In addition, AGC has been operating landfill courses since 1970 and currently manages four golf courses on landfill properties.

The agreement with AGC will commence on July 1, 2019, and will last three years, unless the City opts to extend it further by two one-year terms. The base management fee will be \$100,000 per year. In addition, the City will pay AGC an incentive management fee equal to (i) three percent of the annual threshold of adjusted net operating income per year and (ii) fifteen percent of the adjusted net operating income thereafter. The annual threshold will be increased annually by CPI.

The scope of services requires AGC to provide transition services; hire all existing employees pending background checks and drug tests; provide employee training; procure all operating equipment, supplies, and services; provide corporate oversight and support services; provide marketing and outreach; provide on-site management, maintenance and operation of the golf complex; prepare all timely performance and accounting reports and statements; partner with the City to develop a long term master plan; implement a water management plan; and maintain the adjacent football/soccer fields.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

With a new agreement with AGC, the General Fund will no longer subsidize the operations of RRG. Attachment 1 presents River Ridge Pro Forma Operating Income Projections reflecting, in part, historical performance, but also introduction of new operating programs, targeted reductions in operating expenses, and the purchase of Well #27, which will reduce irrigation water costs by an estimated savings of \$300,000 per year (the projections assume the golf course is exempt from the City's Living Wage Policy). The projected surpluses would allow for the implementation of a capital improvement or sinking fund for RRG.

As noted, River Ridge Pro Forma Operating Income Projections, Attachment 1, reflects the exemption of the Living Wage Policy and the reduction of water cost to \$400,000 per year with the purchase of Water Well #27. The below table summarizes pro forma income for three years of the projection period, compared with actual Fiscal Year 2017/2018 performance. The pro forma projections are shown under two alternative scenarios. The first is a net operating income "baseline" prepared by the City's consultant, while the second is AGC's projected income estimate. The pro forma projections do not include City administrative costs and allocations, reserves for maintenance equipment replacement, or reserves for current and future capital improvements.

Operating Income Projections – Living Wage Policy Exempt		
Year	Consultant	AGC's
Actual FY18	\$211,000	\$211,000
Year 1	\$468,000	\$526,000
Year 2	\$693,000	\$802,000
Year 3	\$543,000	\$793,000

Attachment 2, River Ridge Pro Forma Operating Income Projections, reflects the application of the Living Wage Policy and the reduction of water to \$400,000 per year due to the purchase of Water Well #27. Pro forma

projections with the Living Wage Policy applied are summarized below.

Operating Income Projections – Living Wage Policy Applied		
Year	Consultant	AGC's
Actual FY18	\$211,000	\$211,000
Year 1	\$280,000	\$338,000
Year 2	\$432,000	\$657,000
Year 3	\$280,000	\$690,000

Exempting this contract from the City's Living Wage Policy has the potential to save \$200,000 to \$300,000 per year in operating expenses, providing needed funding for existing and future capital obligations of the golf course and a reasonable cushion against operating losses if projections are not achieved for any number of reasons. Additionally, our consultant advised that many municipal golf courses do not apply living wage, even when a city otherwise has such a policy. The City of Ventura and the County of Ventura exempt their living wage policies for their golf courses. Therefore, it is recommended that City Council exempt RRGc from the City of Oxnard's Living Wage Policy so RRGc can operate on a level playing field with its principal competitors.

The new contract will require City Council appropriation of the Wagon Wheel Development Fees revenue noted above in order to authorize staff to expend funds to purchase Water Well #27 and to pay several hundred thousand dollars for working capital to AGC. The proposed FY 2019/2020 budget contains an appropriation to purchase Water Well #27 but not to provide cash as working capital to AGC. Therefore, staff will return to City Council shortly with a separate appropriation request for Fund 651-River Ridge Golf Course for AGC's working capital. If the contract is approved, there will probably also be a need to ask City Council to recognize in the FY 2019-20 budget, and in subsequent years, the gross revenue of Fund 651 and the gross expenditures. Up to now, under the current golf course management contract, only the net revenues have been appropriated in the City's budget.

Prepared by: Brian Yanez, Assistant Public Works Director

ATTACHMENTS

1. River Ridge - DRAFT Management Agreement
2. Pro Forma Living Wage Exemption
3. Pro Forma with Living Wage
4. River Ridge Golf Course PPT

DRAFT MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT ("Agreement") is made and entered into effective as of July 1, 2019 (the "Commencement Date") by and between the City of Oxnard, California ("Owner"), and AGC Management, LLC, a Delaware limited liability company ("Manager").

RECITALS

A. Manager, together with its affiliates, is engaged in the ownership, management and operation of golf courses and country clubs throughout the United States.

B. Owner is the owner of that certain real property located at Oxnard, California, known as "River Ridge Golf Club" which includes two golf courses, clubhouse and other related amenities, buildings, structures and improvements related thereto (the "Facility").

C. The Facility has previously been operated by High Tide & Green Grass, Inc. ("Prior Operator") under an agreement with the City which has expired.

D. Owner is also the owner of the football fields located adjacent to the Facility which are currently used by the Dallas Cowboys (the "Practice Fields").

E. Owner desires to utilize the services and expertise of Manager in the management, and operation of the Facility and maintenance of the Practice Fields, and Manager desires to render such services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Owner and Manager hereby agree as follows:

ARTICLE 1 - DEFINITIONS

As used in this Agreement, terms not otherwise defined in the body of this Agreement shall have the respective meanings set forth in Exhibit "A" to this Agreement.

ARTICLE 2 - TERM OF AGREEMENT

2.1 Term. The term of this Agreement shall commence on the Commencement Date and shall continue for a period of three (3) years (the "Initial Term"). Upon expiration of the Initial Term, Owner may, in its sole discretion, elect to renew this Agreement for up to two (2) additional one (1) year terms (each a "Renewal Term") by setting forth their intention to so renew in writing no later than sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and Renewal Term(s) (if applicable) are collectively referred to herein as the Term.

ARTICLE 3 - OPERATING RESPONSIBILITIES

3.1 Grant to Manager. Except as otherwise expressly provided in this Agreement, Owner grants to Manager the right to manage and operate the Facility pursuant to the terms of this Agreement, and Manager agrees it will manage and operate the Facility in accordance with the approved Annual Plan, and in a manner comparable to and consistent with the management and

operational practices of Comparable Facilities to the extent established in the Annual Plan and approved by Owner (except as otherwise set forth in this Agreement). Manager shall perform its services in a professional, timely and diligent manner. Without in any way limiting Manager's right to manage and operate the Facility in accordance with the terms of this Agreement, Manager, subject to the approval of Owner and in accordance with the Annual Plan and the terms of this Agreement, shall have the authority and responsibility to: (a) implement each approved Annual Plan; (b) determine, establish, and implement the policies, standards, and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (c) hire, train, and supervise the general manager, course superintendent, and all Facility employees; (d) supervise and direct all phases of advertising, sales, marketing and business promotion for the Facility; and (e) establish payroll procedures and functions for the Facility. To the extent the foregoing duties are discussed, detailed or included in the Annual Plan, Manager will carry out such duties consistent with the Annual Plan. Owner agrees it will reasonably cooperate with Manager to permit and assist Manager to carry out its duties under this Agreement provided Manager provides reasonable advance notice for such cooperation and assistance. Manager shall work with, and obtain any necessary approvals from, the Owner's designated project manager, the City of Oxnard City Manager, and/or the Owner's designated Department Director.

3.2 Annual Plans.

3.2.1 Preparation. **[OPEN ISSUE – OWNER'S OPERATING YEAR AND TIMING AND APPROVAL PROCESS]** Manager will submit to Owner at least thirty (30) days in advance of each Operating Year an "Annual Plan" consisting of (a) a budget which shall include for the ensuing year estimates covering the projected revenues of the Facility (broken down on a line item basis) and the projected expenditures for (i) property operations and ordinary repairs, replacements, alterations and maintenance, including the Practice Fields (ii) Furnishings and Equipment and Operating Inventory, (iii) advertising, sales, and business promotion and (iv) employee Compensation and (b) an operating/business plan for the Facility setting forth a marketing and promotions plan, a schedule of proposed golf charges, an operating schedule (which shall include hours of operation and staffing levels), a maintenance plan, and to the extent applicable, membership sales plans, membership dues and initiation fee schedules. Owner acknowledges that the Annual Plans and budgets and operating/business plans contained therein are estimates and will not and do not constitute a guarantee of the actual revenues or expenses of operating the Facility. The parties understand that, as provided in Article 10, budgets for Major Capital Improvements will be treated separately and will not form part of the Annual Plans. The Annual Plan for the initial Operating Year is attached as Exhibit "B" to this Agreement.

3.2.2 Approvals. Each Annual Plan shall be subject to the prior written approval of Owner, and the new Annual Plan for a given Operating Year cannot go into effect without such approval from Owner, such approval not to be unreasonably withheld. It is contemplated by the parties that the Annual Plan will be agreed upon by the parties not later than thirty (30) days following delivery of the Annual Plan by Manager to Owner. If Owner fails to advise Manager of any objections to the Annual Plan within such 30-day period, then Owner shall be deemed to have approved the Annual Plan as submitted. In the event of a dispute with regard to an Annual Plan, the parties shall use good faith efforts to resolve such dispute. Pending the resolution of such dispute, Manager shall continue to manage and operate the Facility in accordance with the standards set forth in this Agreement and the most recent approved Annual Plan, as it may have been mutually

amended by the parties during the preceding year in accordance with the Agreement, at a level of expenditures comparable to those of the preceding year subject to reasonable increases in Operating Expenses requested by Manager due to (a) increases in the number of guests using the Facility, (b) increases in Gross Revenues, or (c) other matters beyond the reasonable control of Manager (e.g., without limitation, increases in utility charges, etc.). Once approved, Manager may propose amendments or revisions to the Annual Plan to take into consideration variables or events that did not exist, or could not be anticipated by Manager, at the time the Annual Plan was prepared. Any such proposed amendments or revisions shall be submitted in writing and shall be subject to Owner's prior approval.

3.2.3 Emergency Expenditures. Notwithstanding anything in this Agreement to the contrary, in the event an emergency arises by act of God or any event or act beyond the control of Manager, or a dangerous condition exists that requires immediate repair, or a governmental directive or order is issued to Owner, Manager is authorized to take such actions as may in its reasonable discretion be required (including expending any funds reasonably necessary to respond to such condition or event); provided, however, that Manager shall immediately notify Owner of the emergency situation (or governmental directive or order) and the action Manager proposes to take, or has taken (including the amount of any expenditures).

3.3 Technical Assistance Services. During the Term, Manager will provide, as needed, certain supervisory and consulting services to the Facility from Manager's regional and corporate technical assistance services program, including business planning and budgeting, Capital Improvement planning, training, security, marketing and sales, central purchasing, merchandising, food and beverage, maintenance, human resources, and legal compliance. Except as provided in Section 3.4 below, these services will be provided by Manager without any additional charge to Owner.

3.4 Special Consulting Services. In addition to the services described in Section 3.3 above, upon Owner's prior written request and approval, Manager may provide to the Facility additional consulting services not contemplated by this Agreement which would not otherwise be performed in the ordinary course of day-to-day operations of the Facility, including but not limited to special legal consultation, construction and design consultation and construction supervision related to Major Capital Improvements ("Special Services"). Upon Owner's written request for the performance of a Special Services project, Manager shall prepare a scope of work and budget and submit to Owner for review and approval. Manager shall not commence any Special Services project without Owner's prior approval.

3.5 Responsibilities of Manager. Without in any way limiting Manager's right and obligation to manage and operate the Facility in accordance with and subject to the Annual Plan, Manager shall, in its own name or in the name of Owner or as the authorized agent of Owner as may be applicable, perform the following services, or cause the same to be performed for the Facility:

(a) enter into contracts for the furnishing of utilities and maintenance and other services to the Facility, in Manager's name, provided however that (a) any such contract which is for a term greater than twelve (12) months and for an aggregate cost in excess of five thousand dollars (\$5000) and is not otherwise approved via an Annual Plan shall be approved in advance by

Owner, and (b) in the event of a termination of this Agreement for any reason, Owner or Owner's designee shall assume any such contracts which are then in effect and unexpired at the time of such termination and indemnify and hold harmless Manager from and against any additional obligations thereunder which may accrued after termination of this Agreement;

(b) make all repairs, decorations, revisions, alterations and improvements to the Facility as shall be reasonably necessary for maintenance of the Facility in good, safe and sanitary order, condition and repair, and additionally perform all necessary maintenance and repairs to the Practice Fields, including without limitation, the annual maintenance services described on Exhibit "C" attached hereto and in at least the same manner as described on Exhibit "C-1"; all such maintenance, repairs, decorations, revisions, alterations and improvements noted in this section to be Operating Expenses of the Facility;

(c) incur such expenses as shall be necessary for the operation and maintenance of the Facility to the quality standards contemplated by this Agreement and the Annual Plans, including without limitation incurring lease expenses for Furnishings and Equipment and costs for Operating Inventory, expenses for insurance premiums in accordance with insurance coverage required hereunder, and payment of attorney's fees and other costs of legal compliance;

(d) maintain a level of Operating Inventory necessary to satisfy the quality standards contemplated by this Agreement and the Annual Plans and to supply the needs of the Facility and its customers;

(e) apply for, and use its commercially reasonable efforts to obtain and maintain, in addition to the liquor license described in section 3.8 below, all licenses and permits reasonably required by Owner (or by applicable Legal Requirements) in connection with the operation and management of the Facility, in Manager's name; and Owner agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with Manager in the application for, and obtaining and maintenance of, such licenses and permits;

(f) use its commercially reasonable efforts to do, or cause to be done, all such acts and things in and about the Facility as shall be reasonably necessary to comply with all Legal Requirements, and to discharge any lien, encumbrance or other charge on the Facility, including, with Owner's prior written consent, hiring legal representation and paying attorney's fees, as an Operating Expense of the Facility, as necessary to comply with Legal Requirements and defend the Facility against legal claims;

(g) maintain a method of accounting in accordance with generally accepted accounting principles consistently applied ("GAAP") which accurately reflects the Gross Revenues and Operating Expenses and disbursements of Manager in connection with the Facility's operations;

(h) routinely inspect and report on the condition of golf course improvements, facilities and equipment;

(i) submit a 5-year Capital Improvements program plan, updated annually, to Owner before the end of November of each contract year;

- (j) assist, as needed, in the preparation of the Master Plan for the Facility;
- (k) work with Owner in establishing realistic goals and practices in limiting golf course irrigation water consumption;
- (l) allow the meeting room to be available for Owner meetings at no cost to Owner unless the room has been rented and generating revenue;
- (m) use commercially reasonable efforts to eliminate or discourage coots at the Facility using current methods (steel shot) and notify the homeowner associations prior to implementation. If Owner deems the eradication of the coots an undesirable solution, Manager's alternative approach would include a "harassment program" and use of granular insecticides to discourage the coots; and
- (n) comply with all applicable laws, ordinances and regulations, including Owner's Living Wage Policy (a copy of which is attached hereto as Exhibit "D") and State-required prevailing wages, if applicable. **[OPEN ISSUE-OWNER WILL BE REQUESTING A WAIVER OF SAID POLICY BUT IT IS UNKNOWN IF THE WAIVER WILL BE GRANTED]**

3.6 Personnel.

3.6.1 General. Subject to the Annual Plan and the terms of this Agreement, Manager shall employ all of the employees of the Facility, and all such employees shall be deemed employees of Manager and not employees of Owner or joint employees of Owner and Manager. Manager shall recruit, hire, train, discharge, promote and supervise the management staff of the Facility (i.e., the general manager or course manager, the assistant managers, the course superintendent, department heads and other key personnel), and Manager shall supervise through the management staff the recruiting, hiring, training, discharge, promotion and work of all other employees of the Facility. In the event that Owner is dissatisfied with the performance of any Manager personnel, the following procedure shall be followed: (i) Owner shall communicate any complaints regarding personnel below the rank of general manager to the general manager and shall communicate complaints regarding the general manager to Manager's regional manager for the region in which the Facility is located, and (ii) Manager shall reasonably and promptly investigate and take appropriate action, as determined by Manager, with respect to Owner's complaints. All employees of the Facility shall be properly qualified for their positions. The Compensation of the management staff and all other Facility employees shall be approved by Owner as part of the Annual Plan and be an Operating Expense of the Facility payable by Owner in accordance with this Agreement.

3.6.2 Benefit Plans. Manager shall have the right to provide eligible employees of the Facility with profit sharing and other employee retirement benefits and disability, health and welfare benefits and other benefit plan or plans now or hereafter available to employees of Other Manager Facilities, if such benefits have been approved in the Annual Plan, and to charge the Facility with its allocable share of such Manager plan or plans.

3.6.3 Temporary Assignment of Other Manager Personnel. If Manager shall reasonably deem it advisable, and after Owner's prior written approval, Manager may temporarily

assign to the Facility the general manager, the head golf professional and other members of the management staff from the employees of Manager or Affiliates of Manager or from the staff of Other Manager Facilities. During such time as these employees are temporarily assigned to the Facility, all such employees will be paid their regular Compensation, and the pro-rata share of such employees' Compensation equal to the actual time such employees worked at the Facility shall be an Operating Expense of the Facility.

3.6.4 *Nondiscriminatory Treatment.* Manager shall not unlawfully discriminate against any individual based on race, color, religion or religious creed, national origin, ancestry, ethnic group identification, primary language, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, sexual orientation, age, immigration status, citizenship or military and veteran status. Manager understands and agrees that it is bound by and will comply with all legal nondiscrimination mandates. Manager shall take commercially reasonable steps to ensure that its subcontractors, if any, comply with this Section 3.6.4.

3.7 Restrictions on Use of Facility.

(a) The Facility shall be used solely for the operation of a golf club, and to the extent applicable, a retail golf shop, bar and restaurant, banquet facility, driving range and such other uses and amenities as may be approved by Owner and are compatible with the operation of a golf course including, by way of illustration and not limitation, a golf school, a sports and entertainment facility, convention facilities, community special events, disc golf and a foot golf program.

(b) Manager agrees not to willfully carry on any dangerous activity at the Facility, or to use the Facility for any purpose which would increase existing rates of insurance or cause cancellation of any insurance policy carried by Owner or Manager. Manager shall cause the Facility to comply with all Legal Requirements relating to the condition, use and occupancy of the Facility.

3.8 **Liquor License.** Manager shall, as an Operating Expense of the Facility, obtain from Prior Operator the current liquor license issued by the State of California in Manager's name, permitting the sale of alcoholic beverages (including beer, wine and liquor) at the Facility. Manager, as Owner's agent, shall be solely responsible for liquor sales at the Facility and agrees to comply with all requirements of the rules and regulations of the State of California governing the sale of alcoholic beverages. As an Operating Expense of the Facility, Manager shall maintain in its name (and Owner shall reasonably cooperate with Manager in maintaining) the liquor license(s) in good standing, pay all required fees in connection therewith, and otherwise ensure the proper right and permission to sell alcoholic beverages at the Facility. Upon the termination of this Agreement for any reason, Manager shall cooperate in all respects and take all steps necessary to effectuate the transfer of the Facility's liquor license to Owner or Owner's designee. From and after the termination date and continuing until the date which is six (6) months thereafter, Manager shall cooperate with Owner in Owner's efforts to obtain its own liquor licenses (or a transfer of Manager's liquor licenses) to serve alcoholic beverages at the Facility. Manager agrees, on the termination date, to enter into (or cause the holders of the current liquor licenses to enter into) mutually acceptable bills of sale, interim management agreements, concession agreements, leases

and other documents reasonably relating to, among other things, the continued sale and service of alcoholic beverages at the Facility pending the issuance of all appropriate licenses and permits to Owner.

ARTICLE 4 – INSURANCE

Note: the following sets forth the provisions and limits of Manager’s current insurance program. Manager is open to Owner providing some or all necessary coverages, where possible, if Owner prefers to do so (noting that Manager must carry workers compensation and GL/liquor liability since it will employ the personnel and hold the liquor license). Manager is also open to pursuing with its carriers separate policies which are specific to the Facility, and outside its standard program, if requested by Owner.

4.1 Coverage.

(a) **[TO BE REVIEWED BY RISK MANAGEMENT]** Manager agrees to procure and maintain, as an Operating Expense of the Facility, at all times during the Term, the insurance set forth on Exhibit E as well as a minimum of the following insurance:

(i) insurance on the Facility and contents, including without limitation the Furnishings and Equipment and Operating Inventories, against loss or damage by fire, lightning and/or any other perils insurable under the form of “all risk” coverage then available (including specifically irrigation and/or sprinkler system leakage damage, vandalism and malicious mischief, if available), in an amount equal to not less than eighty percent (80%) of the full replacement value of the Improvements and contents and with no co-insurance provisions, with a self-insured retention of \$250,000 for structures, contents and business insurance, and \$750,000 for golf course improvements, subject to higher sub-limits for named storm, hurricane and wind damage.

(ii) business interruption insurance covering actual losses sustained due to fire, lightning and other perils insurable under the form of “all risk” coverage then available (including specifically irrigation and/or sprinkler system leakage damage, vandalism and malicious mischief, if available) in an amount equal to the annual business interruption values and with no co-insurance provisions. Manager shall be named as a loss payee to the extent of Manager’s interests under this Agreement.

(iii) comprehensive general liability insurance, including without limitation bodily injury, personal injury, property damage, products liability, cyber liability, contractual liability covering the provisions of this Agreement, and liquor liability, in an amount not less than Ten Million Dollars (\$10,000,000) single limit per occurrence, and with a self-insured retention of Two Hundred and Fifty Thousand Dollars (\$250,000.00) per occurrence, to be paid as an Expense of the Facility. Manager shall be named as the insured under such policy, and Owner shall be named as additional insured.

(iv) automobile liability insurance, if applicable, in an amount not less than One Million Dollars (\$1,000,000) single limit per occurrence. Manager shall be named as the insured under such policy, and Owner shall be named as additional insured.

(v) Manager agrees to procure and maintain, as an Operating Expense, at all times during the Term, worker's compensation insurance covering all Facility employees who are Manager's employees, as required by law covering all Facility employees who are Manager's employees.

(vi) Comprehensive crime insurance, in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence.

(b) Manager shall have the right to raise the minimum amount of any insurance to be maintained with respect to the Facility under Subsections 4.1(a) above to make such coverage comparable to the amount of insurance carried with respect to Other Manager Facilities, taking into account the size, character and location of the Facility. At least sixty (60) days prior to the beginning of each Operating Year, the party procuring such insurance will submit to the other party a schedule setting forth any changes to the insurance to be maintained by the procuring party during the ensuing Operating Year in connection with the Facility.

(c) The types of insurance and the coverage amounts specified in this Section 4.1 are the minimum insurance recommended by Manager in connection with the operation of the Facility. Owner acknowledges and understands that Manager has made no representations or warranties that such insurance is adequate to protect Owner. If Owner believes that any such insurance is insufficient, Owner shall provide, at Owner's expense, such additional insurance as Owner deems adequate. Manager shall not be responsible for any losses, damages, liability, or expenses that may not be covered by any of the insurance specified in this Section 4.1.

4.2 Policies and Endorsements.

4.2.1 *Policies.* All insurance coverage provided for under Section 4.1 above shall be secured through policies issued by insurance companies of good reputation and of sound and adequate financial responsibility which are approved to do business in the State of California. The party procuring such insurance shall deliver to the other party all of the policies of insurance so procured, naming the other party as an additional insured, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to renewal policies not less than ten (10) days prior to the respective dates of expiration.

4.2.2 *Endorsements.* All policies of insurance provided for under this Article 4 shall, to the extent obtainable, have attached an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager. All insurance policies required under Section 4.1 shall contain an endorsement to the effect that such insurance shall be primary and non-contributory to any similar insurance that may be carried by the other party.

4.2.3 *Blanket Policies.* Any insurance policies provided by Owner or Manager under this Article 4 may be affected under policies of blanket insurance which cover other properties in addition to the Facility, and in such case an allocable portion of the premiums for such blanket policies of insurance, as established in the approved Annual Plan, shall be charged to the Facility as an Operating Expense.

4.3 Waiver of Subrogation. Neither Manager nor Owner shall assert against the other, and Manager and Owner hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation and maintenance of the Facility, to the extent that the same are covered by the insurance required under this Article 4. Owner and Manager hereby grant to each other, on behalf of any insurance company providing insurance under this Agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy. Owner and Manager shall give notice to the insurance companies providing insurance under this Agreement of the mutual waiver of subrogation contained in this Section 4.3, and Owner and Manager shall cause each such insurance company to provide a written subrogation waiver indicating that such insurance company waives all right of recovery by way of subrogation which such insurance company may acquire against Owner or Manager (as the case may be) and their insurance companies.

ARTICLE 5 - MANAGEMENT FEE

5.1 Base Management Fee. In consideration of Manager's services during the Term, Owner shall pay to Manager a "Base Management Fee" equal to One Hundred Thousand Dollars (\$100,000) per year, payable in twelve (12) monthly installments of \$8,333.33. The Base Management Fee shall be paid to Manager in accordance with Section 5.3 of this Agreement.

5.2 Incentive Management Fee. [TO BE DISCUSSED]

5.2.1 In addition to the Base Management Fee, Owner shall further pay to Manager an "Incentive Management Fee" equal to (i) three percent (3%) of the first \$1,050,000 of Adjusted Net Operating Income for a given Operating Year (the "Annual Threshold") and (ii) fifteen percent (15%) of the Adjusted Net Operating Income in excess of the Annual Threshold for a given Operating Year (the "15% Fee"). The Annual Threshold shall be increased annually by CPI. **[OPEN ISSUE - \$900,000 ANNUAL THRESHOLD IF THE FACILITY IS NOT EXEMPTED FROM LIVING WAGE ORDINANCE]**

5.2.2 **[APPLICABLE IF FACILITY IS NOT EXEMPTED FROM LIVING WAGE ORDINANCE]** In addition to the Base Management Fee, Owner shall further pay to Manager an "Incentive Management Fee" equal to (i) three percent (3%) of the first \$900,000 of Adjusted Net Operating Income for a given Operating Year (the "Annual Threshold") and (ii) fifteen percent (15%) of the Adjusted Net Operating Income in excess of the Annual Threshold for a given Operating Year (the "15% Fee"). The Annual Threshold shall be increased annually by CPI.

5.2.3 **[OPEN ISSUE]** If, in a given Operating Year, Net Operating Income is less than \$0.00, the Incentive Management Fee for such Operating Year shall be reduced by an amount equal to the difference between \$0.00 and actual Net Operating Income. So, for example, if Adjusted Net Operating Income for a given Operating Year is \$100,000 but Net Operating Income for the same Operating Year is (-\$1000), the Incentive Management Fee would be reduced from \$4000 ($\$100,000 \times .04 = \4000) to \$3000 ($\$4000 - \$1000 = \3000). Provided however, (a) the amount of the reduction may not be greater than the amount of the Incentive Management Fee for the given Operating Year, (b) in any subsequent Operating Year for which cumulative Net Operating Income is positive, any reductions in the Incentive Management Fee from a prior

Operating Year or Years will be added to the Incentive Management Fee payable for such positive Operating Year, but only to the extent that the positive Net Operating Income exceeds the negative Net Operating Income from the prior Operating Year or Years, and (c) in the event that combined water and power costs in any Operating Year exceed the Utilities Baseline, then for purposes of this paragraph Net Operating Income shall be calculated as if combined water and power costs for such Operating Year were equal to the Utilities Baseline. Notwithstanding the foregoing, the parties agree that only the 15% Fee portion of the Incentive Management Fee will be subject to reduction during the first Operating Year.

5.3 Payment Schedule. Owner shall pay Manager the Base Management Fee in advance, no later than five (5) days following the first day of each month during the Term. Owner shall pay the Incentive Management Fee, if any, to Manager within thirty (30) days following the final calculation of financial results for the Facility for the proceeding Operating Year. The Base Management Fee and Incentive Management Fee are sometimes referred to herein as “Fees.” Owner shall permit and hereby authorizes Manager to pay to Manager, from the Operating Account, all Fees which are legally due and owing hereunder.

ARTICLE 6

BANK ACCOUNTS; WORKING FUNDS; RECORDS AND REPORTS; REMOVAL OF PROPERTY

6.1 Bank Accounts. In connection with operation and management of the Facility, the following bank accounts shall be established by Owner and Manager in a bank or banks approved by Owner, and shall be subject to Owner’s control, audit and inspection (the “Bank Accounts”):

6.1.1 Owner Account and Operating Account. [TO BE DISCUSSED] Owner shall establish a bank account for the Facility at a banking institution or institutions reasonably selected by Owner, such account to be in Owner’s name (the “Owner Account”). Owner and Manager shall also establish a bank account for the Facility at a banking institution or institutions reasonably approved by Owner, such account to be in Manager’s name but subject to Owner’s control (the “Operating Account”). Manager will collect, receive and deposit into the Owner Account all monies received by Manager from the operation of the Facility. Owner shall deposit all funds required to be furnished by Owner as working capital funds under Section 6.3 of this Agreement into the Operating Account, and Manager will disburse those monies from the Operating Account only for the purposes set forth in this Agreement. Notwithstanding the provisions of the foregoing, Manager shall be entitled to maintain funds in reasonable amounts in “cash register banks” or in petty cash funds at the Facility but Manager shall not open any other bank accounts related to the Facility except for the Operating Account. All records and bank statements shall be subject to access and inspection by Owner pursuant to the terms recited herein. All Gross Revenues of the Facility shall be collected, received and deposited by Manager exclusively through the Owner Account. Upon termination of this Agreement for any reason, any funds remaining in the Operating Account after payment of all final expenses, costs and obligations of the Facility incurred during the Term shall be paid to Owner.

6.2 Expenditures. Manager is authorized to pay, from the Operating Account such amounts at such times as are required in connection with the ownership, operation, maintenance, repair, and improvement of the Facility and related facilities and Manager's performance under this Agreement in accordance with the approved Annual Plan, subject to the provisions of this Agreement, including but not limited to all amounts specifically payable to or reimbursable to Manager hereunder.

6.3 Account Funding. [OPEN ISSUE – WORKING CAPITAL AMOUNT] Owner shall deposit into the Operating Account all funds required for Manager to operate and maintain the Facility in accordance with this Agreement and the Annual Plans, including, without limitation, funds for Manager to timely fund Operating Deficits, if any. Upon execution of this Agreement, Owner shall cause the sum of \$200,000.00 (the "Working Capital Amount") to be deposited into the Operating Account as initial working capital for the Facility. On the first day of each month during the Term, Manager shall notify Owner of the total funds then in the Operating Account, and within three (3) business days following such notification, Owner shall deposit additional funds into the Operating Account in the amount required to bring the Operating Account balance to an amount necessary to pay the projected Operating Expenses for the upcoming month. So, for instance, if Manager notifies Owner that, as of the first day of a given month the balance in the Operating Account is \$200,000.00, and the projected Operating Expenses for the upcoming month are \$300,000, then Owner will deposit an additional \$100,000.00 into the Operating Account within three business days. Manager shall not, under any circumstance, be required to, or be deemed to have any duty to, advance any of its own funds for the operation of the Facility. Manager shall analyze all bills received for services, work and supplies in connection with maintaining and operating the Facility. Manager shall pay, on behalf of Owner, all such bills in accordance with the Annual Plan as and when the same shall become due and payable. Manager shall exercise commercially reasonable efforts to pay all bills within the time required to obtain any discounts which may be available. If there are insufficient funds in the Operating Account to make any payment, Manager shall promptly notify Owner prior to any delinquency so that Owner shall have an opportunity to transfer sufficient funds for Manager to make such payment prior to the imposition of any penalty or late charge as provided herein. In the event that Manager should advance any of its own funds for the operation of the Facility due to the failure of Owner to timely fund the Working Capital Amount as required hereunder, or to make any other payment to Manager required hereunder, Manager shall be entitled, without any further approval or authorization of Owner, to reimburse itself for such advances, from the Operating Account upon funding of the Operating Account by Owner.

6.4 Insufficient Funds. Manager shall monitor the Facility's cash flow and shall provide to Owner a report detailing projected cash flow in the event that Manager projects an Operating Deficit to occur within thirty (30) days of providing such report. If at any time funds in the Operating Account, including the anticipated monthly funding of the Working Capital Amount by Owner as set forth in Section 6.3, shall be projected to be or are insufficient to pay the Facility's Expenses for the following month ("Operating Deficits"), Manager shall notify Owner and request a sufficient additional amount ("Additional Working Capital") to satisfy same so that Manager will have sufficient funds in the Operating Account to prevent any delinquency in payment for such expenses, and Owner agrees to deposit such funds within seven (7) days after Manager notifies Owner. Manager shall not be obligated to advance any of its own funds to or for the account of the Facility or Owner, nor to incur any liability unless Owner has furnished Manager

with funds necessary for the discharge thereof. In the event Owner fails to timely provide Manager sufficient Additional Working Capital to pay expenses, Manager shall be under no obligation to pay any bill if there are insufficient funds in the Operating Account. Notwithstanding the foregoing, if Manager advances any funds in payment of an expense authorized by the Annual Plan, or an emergency expenditure under Section 3.2.3 herein, Manager may reimburse itself from the Operating Account.

6.5 Accounting Procedures.

6.5.1 Inspection and Disclosure of Records. Upon fifteen (15) days' advance written notice to Manager setting forth the time of inspection and records to be inspected, Owner or its authorized auditors and representatives shall have access to and the right to audit and reproduce any of Manager's records related to the generation of Gross Revenues to the extent Owner deems necessary to ensure Owner is receiving all monies to which Owner is entitled under this Agreement or for other purposes relating to this Agreement. Manager acknowledges that the Owner must comply with the California Public Records Act (Cal. Gov. Code §§ 6250 et seq.). Accordingly, any and all records related to Manager's performance under this Agreement are subject to public disclosure at any time, without notice, pursuant thereto, including but not limited to this Agreement in its entirety.

6.5.2 Records Preservation. Manager shall maintain and preserve all such records for a period of at least three (3) years after termination of this Agreement. If Manager fails to make such records available within Los Angeles County, California or at a mutually agreed upon place, Manager shall promptly reimburse Owner for all reasonable costs incurred in conducting the inspection at another location, including but not limited to expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

6.6 No Default due to Lack of Funds. If Manager is unable to perform any of its agreements or covenants under this Agreement because of the failure on the part of Owner to provide the funds pursuant to Section 6.4, such failure of performance on the part of Manager shall not be deemed a default on the part of Manager and shall not give rise to any right of termination, damages or any other remedy against Manager, unless the failure to provide the funds is due to the occurrence of a breach of this Agreement by Manager or the gross negligence, willful misconduct or fraud by Manager.

6.7 Books and Records. Manager shall keep full and accurate books of account and such other records as are necessary to reflect the results of the operation of the Facility. For this purpose, Owner agrees it will make available to Manager, or Manager's representatives, all books and records in Owner's possession relating to the Facility, including contract documents, invoices and construction records. All books and records for the Facility shall be located at the Facility.

6.8 Reports to Owner. Manager will deliver, or will cause to be delivered, to Owner the following forecasts and statements:

(a) within twenty (20) days after the end of each calendar month, an update to the Annual Plan together with monthly and year-to-date financial statements which shall include a

balance sheet, a profit and loss statement (on an accrual basis) showing the results of operation of the Facility for such month and for the year to date; and

(b) within sixty (60) days after the end of each Operating Year, financial statements, including a balance sheet, a profit and loss statement and actual versus budget comparison showing the results of operation of the Facility for such year (it being understood and agreed that such annual statement will reflect the annual Base Management Fee paid to Manager, calculated as provided in Article 5).

6.9 Accounting Firm; State Audit. Manager shall, if requested by Owner, hire an independent certified public accounting firm selected by Owner to audit the financial statements required under this Agreement and/or all other records or written materials used by Manager in generating the financial statements or perform agreed upon procedures requested by Owner. Manager shall promptly furnish all documents requested by Owner, train the accounting firm with respect to the use and application of Manager's accounting software and supervise the work of the accounting firm. All fees and charges of the accounting firm shall be an Operating Expense of the Facility, unless the audit determines that an error of greater than five percent (5%) was made by Manager, in which case the costs of the audit will be paid by Manager and not as an Operating Expense of the Facility. Further, the State Auditor may examine and audit Manager for a period of 3 years after final payment under the Agreement. Regardless of whether a State audit is permitted, Manager shall maintain and preserve all such records for a period of at least 3 years after final payment under the Agreement or until an audit has been completed and accepted by Owner, whichever occurs later.

6.10 Manager Accounting Software; Other Personal Property Owned by Manager. The parties acknowledge and understand that the accounting software used at the Facility is owned by Manager, and Owner shall have no rights or interests in such software. Upon the expiration or earlier termination of this Agreement, the accounting software and other personal property at the Facility owned by Manager shall be removed from the Facility by Manager; provided, however, the financial data of and related exclusively to the Facility shall remain the property of Owner.

ARTICLE 7 - TERMINATION RIGHTS

7.1 Termination by Owner. Owner shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(a) Manager fails to keep, observe or perform any material covenant, agreement, term or provision of this Agreement, to be kept, observed or performed by Manager including, without limitation, Manager's failure to maintain, market, and promote the Facility in the manner required by this Agreement, and such default continues for a period of thirty (30) days after written notice of such default by Owner to Manager; or

(b) (i) Manager applies for or consents to the appointment of a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets; (ii) Manager files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) Manager files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against Manager;

(iv) Manager admits in writing its inability to pay its debts as they come due; (v) Manager makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization of Manager or appointing a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

Owner's right to terminate pursuant to this Section 7.1 shall be exercised upon thirty (30) days additional written notice to Manager given at any time after the applicable cure period has expired. Owner's termination notice shall specify the effective date of such termination.

7.2 Termination by Manager. Manager shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(a) Owner fails to keep, observe, or perform any other material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Owner, and such default continues for a period of thirty (30) days after notice of such default by Manager to Owner; or

(b) (i) Owner applies for or consents to the appointment of a receiver, trustee or liquidator of Owner or of all or a substantial part of its assets; (ii) Owner files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) Owner files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against Owner; (iv) Owner admits in writing its inability to pay its debts as they come due; (v) Owner makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Owner a bankrupt or insolvent or approving a petition seeking reorganization of Owner or appointing a receiver, trustee or liquidator of Owner or of all or a substantial part of the assets of Owner, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days;

Manager's right to terminate pursuant to this Section 7.2 shall be exercised upon thirty (30) days additional written notice to Owner given at any time after the applicable cure period has expired. Manager's termination notice shall specify the effective date of such termination.

7.3 Curing Defaults. Any default by Manager or Owner under the provisions of Section 7.1 or 7.2, as the case may be, which is susceptible of being cured shall not constitute a basis for termination of this Agreement if the nature of such default shall not permit it to be cured within the cure period allotted; provided that within such cure period the alleged party in default shall have given notice of its intent to cure, has commenced to cure such default, and is proceeding to complete the cure in good faith and with reasonable diligence by a date which is not more than six (6) months after the date of notice of default.

7.4 Effect of Termination. The termination of this Agreement under the provisions of this Article 7 shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of

either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

7.5 Remedies Cumulative. Neither the right of termination, nor the right to sue for damages, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

7.6 Indemnification re Post-Termination Events. Owner shall indemnify and hold harmless Manager and its owners, officers, directors, and employees from all costs, expenses, claims, damages, and liabilities arising or resulting from the failure of Owner following the expiration or earlier termination (for whatever cause) of this Agreement to fulfill its legal obligations to assume and provide any tournaments, banquets, meetings, and other group functions to be held at the Facility (collectively, “Events”) contracted for by Manager prior to such expiration of termination of the Agreement pursuant to its rights and obligations under this Agreement (or contracted for prior to the Commencement Date), which Events are to be provided after the expiration or termination of this Agreement, provided that on or before termination of the Agreement Manager has paid to Owner an amount equal to all deposits received from clients for reservation of such Events.

7.7 Transition. Upon the termination of this Agreement, Owner and Manager shall cooperate, in good faith, to ensure an orderly transition of the management and operation of the Property from Manager to Owner.

7.7.1 Employees. Upon termination of this Agreement for any reason, Manager shall terminate all employees of Manager, and Owner shall rehire a sufficient number of Manager’s employees at the Property as employees of Owner so as to comply with the WARN Act and obviate any notice or other requirements thereunder.

7.7.2 Licenses and Permits. Upon termination of this Agreement for any reason, Manager shall, if possible, transfer any and all licenses and permits which are in Manager’s name to Owner and/or assist Owner in obtaining new licenses and permits as necessary.

ARTICLE 8 - ASSIGNMENT

8.1 Assignment.

8.1.1 Prohibited Assignments. Except as provided in Sections 8.1.2 and 8.1.3, neither party shall assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, delayed or conditioned. It is understood and agreed that any consent granted by a party to any such assignment shall not be deemed a waiver of any consent required under this Section 8.1.1 as to any future assignment.

8.1.2 Permitted Assignment by Manager. Manager shall have the right, without the consent of Owner, to assign this Agreement to any Affiliate of Manager by providing a commercially reasonable prior written notice to Owner, provided that the Affiliate expressly assumes all of Manager’s obligations hereunder.

8.1.3 Permitted Assignment by Owner. Owner shall have the right, without the consent of Manager, to assign this Agreement to any Affiliate or to any third party upon notice to Manager, provided that the Affiliate, assignee or transferee (as applicable) expressly assumes all of Owner's obligations hereunder. In the event that Owner assigns this Agreement to an unaffiliated third party without the consent of Manager, Manager shall have the right but not the obligation to terminate this Agreement upon sixty (60) days advance written notice to both Owner and its assignee, such notice to be provided no later than thirty (30) days following written notification by Owner to Manager of the assignment and identity of the assignee.

8.1.4 Remedies. Any assignment by either party of this Agreement in violation of the provisions of this Section 8.1 shall be null and void and shall result in a termination of this Agreement. In addition to any other remedies available to the parties, the provisions of this Section 8.1 shall be enforceable by injunctive proceeding or by a suit for specific performance.

8.2 Successors and Assigns. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

ARTICLE 9 - DAMAGE OR DESTRUCTION; EMINENT DOMAIN

9.1 Damage or Destruction. Should the Facility be destroyed or substantially damaged by fire or other casualty, Owner, by written notice to Manager given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section 9.1, the Facility shall be deemed to have been substantially damaged if, in the reasonable opinion of Owner, full and productive economic use of the Facility cannot be made and the estimated length of time required to restore the Facility substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months. If this Agreement is not terminated in the event of damage to the Facility because the damage does not amount to substantial damage as described above, then Owner shall proceed with all due diligence to commence restoration of the Facility, but only to the extent that Owner has received insurance proceeds in connection with such damage or destruction.

9.2 Eminent Domain. If all of the Facility premises (or such a substantial portion of the premises so to make it unfeasible, in the reasonable opinion of Owner, to restore and continue to operate the remaining portion of the premises for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain, then upon the date that Owner shall be required to surrender possession of the premises or of that substantial portion of the premises, this Agreement shall terminate and neither party shall have any further obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the Facility shall not make it unfeasible, in the reasonable opinion of Owner, to restore and continue to operate the remaining portion of the premises for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and Owner shall proceed to repair any damage to the Facility, but only to the extent that Owner has received compensation in connection with such taking.

ARTICLE 10 - MAJOR CAPITAL IMPROVEMENTS

Any Capital Improvement involving an addition to the Facility or renovation or refurbishing designed to upgrade or change the nature or image of the Facility, which costs more than \$10,000 in the aggregate, shall be deemed to be a “**Major Capital Improvement.**” Any Major Capital Improvement project is in Owner’s sole control and discretion, and all costs and expenses of any Major Capital Improvement shall be paid solely by Owner. The parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of Manager with respect to any aspect of a Major Capital Improvement project, including design, construction, or supervision.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Purchases by Manager. [OPEN ISSUE-APPLICABILITY OF OWNER’S BULK PURCHASING PROGRAM] Manager shall use reasonable efforts to obtain the optimum combination of quality, price and terms for all purchases for the Facility utilizing its extensive contacts and experience in purchasing golf course related items. Manager shall not be entitled to any additional compensation for this undertaking other than as set forth herein. In connection with any purchases made by Manager or an Affiliate of Manager for the account of Owner, it is understood that Manager or such Affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings shall be passed on to Owner, including representatives’ fees. In addition, all trade discounts, rebates and refunds pertaining directly to purchases for the Facility (but excluding refunds and rebates received by Manager in connection with purchasing or leasing related to all Other Manager Facilities) shall accrue to the benefit of Owner.

11.2 Purchases from Manager Affiliates. If any purchases of goods or services for the Facility are made from or through an Affiliate of Manager, the charges to the Facility for such goods or services shall be on the same terms as those made to Other Manager Facilities, and such charges shall not exceed the market prices for such goods and services. Manager shall disclose to Owner the prices paid by its Affiliates for any such goods and services. Further, in case of any actual or potential material conflict of interests as to any purchases, Manager shall (i) disclose to Owner in writing such conflict with sufficient details and specificity; and (ii) obtain a prior written approval from Owner for each instance.

11.3 Indemnities.

11.3.1 *Manager’s Indemnity.* Manager agrees to indemnify, protect, defend and hold harmless Owner and Owner’s officers, directors, shareholder, affiliates, and employees from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys’ fees, costs, and expenses:

(a) which result from any act or omission constituting negligence or willful misconduct or fraud by Manager or any Affiliate, officer, director, agent, independent contractor, or employee of Manager in connection with Manager’s performance under this Agreement; or

(b) which result from any action taken by Manager or its Affiliates, employees or agents relating to the Facility (i) that is expressly prohibited by this Agreement, or (ii) that is not within Manager's delegated authority under this Agreement.

Manager's indemnity obligations under this Section 11.3.1 shall not apply to any acts or omissions taken (or in the case of omissions, not taken) at the express direction or with the express approval of Owner, or to any acts or omissions taken (or in the case of omissions, not taken) constituting gross negligence or willful misconduct by Owner, unless such act or omission constitutes negligence or willful misconduct or fraud on the part of any employee of Manager.

11.3.2 Owner's Indemnity. Owner agrees to indemnify, protect, defend, and hold harmless Manager and its owners, officers, directors, and employees from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs and expenses relating to the Facility or Premises, or the operations thereof:

(a) which relate to or arise from the presence in, on, under or about the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products (as defined or regulated under any and all applicable federal, state and local environmental, health or safety laws, ordinances and regulations) from or through the Premises (collectively, the "Hazardous Materials"), including without limitation any and all costs of any required or necessary repair, cleanup, remediation or decontamination of the Premises, and the preparation and implementation of any closure, remedial or other required plans; provided that if the presence of the Hazardous Materials was caused by the negligence or willful misconduct on the part of Manager or any of its Affiliates, employees or agents, Manager shall not be indemnified under this Section 11.3.2; or

(b) which result from any act or omission by Manager in connection with the management and operation of the Facility (i) that is expressly authorized by this Agreement, or (ii) that is within the scope of Manager's duties under this Agreement, or (iii) that is within Manager's delegated authority under this Agreement, or (iv) that was at the express direction or with the express approval of Owner, unless such act or omission constitutes negligence or willful misconduct or fraud on the part of any employee of Manager (and was neither at the express direction of Owner nor with the express approval of Owner) in which event Manager shall not be indemnified under this Section 11.3.2.

11.4 Facility Names. The Facility shall be known by such trade name and/or trademark or logo as may from time to time be determined by Owner. All names, logos and designs used at the Facility shall be the exclusive property of Owner. However, during the term of this Agreement Manager shall have a non-exclusive license to use such names, logos and designs in connection with the operation of the Facility. Manager may identify the Facility as a golf course managed and operated by Manager and may use the name "American Golf Corporation" or the initials "AGC" or the American Golf Corporation logo alone or in conjunction with other words or names or designs owned by Manager or any of its Affiliates. It is recognized that the name "American Golf Corporation" and the initials "AGC," together with any other names, logos or designs owned by Manager or any of its Affiliates and used in the management and operation of the Facility (including without limitation any such names, logos or designs used in connection with the restaurant, banquet rooms and meeting rooms in and about the Facility), together with

appurtenant goodwill, are the exclusive property of Manager or its Affiliates (collectively, the "Manager -Owned Names"). Accordingly, Owner agrees that no right or remedy of Owner for any default on the part of Manager under this Agreement shall, nor shall any provision of this Agreement, confer upon Owner or its successors or assigns the right to use Manager -Owned Names in the operation of the Facility or otherwise after the termination of this Agreement. In the event of any breach of this covenant by Owner, Manager, in addition to any remedies available to it under this Agreement or at law or in equity, shall have the right to injunctive relief. Anything contained in this Section 11.4 to the contrary notwithstanding, upon the expiration or earlier termination of this Agreement, Owner shall have the right to continue to use any and all items of Operating Inventory then on hand bearing any Manager -Owned Names, but shall not have the right to reorder any such items. In lieu of permitting Owner to continue to use such items of Operating Inventory bearing any Manager -Owned Names, Manager shall have the option to purchase any or all of such items at a price equal to Owner's cost of such items.

11.5 Notices. All notices, demands, requests, consents, approvals, replies and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (c) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("Fax") or e-mail; provided, however, that in order for a Fax Notice or e-mail Notice to be deemed effective, the party giving notice by Fax or e-mail shall provide a "hard copy" of the Fax Notice or e-mail Notice thereafter to the other party pursuant to one of the three methods of "hard copy" delivery specified in this Section.

For purposes of Notices hereunder, the address of Owner shall be:

City of Oxnard, California

Attention: _____

With a copy to:

City Attorney
City of Oxnard
305 W. Third Street, Suite 100E
Oxnard, California 93030
Fax: 805-385-7423

For purposes of Notices hereunder, the address of Manager shall be:

AGC Management, LLC
c/o American Golf Corporation
909 Pacific Coast Highway , Suite 650
El Segundo, California 90245
Attention: Legal Department
Facsimile: (310) 664-6165

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this Section 11.5.

11.6 Mortgages. No mortgage shall in any way affect the rights, duties or obligations of Owner or Manager, respectively, hereunder, and in the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any mortgage, the terms and conditions of this Agreement shall control. If the Owner records a mortgage and the mortgagee thereof requests that the terms of this Agreement be subordinate to such mortgage, Manager shall execute a subordination agreement substantially in the form requested by such mortgagee, so long as such subordination agreement is reasonable and contains attornment and non-disturbance provisions reasonably acceptable to Manager. No mortgagee shall have any rights against Manager and Manager shall have no obligations to any Mortgagee except as set forth in this Section 11.6.

11.7 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between Owner and its successors and assigns, on the one part, and Manager and its successors and assigns, on the other part. Manager shall perform all activities hereunder as an independent contractor, and no employer-employee or principal-agent relationship shall be established by this Agreement or the performance hereof.

11.8 Modification and Changes. This Agreement may be amended or modified only by a writing signed by both parties.

11.9 Understandings and Agreements. This Agreement constitutes all of the understandings and agreements of whatever nature or kind existing between the parties with respect to Manager's management and operation of the Facility.

11.10 Headings. The Article, Section and Subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

11.11 Consents. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified. Similarly, each party agrees that any provision of this Agreement which permits such party to make requests of the other party shall not be construed to permit the making of unreasonable requests.

11.12 Survival of Covenants. Any covenant, term or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

11.13 Third Parties. None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than the parties to this Agreement or by a party deriving rights under this Agreement as a result of an assignment, subordination or similar agreement permitted pursuant to the terms hereof.

11.14 Waivers. No failure by Manager or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

11.15 Applicable Law; Venue. This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of California. Venue for any action relating to this Agreement shall be property in Ventura County, CA, Superior Court. Manager shall comply with all applicable laws in the performances of services hereunder.

11.16 No Presumption Regarding Drafter. Owner and Manager acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between Owner and Manager, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either Owner or Manager to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

11.17 Enforceability of Any Provision. If any term, condition, covenant, or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

11.18 United States Currency. All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

11.19 Counterparts. This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement.

11.20 Gender and Number. Whenever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain gender shall be deemed to include either of both of the other genders.

11.21 Further Assurance. Owner and Manager agree that at any time or from time to time after the execution of this Agreement, each shall, upon the request of the other, execute and deliver such further documents and do such further acts and things as such party may reasonably request in order to fully effect the purpose of this Agreement.

11.22 Waiver of Jury Trial. The parties hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto on any matter whatsoever arising out of or in any way connected with this Agreement.

11.23 Documents and Materials. All final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data, photographs, specifications, information, images, video files, media, or other deliverables prepared, created, drawn, calculated, photographed or developed by Manager pursuant to this Agreement specifically for the Facility and not for use at any other facilities operated by Manager (“Documents and Materials”) shall be the Owner’s property without restriction or limitation upon its use, duplication or dissemination. All Documents and Materials shall be considered “works made for hire,” and all Documents and Materials and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the Owner without restriction or limitation upon their use, duplication or dissemination by the Owner. Manager shall not obtain or attempt to obtain copyright protection as to any Documents and Materials. Manager hereby assigns to the Owner all ownership and any and all intellectual property rights to the Documents and Materials that are not otherwise vested in the Owner pursuant to this Section 11.24. Manager shall deliver all Documents and Materials to Owner’s Project Manager upon completion of the services or termination of this Agreement as an expense of the Facility. Additionally, anytime at Owner’s request, Owner shall be entitled to possession of, and Manager shall furnish to Owner’s Project Manager within 10 calendar days, any or all of the Documents and Materials without additional cost to Owner. In both situations, if Manager prepares Documents and Materials on a computer, Manager shall provide Owner with said Documents and Materials both in a printed format and in an electronic format that is acceptable to the Owner. Manager may retain copies of these Documents and Materials but must request permission from the Owner before use, duplication or dissemination of these Documents and Materials for any purpose other than for the services provided to the Owner pursuant to this Agreement. Any substantive modification of the Documents and Materials by Owner staff or any use of the completed Documents and Materials for other Owner projects, or any use of incomplete Documents and Materials, without the written consent of Manager, shall be at Owner’s sole risk and without liability or legal exposure to Manager. Manager warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the services and the production of all Documents and Materials, and that the Owner has full legal title to and the right to use, duplicate or disseminate the Documents and Materials. Manager shall defend, indemnify and hold Indemnitees harmless from any loss, claim or liability in any way related to a claim that any of the Documents and Materials is violating federal, state or local laws, any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Manager shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the

services and Documents and Materials. In the event the use of any of the Documents and Materials by the Owner is held to constitute an infringement and the use of any of the same is enjoined, Manager, at its own expense, shall: secure for Owner the right to continue using the Documents and Materials by suspension of any injunction, or by procuring a license or licenses for Owner; or modify the Documents and Materials so that they become non-infringing while remaining in compliance with the requirements of this Agreement. This Section 11.24 shall survive the termination of this Agreement.

11.25 Confidential Information.

a. For the purposes of this Agreement, “confidential information” means all data or information, in whatever form transmitted, relating to the past, present or future business affairs of Owner, including without limitation, (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulas; or (ii) non-technical information, including without limitation finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data and any other information belonging to Owner, or to a third party whose information is in Owner’s possession or control under obligations of confidentiality, and which is disclosed to Manager or is developed by Manager in whole or in part at Owner’s expense.

b. Said data or information constitutes confidential information pursuant to California Government Code Sections 6254(e), 6254(k), 6254(aa), 6254.9, 6254.16, 6254(n) and 6255, which exempts Owner’s internal programs and network structure and information regarding infrastructure and customer information from disclosure under the California Public Records Act (California Government Code Sections 6250 through 6276.48) (“CPRA”). Without in any way affecting the confidential nature of the information, Owner will provide the requested information to Manager pursuant to the terms of this Agreement, and Owner’s disclosure shall not constitute a public disclosure pursuant to Government Code Section 6254.5.

c. All confidential information shall not be reproduced, transmitted, disclosed or used by Manager without the written consent of Owner, except as may be necessary for Manager to fulfill its obligations to Owner.

d. Notwithstanding the above, these limitations shall not apply to information that (i) is already known to Manager at the time of that information’s disclosure or becomes publicly known through no wrongful act or omission of Manager, (ii) is communicated to a third party with the express written consent of Owner and is not subject to restrictions on further use or disclosure, (iii) is independently developed by Manager and has no relation to this Agreement, or (iv) is required by law, court order, court-issued subpoena or other legal process to be disclosed; provided, however, that before making such disclosure, Manager shall immediately provide Owner with written notice and a reasonable opportunity for Owner to object to the disclosure or to take action to maintain the confidentiality of the information, unless such prior disclosure is legally impermissible.

e. Manager shall use reasonable care to protect the confidential information. In the event of a breach or threatened breach of this Agreement, Owner shall be entitled to obtain an

injunction prohibiting any such breach, the costs of which shall be paid by Manager. Any relief granted shall be in addition to and not in lieu of any other legal or equitable relief, including money damages.

f. Other than an obligation upon Owner to deal in good faith, Owner makes no warranties and shall bear no liability or responsibility for errors or omissions in any confidential information disclosed under this Agreement or for any business decisions made by Manager in reliance on any confidential information disclosed under this Agreement.

g. Manager will use the confidential information solely for the limited purposes of providing the services and fulfilling its obligations hereunder.

h. Except as otherwise agreed upon by the Parties, Manager shall maintain physical custody or control over all confidential information obtained by it and shall be responsible for ensuring that such confidential information is not disclosed.

i. Without prejudice to the rights and remedies otherwise available to Owner, Manager acknowledges and agrees that: the confidential information is valuable to Owner, unique, and contains sensitive information; a breach of this Agreement could cause irreparable harm to Owner; and that Owner could be entitled to seek injunctive relief, specific performance or both if Manager breaches or threatens to breach any of the provisions of this Agreement.

j. All confidential information shall remain the property of Owner. Following Manager's completion of the Services, Manager shall promptly destroy all such confidential information in its possession or control and certify such destruction to Owner in a writing signed by an authorized representative.

k. This Section 11.25 shall survive the termination of this Agreement.

11.26 Conflict of Interest. If, in performing the Services set forth in this Agreement, Manager makes, or participates in, a "governmental decision" as described in Title 2, Section 18700(c)(4) of the California Code of Regulations, or performs the same or substantially all the same duties for Owner that would otherwise be performed by an Owner employee holding a position specified in Owner's conflict of interest code, Manager shall be subject to Owner's conflict of interest code, the requirements of which include the filing of one or more statements of economic interests disclosing the relevant financial interests of Manager's personnel providing the services set forth in this Agreement. Furthermore, Manager shall not to accept any employment or representation during the term of this Agreement or within 12 months after completion of the Services which is or may likely make Manager "financially interested," as provided in California Government Code Sections 1090 and 87100, in any decisions made by Owner on any matter in connection with which Manager has been retained pursuant to this Agreement.

11.27 Force Majeure. Neither Owner nor Manager shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include but are not be limited to acts of God, riots, acts of war, epidemics, fire, earthquakes, or other disasters.

11.28 Manager's Representations. Manager represents, covenants and guarantees that: (a) Manager is licensed, qualified and capable of furnishing the labor, materials and expertise necessary to perform the service hereunder in accordance with the terms and conditions set forth in this Agreement; (b) there are no obligations, commitments or impediments of any kind that will limit or prevent Manager's full performance under this Agreement; (c) to the extent required by the standard of practice, Manager has investigated and considered the scope of services performed, has carefully considered how the services should be performed, and understands the facilities, difficulties and restrictions attending performance of the services under this Agreement.

11.29 Compliance with Laws. In performing the services under this Agreement, Manager shall comply with all applicable laws, ordinances and regulations. Before providing any services under this Agreement, Manager shall, at its own expense, obtain and maintain all required certificates, licenses and permits, including a City of Oxnard business tax certificate.

11.30 Additional Warranties and Representations. Manager warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the services. Manager shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services hereunder.

11.31 Taxes. Manager shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority (a) against the Manager and/or any personal property or equipment of Manager used in connection with the services rendered pursuant to this Agreement or (b) as a result of the services rendered by Manager pursuant to this Agreement. Any such taxes shall not be considered an Operating Expenses.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed effective as of the day and year first written above.

“OWNER”

CITY OF OXNARD, CALIFORNIA

By: _____
Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City
Clerk (only if Mayor signs) Date _____

APPROVED AS TO FORM:

Stephen M. Fischer, City
Attorney (always required) Date _____

“MANAGER”

AGC Management, LLC

By: _____
Name: _____
Title: _____

Owner requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

EXHIBIT A - DEFINITIONS

Affiliate means any and all corporations, partnerships, trusts, limited liability companies and other entities directly or indirectly controlled by, controlling, or subject to direct common control of an entity or person.

Adjusted Net Operating Income [TO BE DISCUSSED] means Gross Revenues minus Net Operating Expenses.

Capital Improvements means any alteration or addition to, or rebuilding or renovation of, the Facility which is considered a capital expenditure under GAAP, the cost of which is not charged to ordinary property operations, repair, replacement, alteration and/or maintenance.

Comparable Facilities means (i) Olivas Links and Buenaventura both in Ventura, California, (ii) Los Robles in Thousand Oaks, California and (iii) Rustic Canyon Golf Course and Moorpark Country Club, both in Moorpark, California.

Compensation means the direct salaries and wages paid to or accruing for the benefit of any manager or other employee, together with all fringe benefits payable to or accruing for the benefit of such manager or other employee, including employer's contribution under the Federal Insurance Contributions Act ("FICA"); unemployment compensation, or other employment taxes; pension fund contributions, worker's compensation, group life and accident and health insurance premiums as well as any payments made by Manager which fall within the deductible amounts of any such policies; profit sharing; retirement; disability; and other similar benefits but only to the extent established in the Annual Plan and approved by Owner.

CPI means The United States Department of Labor, Bureau of Labor Statistics, All Items Consumer Price Index for All Urban Consumers (all items for the metropolitan area in which the Premises are located on the basis of 1982 - 1984 equals 100). Notwithstanding the foregoing, if the format or components of the CPI are materially changed after the date hereof, then Owner and Manager shall mutually agree to a substitute index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the CPI in effect as of the date hereof.

Excluded Operating Expenses [TO BE DISCUSSED] means utility costs, insurance premiums (excluding workers compensation), cart and equipment lease payments, Capital Improvements and any possessory interest taxes owed by Owner.

Furnishings and Equipment means all furniture, furnishings, trade fixtures, apparatus and equipment, including golf course maintenance vehicles and equipment, golf carts, driving range pickers and pullers, mats, buckets, cash registers, rental golf clubs, ball washers, benches, uniforms, and other personal property used in or held in storage for use in the operation of the Facility, other than Operating Inventory and fixtures attached to and forming part of the Improvements.

Gross Revenues means all amounts received as a result of the operation of the Facility and the sale of goods and services at the Facility, determined on an accrual basis and consistent with the income/operating statements generated by Manager in the ordinary course of business. Gross Revenues shall include, without limitation, the following generated at the Facility: all green fees; rental fees for golf carts, golf clubs, and other rental items; range balls; rental and concession payments; food and beverage sales; liquor sales; revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments, and other group gatherings; merchandise sales; instruction fees; vending sales (or, if applicable, receipts from vending companies); and proceeds from business interruption insurance. Gross Revenues shall not include the following:

- (a) Cash refunds or credits allowed on returns by customers;
- (b) Sales taxes, excise taxes, gross receipts taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid to the appropriate taxing authority, whether added to or included in the selling price;
- (c) Fees charged by a golf professional functioning as an independent contractor for the teaching of golf lessons and instruction to the extent the Facility operation does not receive revenue from such golf lessons
- (d) Receipts in the form of refunds from, or the value of merchandise, supplies or equipment returned to, shippers, suppliers or manufacturers;
- (e) The amount of any gratuities paid or given by customers to Facility employees;
- (f) Proceeds of insurance other than business interruption insurance or similar types of insurance;
- (g) Any interest earned on any Owner provided bank account or funds;
- (h) The actual uncollectible amount of any check or bank draft received as payments for goods or services and returned from a bank as being uncollectible; and
- (i) The actual uncollectible amount of any sale of merchandise or services for which a credit card was accepted.

Legal Requirements means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the Premises and the operation of the Premises.

Major Capital Improvements has the meaning set forth in Article 10.

Net Operating Expenses **[TO BE DISCUSSED]** means Operating Expenses minus Excluded Operating Expenses.

Net Operating Income [TO BE DISCUSSED] means Gross Revenues minus Operating Expenses plus any expenses for Capital Improvements.

Operating Expenses [TO BE DISCUSSED] means utility costs, costs of purchasing Operating Inventory, Compensation and expenses of the management staff and other employees directly employed at the Facility, advertising and promotion, ordinary repairs, replacements, alterations and maintenance, cart and equipment lease payments, insurance premiums, the Base Management Fee, taxes and all other expenses relating to the operation of the Facility and/or payable under the Annual Plan that would be expensed in accordance with GAAP, except as provided in the next paragraph. Operating Expenses shall not include principal and interest payments on any promissory note or other debt instrument and payments under a deed of trust or mortgage (if any); depreciation; amortization; costs incurred as a result of any assignment of this Agreement or sale of the Facility; income taxes paid or payable by Owner on the income from the Facility.

Operating Inventory means consumable items used in or held in storage for use in the operation of the Facility, including scorecards and cart tickets, driving range balls, professional shop merchandise, food and beverages, paper and plastic ware, fuel, cleaning materials, fertilizers, pesticides, linens, glassware, sanitation supplies and other similar items.

Operating Year means any 365 day period during the Term beginning on the Commencement Date or any anniversary of the Commencement Date.

Other Manager Facilities means all other golf course facilities within the United States owned, leased, managed and/or operated, directly or indirectly, by Manager.

Utilities Baseline means \$900,000 for the initial Operating Year of the Term, plus three percent (3%) per annum for each Operating Year thereafter.

EXHIBIT B

**ANNUAL PLAN FOR
INITIAL OPERATING YEAR**

(See Attached)

DRAFT

EXHIBIT C
MAINTENANCE – PRACTICE FIELDS
(See Attached)

DRAFT

Cowboys Fields Maintenance Schedule 2019

July 1st - July 6th

- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mow fields Monday-Saturday
- Fertilize with 46-0-0 and 6-24-24.
- Adjust irrigation as needed by 1pm

July 7th- July 13th

- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mondays clean grass clippings along fence lines.
- Mow fields Monday-Saturday
- Spray chemicals Primo Maxx, Iron Man, and Green Toes.
- Adjust irrigation as needed by 1pm

July 14th- July 20th

- Coordinate fence & tower install inside fields, help fence factory, lifts(3)?
- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mondays clean grass clippings along fence lines.
- Mow fields Monday-Saturday
- Fertilize with 15-15-15
- Adjust irrigation as needed by 1pm (increase/decrease)

July 21st - July 27th

- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mondays clean grass clippings along fence lines.
- Mow fields Monday-Saturday
- Spray chemicals Primo Maxx, Iron Man, and Green Toes.
- Adjust irrigation as needed by 1pm (increase/decrease)

July 28th- August 5th

- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mondays clean grass clippings along fence lines.
- Mow fields Monday-Saturday
- Fertilize if necessary. Spread second application of soil surfactant LT120
- Adjust irrigation as needed by 1pm (increase)

August 6th- End of Camp

- Check and hand water eastern end of fields for heat dry spots, blow and fill divots with a 2:1 topper/sand mix on a daily basis.
- Mondays clean grass clippings along fence lines.
- Mow fields Monday-Saturday
- Fertilize or spray fields if necessary.
- Adjust irrigation as needed by 1pm (increase)

Irrigation Schedule

Current as of 5/20/19

Days: M T, W F, Sa Start Times: 7pm 9pm 11:45pm

Stations: 1-8 @ 10 minutes

9-12 @ 5 minutes

13 @ 4 minutes

Beginning of camp [subject to change](#)

Days: M W F, Sa Start Times: 7pm 10:30pm 11:45pm

Stations: 1-8 @ 7 minutes

9 **Water end shutdown during camp**

10-12 @ 3 minutes

13 @ 2 minutes

***Water is scheduled to start increasing on the 3rd week of camp. Subject to change upon request.**

Chemical Sprayed / Fertilizer Spread (160 Gallons) per application

Chemical Used: Primo Maxx: 115 oz, Iron Man: 2.5 Gallons, Green Toes: 2 quarts

Fertilizer Used: 46-0-0, 6-24-24/18-9-18, 15-15-15

LT120: 8 bags on June 3rd and August 3rd

Ronstar

EXHIBIT C-1
MAINTENANCE – PRACTICE FIELDS
(See Attached)

DRAFT

Scope of Work:

- Fields will be mowed as needed at ½" with John Deere 3235's. These are 5 gang reel unit fairway mowers. These will be augmented with Toro 1445 trim mowers and Buffalo blowers if the fields need to be blown.
- Aerification will be done with a Toro Fairway Aerator, drug in with drag mats, blown into windrows with a Buffalo blower and then swept with a Toro sweeper.
- Fertilization will be done with a Lely spreader and depending on the soils analysis we'll apply the appropriate fertilizer for optimum growth. Just prior to the Cowboys arrival we've always increased the phosphorus and potassium levels to make the grass more wear resistant.
- Herbicide applications will be done with either a Toro or John Deere spray rig and granular applications will be made with a Lely spreader. Pre-emergent applications will be timed based on soil temperature to maximize efficacy. Post emergent applications will also be based on weather conditions to enhance the transition from Poa and volunteer Ryegrass to the hybrid Bermuda grass desired.
- Topdressing will be done with washed plaster sand to match the sand the fields were originally built with to avoid layering. The sand will be spread with a Tycrop MH400 material delivery unit and drug in with drag mats.
- Composting the fields will be done using a Tycrop 400 and drug in with drag mats.
- Field levels will be shot biannually and topdressing will be applied to lower areas to level the surface.
- Grooming or verticutting the fields will also aid in producing a healthier and more level surface.
- Records will be available at any time and we will always be available to city staff.

Schedule:

- January the fields require little maintenance and are mowed as few times as possible. There could be hours spent cleaning up after rainstorms.
- February is very similar in that we do as little as possible to maintain the fields and make them available for kids soccer. This is when we take soil samples to be analyzed and possibly begin post emergent herbicide applications.
- March is when the activity usually picks up with, a mowing frequency increase, post emergent herbicide applications and field fertilizations. Topdressing and composting the fields is standard and depending on the weather we could aerify the fields also.
- April will typically see the aerification done on the fields as well as a topdressing and composting. The mowing schedule is about the same as March but we often verticut the fields to remove thatch and the dead and dying Poa Annua and volunteer Ryegrass. This also helps to level the playing surface.
- May we topdress, compost, fertilize and usually increase the mowing frequency.
- June is spent prepping for the Cowboys summer camp by applying more phosphorus and potassium, increasing the mowing schedule and continuing with topdressing and composting.
- July is when training camp begins and the level of activity depends on what the Cowboys require. We mow the fields 3 to 4 times a week, drag the dew off in the mornings and fill divots left from the previous days practice. Each mowing requires the fields be blown off afterward. We do a lot of hand watering during training camp.
- August after the camp is completed we begin rehabbing the field with fertilizer applications, topdressing and composting. Toward the end of this month we will aerify the fields.
- September mowings decrease, topdressing and composting continue and if we were not able to aerify the fields in August due to scheduling we will do them now.
- October as the days grow shorter and the weather cools the Bermudagrass growth slows down and our efforts do also. This is when we try to do as little as possible to maintain the fields but ensuring they are suitable for youth soccer and/or any events the Radison Hotel puts on.
- November same as October, anytime in these months that we can topdress and compost the fields we will. This is dependant upon the weather and growth curve on the fields, once they grow over the previous topdressing/composting we do it again.
- December fewer hours and mowing. Mainly spent on clean up after rain storms.

EXHIBIT D

LIVING WAGE POLICY EXHIBIT

The Living Wage Policy of the City of Oxnard is hereby adopted by the City Council on July 9, 2002 to be effective October 1, 2002.

1. Pursuant to this Living Wage Policy, Vendor shall pay those employees who provide services to the City under contract:
 - (a) Effective October 1, 2002, at least \$9.00 an hour for the time during which the employee is providing services to the City;
 - (b) Effective July 1, 2003, at least \$9.25 an hour for the time during which the employee is providing services to the City and 32 hours of paid leave per every calendar year in which an employee provides services to the City;
 - (c) Effective July 1, 2004, at least \$10.59 an hour for the time during which the employee is providing services to the City and 64 hours of paid leave per every calendar year in which an employee provides services to the City; and
 - (d) Effective July 1, 2005, at least \$12.22 an hour for the time during which the employee is providing services to the City and 96 hours of paid leave per every calendar year in which an employee provides services to the City.
2. The hourly rates established in Section 1 shall be adjusted July 1, 2006 and, each July 1 thereafter, according to the percentage change since July 1, 2005 in the Consumer Price Index prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers.
3. A service contractor executing a service contract with the City for which the City will pay the contractor \$25,000 or more during the contract term shall be subject to the Living Wage Policy.
4. A service contractor executing more than one service contract with the City, and the combined monetary total of the payments by the City pursuant to such contracts is \$25,000 or more for the combined contract terms shall be subject to the Living Wage Policy.
5. This Living Wage Policy shall not govern the following types of contracts for: (a) the purchase, rental or lease of goods, products, equipment, supplies or other personal property; (b) public works projects as defined in State or local law; and (c) professional services.
6. This Living Wage Policy shall not govern the following service contractors: (a) nonprofit entities organized under IRS Code section 501(c)(3); (b) public entities such as cities, counties, special districts, states and the federal government; and (c) businesses employing fewer than five persons.
7. The City Attorney is directed to include in all standard trade services contracts and all contracts involving unique trade services, the language set forth in **Exhibit 1** attached hereto and incorporated herein by this reference.
8. If Vendor fails to comply with this Living Wage Policy, the City Manager is directed to terminate the subject service contract immediately and to impose appropriate fines and penalties as set forth in the service contract.
9. The City Manager and the City Attorney are responsible for the administration and enforcement, respectively, of the Living Wage Policy. If an employee of a service contractor governed by the Living Wage Policy concludes that he/she has been retaliated against for the exercise of rights under the Living Wage Policy, the employee should contact the City Manager at 385-7430.
10. The City Manager shall reasonably cooperate with representatives of the Ventura County Living Wage Coalition to ensure the effective administration and enforcement of the Living Wage Policy.
11. This Living Wage Policy may be changed only by City Council and only after a duly noticed public hearing.
12. The City Manager is directed to ensure that the City Council will review the Living Wage Policy as part of the FY 2003-2004/05 budget process.

Exhibit 1

Living Wage Policy

Pursuant to the Living Wage Policy adopted July 9, 2002 by the City Council and effective October 1, 2002, the City Manager and City Attorney are directed to include the following language in all standard trade services contracts and all unique trade services contracts governed by the Living Wage Policy.

- A. Vendor shall compensate any employee of Vendor who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as the Living Wage Policy Exhibit. While this Agreement is in effect, Vendor shall pay such employee no less than \$15.67 per hour for each hour that such employee provides services under this Agreement. In addition, while this Agreement is in effect, Vendor shall provide to such employee no less than 96 hours of paid leave per calendar year.
- B. Vendor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by City Council on July 9, 2002 and effective October 1, 2002.
- C. If Vendor fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Vendor, effective immediately.
- D. In addition, if Vendor fails to comply with the Living Wage Policy in any manner, Vendor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Vendor shall pay such fine and penalty within 15 days after the City Manager or designee provides written notice to Vendor of the amount owed.

**CITY OF OXNARD LIVING WAGE REQUIREMENTS
EFFECTIVE JULY 1, 2018**

11.24 Vendor shall compensate any employee of Vendor who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as Exhibit 1. While this Agreement is in effect, Vendor shall pay such employee no less than **\$15.67 per hour** for each hour that such employee provides services under this Agreement. **This hourly rate shall be adjusted on July 1, 2019, and each July 1 thereafter, according to the percentage change in the Consumer Price Index**, all items, prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers (CPI-U), index base 1967 + 100, comparing May of the previous year to May of the current year. In addition, while this Agreement is in effect, Vendor shall provide to such employee no less than 96 hours of paid leave per calendar year.

a. Vendor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by the Oxnard City Council on July 9, 2002 and effective October 1, 2002.

b. If Vendor fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Vendor, effective immediately.

c. In addition, if Vendor fails to comply with the Living Wage Policy in any manner, Vendor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Vendor shall pay such fine and penalty within 15 days after the City Manager or designee provides written notice to Vendor of the amount owed.

d. The foregoing requirements are restated on page 5 of the Agreement for Trade Services.

PREVAILING WAGES EXHIBIT

1. Vendor acknowledges that the Project defined in the Agreement between Vendor and City is a “public work” as defined in Division 2, Part 7, Chapter 1 of the California Labor Code (“Chapter 1”), and that this Agreement is subject to Chapter 1 and the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. Vendor shall perform the Project as a public work. Vendor shall comply with and be bound by all the terms, rules and regulations described in Chapter 1 and the DIR’s rules and regulations as though set forth in full herein.
2. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Vendor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Vendor shall post such rates at each job site covered by this Agreement.
3. Vendor is required to post job site notices, as prescribed by regulation. See Labor Code Section 1771.4(a)(2).
4. Vendor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Vendor shall, as a penalty to City, forfeit not more than \$200 for each calendar day or portion thereof for each worker paid less than the DIR’s determined prevailing rates for the work or craft in which the worker is employed pursuant to this Agreement by Vendor or any subcontractor. The Labor Commissioner shall determine the amount of the penalty as described in Section 1775.
5. Vendor shall comply with Labor Code Section 1776, which requires Vendor and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, (2) certify and make such payroll records available for inspection, and (3) inform City of the location of the records.
6. Vendor shall comply with Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects for all apprenticeable occupations. Before commencing work under this Agreement, Vendor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding the Project, Vendor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.
7. Vendor may not be debarred or suspended throughout the Agreement Term pursuant to Labor Code Section 1777.1 or 1777.7. If he, she or it becomes debarred or suspended in the Agreement Term, Vendor must immediately notify City.
8. Vendor is not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Vendor shall continue without interruption to stay registered and qualified to perform public work pursuant to Section 1725.5 for the duration of the term of this Agreement. This provision does not apply to construction, alteration, demolition, installation or repair work of \$25,000 or less or to maintenance work of \$15,000 or less.
9. Vendor acknowledges that 8 hours labor constitutes a legal day’s work. Vendor shall comply with and be bound by Labor Code Section 1810.
10. Vendor shall comply with and be bound by Labor Code Section 1813 concerning penalties for workers who work excess hours. Vendor shall, as a penalty to City, forfeit \$25 for each worker employed in the performance of this Agreement by Vendor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by Vendor’s employees in excess of 8 hours per day and 40 hours per week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay.
11. The Project listed in the Agreement is subject to compliance monitoring and enforcement by the DIR.
12. Vendor shall be responsible for each and every one of its subcontractors’ compliance with Chapter 1, the DIR’s rules and regulations, and Labor Code Sections 1860 and 3700. Vendor shall include in the written contract between it and each subcontractor a copy of, and a requirement that each subcontractor shall comply with, those statutory provisions. Vendor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractors’ compliance, including without limitation, conducting a periodic review of the certified payroll records of each subcontractor, and upon becoming aware of the failure of the subcontractor to pay its workers the specified prevailing rate of wages, Vendor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent, Vendor shall hold harmless, defend (with counsel approved by the City Attorney) and indemnify City, its legislative bodies, and its officials, officers, employees and agents from any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Vendor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all attorneys' fees and other related costs. All duties of Vendor under this Section shall survive Agreement termination.

DRAFT

SCHEDULE OF SERVICES EXHIBIT

EXHIBIT E

INSURANCE REQUIREMENTS FOR FACILITY MANAGERS

1. Manager shall obtain and maintain during the term of the Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Agreement by Manager, its agents, representatives, employees or subcontractors.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$3,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business Automobile Liability Insurance in an amount not less than \$2,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City of Oxnard ("City").

d. Property Insurance against all risks of loss to any tenant improvements or betterments in the amount of the full replacement cost of the improvement or betterment with no co-insurance provisions.

Crime/Employee Dishonesty Policy in an amount not less than \$3,000,000. The Crime/Employee Dishonesty Policy shall name the City of Oxnard as a Joint Loss Payee.

2. Manager shall, prior to occupation of the premises, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-X. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before occupation of the premises. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email (or fax if necessary) to the Risk Manager, addressed as follows (do not send hard copies):

City of Oxnard
Insurance Compliance
Reference No. _____
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

3. Manager agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Manager agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Manager; products and completed operations of Manager; premises owned, occupied or used by Manager; or automobiles owned, leased, hired or borrowed by Manager. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-X or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the

Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Manager shall also be applicable to Manager's subcontractors. Manager agrees to maintain appropriate agreements with subcontractors and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

6/19

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-X.doc

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY

LETTER A

SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY

LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR. ☒ OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$6,000,000 PRODUCTS COMP/OP AGG. \$3,000,000 PERSONAL & ADV. INJURY \$3,000,000 EACH OCCURRENCE \$3,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person)\$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$2,000,000 BODILY INJURY \$ (Per person) BODILY INJURY \$ (Per accident) PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER Property insurance against all risks of loss to any tenant improvements or betterments Crime/Employee Dishonesty Policy				LIMIT OF INSURANCE \$3,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

CITY OF OXNARD

Attn: Insurance Compliance

Reference No._____

P.O. Box 100085 – OX

Duluth, GA 30096

Via Email: cityofoxnard@ebix.com

Via Fax: 678-259-1007

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE _____

GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")		SUBMIT IN DUPLICATE							
		ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)						
PRODUCER Telephone: _____	POLICY INFORMATION: Insurance Company: _____ Policy No.: _____ Policy Period: (from) _____ (to) _____ LOSS ADJUSTMENT EXPENSE ☐ Included in Limits ☐ In Addition to Limits ☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____ with an Aggregate of \$ _____ applies to _____ coverage. ☐ Per Occurrence ☐ Per Claim (which) _____								
NAMED INSURED	APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered: CITY AGREEMENTS/PERMITS								
TYPE OF INSURANCE		OTHER PROVISIONS							
GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ Claims Made ☐ COMPREHENSIVE GENERAL LIABILITY ☐ Retroactive Date _____ ☐ OWNERS & CONTRACTORS PROTECTIVE ☐ Occurrence									
COVERAGES ☐ GENERAL ☐ PRODUCTS/COMPLETED OPERATIONS ☐ PERSONAL & ADVERTISING INJURY ☐ FIRE DAMAGE ☐ _____ ☐ _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center; padding: 2px;">LIABILITY LIMITS IN THOUSANDS \$</th> </tr> <tr> <th style="width: 50%; padding: 2px;">EACH OCCURRENCE</th> <th style="width: 50%; padding: 2px;">AGGREGATE</th> </tr> </thead> <tbody> <tr> <td style="height: 100px;"></td> <td></td> </tr> </tbody> </table>			LIABILITY LIMITS IN THOUSANDS \$		EACH OCCURRENCE	AGGREGATE		
LIABILITY LIMITS IN THOUSANDS \$									
EACH OCCURRENCE	AGGREGATE								
		CLAIMS: Underwriter's representative for claims pursuant to this insurance. Name: _____ Address: _____ Telephone: (____) _____							
In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows: 1. INSURED. The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured. 2. CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it. 3. SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included. 4. CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City. 5. PROVISIONS REGARDING THE INSURED'S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers. 6. SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as: a. Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or b. If excess, affords coverage which is at least as broad as the primary insurance form CG0001. Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.									
ENDORSEMENT HOLDER									
CITY OF OXNARD Attn: Insurance Compliance Reference No. _____ P.O. Box 100085 – OX Duluth, GA 30096 Via Email: cityofoxnard@ebix.com Via Fax: 678-259-1007		AUTHORIZED REPRESENTATIVE ☐ Broker/Agent ☐ Underwriter ☐ _____ I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. Signature _____ (original signature required) Telephone: (____) _____ Date Signed _____							

AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT

FOR THE CITY OF OXNARD (the "City")

SUBMIT IN DUPLICATE

ENDORSEMENT NO.

ISSUE DATE (MM/DD/YY)

PRODUCER

POLICY INFORMATION:

Insurance Company:

Policy No.:

Policy Period: (from) (to)

LOSS ADJUSTMENT EXPENSE	☐ Included in Limits
	☐ In Addition to Limits

☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____
with an Aggregate of \$ _____ applies to
coverage. ☐ Per Occurrence ☐ Per Claim (which)

Telephone:

NAMED INSURED

APPLICABILITY

APPLICABILITY: This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered:

CITY AGREEMENTS/PERMITS

TYPE OF INSURANCE

❑ COMMERCIAL AUTO POLICY

☐ BUSINESS AUTO POLICY

☐ OTHER

OTHER PROVISIONS

LIMIT OF LIABILITY

\$ _____ per accident, for bodily injury and property damage.

CLAIMS:

Underwriter's representative for claims pursuant to this insurance.

Name: _____

Address: _____

Telephone: _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

1. **INSURED.** The City, its officers, agents, volunteers and employees are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
5. **PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.
6. **SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
 - a. Insurance Services Office Automobile Liability Coverage, "occurrence" form CA0001, code ("any auto"); or
 - b. If excess, affords coverage which is at least as broad as the primary insurance form referenced in the preceding section (1).

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD
Attn: Insurance Compliance
Reference No. _____
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

AUTHORIZED REPRESENTATIVE

☐ Broker/Agent ☐ Underwriter ☐ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: (_____) _____ Date Signed _____

River Ridge Pro Forma Operating Income Projections With Living Wage Exemption ^{1/} (thousands of dollars)						
	Baseline			AGC Proposal		
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
Gross Revenue						
Golf						
Greens Fees	\$2,150	\$2,275	\$2,350	\$2,108	\$2,193	\$2,282
Cart Rentals	820	850	880	751	766	781
Practice Range/Player's Club	<u>160</u>	<u>165</u>	<u>170</u>	<u>380</u>	<u>707</u>	<u>721</u>
Subtotal Golf	\$3,130	\$3,290	\$3,400	\$3,239	\$3,666	\$3,784
Merchandise	230	235	240	231	238	245
Food & Beverage	800	950	1,000	823	870	904
Other	<u>45</u>	<u>48</u>	<u>50</u>	<u>46</u>	<u>49</u>	<u>50</u>
Total	\$4,205	\$4,523	\$4,690	\$4,340	\$4,824	\$4,983
Cost of Sales						
Merchandise	\$163	\$166	\$168	\$157	\$162	\$167
Food & Beverage	<u>255</u>	<u>305</u>	<u>320</u>	<u>230</u>	<u>244</u>	<u>253</u>
Total	\$418	\$471	\$488	\$387	\$406	\$420
Gross Profit	\$3,787	\$4,052	\$4,202	\$3,952	\$4,418	\$4,564
Operating Expenses	<u>\$3,160</u>	<u>\$3,293</u>	<u>\$3,479</u>	<u>\$3,257</u>	<u>\$3,394</u>	<u>\$3,548</u>
Net Income, Before Mgmt Fees	\$627	\$875	\$723	\$695	\$1,024	\$1,016
Less: Management Fees	<u>\$159</u>	<u>\$182</u>	<u>\$180</u>	<u>\$169</u>	<u>\$222</u>	<u>\$223</u>
City Net Income ^{2/}	\$468	\$693	\$543	\$526	\$802	\$793
^{1/} Assumes \$400,000 water costs and Living Wage exemption.						
^{2/} Expressed before City administrative expenses an allocations, reserves for maintenance equipment replacement, and reserves for capital improvements.						

River Ridge Pro Forma Operating Income Projections With Living Wage Applied ^{1/} (thousands of dollars)						
	Baseline			AGC Proposal		
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
Gross Revenue						
Golf						
Greens Fees	\$2,150	\$2,275	\$2,350	\$2,108	\$2,193	\$2,282
Cart Rentals	820	850	880	751	766	781
Practice Range/Player's Club	160	165	170	380	707	721
Subtotal Golf	\$3,130	\$3,290	\$3,400	\$3,239	\$3,666	\$3,784
Merchandise	230	235	240	231	238	245
Food & Beverage	800	950	1,000	823	870	904
Other	45	48	50	46	49	50
Total	\$4,205	\$4,523	\$4,690	\$4,340	\$4,824	\$4,983
Cost of Sales						
Merchandise	\$163	\$166	\$168	\$157	\$162	\$167
Food & Beverage	255	305	320	230	244	253
Total	\$418	\$471	\$488	\$387	\$406	\$420
Gross Profit	\$3,787	\$4,052	\$4,202	\$3,952	\$4,418	\$4,564
Operating Expenses	\$3,360	\$3,443	\$3,575	\$3,457	\$3,544	\$3,648
Net Income, Before Mgmt Fees	\$427	\$609	\$627	\$495	\$874	\$916
Less: Management Fees	\$147	\$177	\$182	\$157	\$217	\$226
City Net Income ^{2/}	\$280	\$432	\$445	\$338	\$657	\$690
^{1/} Assumes \$400,000 water costs and Living Wage applies.						
^{2/} Expressed before City administrative expenses an allocations, reserves for maintenance equipment replacement, and reserves for capital improvements.						

River Ridge Golf Club

**Public Works and Transportation
Committee Meeting of June 11, 2019**

Recommendation

That the Public Works and Transportation Committee recommend the City Council:

1. Approve the fee-for-service management agreement between American Golf Corporation (AGC) and the City of Oxnard (City) for the management, operation and maintenance of River Ridge Golf Club (RRGC) with no City subsidy for a three-year term with options to renew for two additional one-year terms, exercised at the sole discretion of the City, and
2. Exempt the golf course from the City's Living Wage Policy.

Background

- River Ridge Golf Club is the City's municipal golf complex consisting of two 18-hole golf courses
- Vineyard Course opened in 1986
- Victoria Lakes opened all 18 holes in 2008
- Contract with High Tide and Green Grass contract has been in place since 1994, with the latest agreement amended in 2009 and terminating June 30, 2019

- The City's primary objectives are to make the golf course self-sustaining (meaning operating without any City subsidy) in the short-term and make it profitable in the long-term.
- Thus, committing to a short-term contract that at minimum breaks even, during which time an overall master plan for the long term success of RRGCC can be developed.

Discussion

River Ridge Golf Club Historical Rounds of Play

Calendar Year	Complimentary	Paid	Total
2016	13,002	70,955	83,957
2017	12,537	70,221	82,758
2018	9,527	67,780	77,307

Discussion

River Ridge Golf Club Historical Gross Revenue			
Department	2016	2017	2018
Greens Fees	\$2,174,200	\$2,142,000	\$2,014,200
Carts	\$766,300	\$834,300	\$778,700
Practice Range	\$144,600	\$157,400	\$156,000
Merchandise	\$190,600	\$215,500	\$225,800
Snack Bar	\$470,500	\$472,100	\$444,100
Banquets	\$289,000	\$257,000	\$412,300
Miscellaneous	\$41,300	\$39,000	\$39,400
Total	\$4,835,400	\$4,846,400	\$4,926,900

Discussion

- The City's General Fund operating budget (subsidy) for RRGC's for Fiscal Year 2017/2018 was approximately \$1,317,000, declining to \$922,000 in FY 2018/2019
- The municipal golf industry has moved almost universally to fee-for-service management agreements for operations of golf courses
- The proposed fee-for-service management agreement provides the municipality with the benefits of a short term agreement, private sector management practices, a high degree of control and the greatest financial upside potential

- RRGC annual water consumption for both courses ranges between 700 to 800 acre feet
- To reduce water operating expenses, the RRGC will purchase Water Well #27 from the City's Water Utility at a cost of \$126,000
- The Wagon Wheel Development Fees will be used to purchase Water Well #27
- The purchase of Water Well #27 will reduce the annual usage of reclaimed water, potentially saving approximately \$300,000 in water expenses

Bidding Process

- City issued a request for proposals (RFP) on March 25, 2019
- City received 7 proposals from qualified professional golf course management companies
- An evaluation committee consisting of 3 individuals was assembled to review and analyze the proposals
- AGC's corporate resources and strong proposed marketing plan ranked high for RRGC
- AGC's extensive corporate resources, which are provided under the management fee, allow minimum on-site general and administrative support staff, thus reducing on-site operating expenses

Proposed Agreement

- AGC is a major golf management firm headquartered in Southern California and is the largest operator of golf courses in the State
- The agreement with AGC will commence on July 1, 2019, and last three years, unless the City opts to extend it further by two one-year terms
- The base management fee will be \$100,000 per year
- City will pay AGC an incentive management fee equal to (i) 3% percent of the annual threshold of adjusted net operating income per year and (ii) 15% of the adjusted net operating income thereafter

Scope of Services

- Provide transition services
- Provide employee training
- Procure all operating equipment, supplies, and services
- Provide corporate oversight and support services
- Provide marketing and outreach
- Provide on-site management, maintenance and operation of the golf complex
- Prepare all timely performance and accounting reports and statements
- Partner with the City to develop a long term master plan
- Implement a water management plan
- Maintain the adjacent football/soccer fields

Financial Impact

- With a new agreement with AGC, the General Fund will no longer subsidize the operations of RRG
- Exempting this agreement from the City's Living Wage Policy has the potential to save \$200,000 to \$300,000 per year in operating expenses

Financial Impact

The Operating Income Projections table below reflects the exemption of the Living Wage Policy and the reduction of water cost to \$400,000 per year with the purchase of Water Well #27

Operating Income Projections – Living Wage Exempt		
Year	Consultant	AGC's
Actual FY18	\$211,000	\$211,000
Year 1	\$468,000	\$526,000
Year 2	\$693,000	\$802,000
Year 3	\$543,000	\$793,000

Financial Impact

- The Operating Income Projections table below reflects the application of the Living Wage Policy and the reduction of water to \$400,000 per year due to the purchase of Water Well #27.
- Pro forma projections with the Living Wage applied are summarized below.

Operating Income Projections – Living Wage Applied		
Year	Consultant	AGC's
Actual FY18	\$211,000	\$211,000
Year 1	\$280,000	\$338,000
Year 2	\$432,000	\$657,000
Year 3	\$280,000	\$690,000

Financial Impact

- The new contract with AGC will require the appropriation of Wagon Wheel Development Fees
- Wagon Wheel Development Fees will be used to purchase Water Well #27 and for working capital funds
- Upon approval of management agreement, staff will return to City Council to appropriate Wagon Wheel Development Fees for Fund 651 -RRGC working capital and to recognize gross revenue and expenditures in FY 2019/2020

Questions?