

## REPORT TO CITY COUNCIL

Approved by:

John Scarborough, Interim Public Works Director

Arnaldo Rodriguez, City Manager

Council Meeting of: April 17, 2019

Agenda Number: E-3

### SUBJECT:

Request for City Council Direction Regarding Operation and Management Lease Agreement with SGM Inc. dba Sierra Golf Management Inc. Regarding Renewal Options for the Madera Municipal Golf Course Operations.

### RECOMMENDATION:

Staff recommends that the City Council (Council) provide direction to staff regarding renewal options for the Operation and Management Lease Agreement with SGM Inc. dba Sierra Golf Management Inc. (Sierra).

### SUMMARY:

On October 7, 2009, the City entered into a 10-year agreement with Sierra for the management of the Madera Municipal Golf Course (Golf Course). The Operation and Management Lease Agreement is a full-service contract that includes the maintenance and management of all Golf Course activities, such as pro shop sales, rental of golf carts, collection of fees for services, and food, beverage, and banquet services. The Operation and Management Lease Agreement is set to terminate on October 31, 2019 but may be extended an additional five years by mutual agreement of both parties. Should Council wish to renew this existing agreement with Sierra, a notice of intent to extend must be submitted to them 180 days in advance of expiration, or by May 3, 2019, to allow for negotiations prior to the expiration date.

### DISCUSSION:

Staff has identified the following options for navigating through the possible expiration of the Golf Course Operation and Management Lease Agreement:

Submit 180 Day Notice of Intent to Extend:

Staff would prepare and submit to Sierra a notice of intent to extend. This would allow 180 days to negotiate the terms of a 5-year extension per the existing agreement. By choosing to move forward with this option, Council does not bind themselves to extending the agreement. Staff will bargain in good faith until an amendment has been agreed upon to bring back to Council for a final vote. If an agreement is not reached through the negotiation process, the Agreement automatically expires on October 31, 2019.

If Council directs staff to issue the notice and begin negotiations, City workshops on this topic and negotiations with Sierra must be completed in time to allow for a Request for Proposals (RFP) to be generated and awarded in the event that negotiations are unsuccessful. The typical timeline for development and award of an RFP is approximately 120 days, which allows approximately 60 days for staff and Council to finish the negotiation process.

Do Not Submit Notice of Intent to Extend:

This option assumes the current vendor will formally terminate its activities with the City as of October 31, 2019. The period prior to the termination date will be used primarily to generate and advertise an RFP to secure a new vendor. Council may, however, consider other options during this process. It is important to note that if this option is chosen, the current vendor may choose to bid on the new contract, but no guarantee exists that they would be chosen. Additionally, the cost of the contract may fluctuate significantly, even under the same vendor.

**ALTERNATIVES:**

1. Direct staff to issue a notice of intent to extend the agreement.  
This option will allow Council to negotiate with the current vendor to determine if mutually agreeable terms are attainable. If after negotiations, Council believes contract negotiations are not being productive, Council may direct staff to not exercise the remaining five-year extension contained in the agreement and enter the competitive bid process to secure a new vendor.
2. Direct staff not to issue a notice of intent to extend the agreement.  
With this option, the City would allow the current agreement with Sierra to expire in October 2019. Staff would immediately begin preparation of an RFP for advertisement for a new Operation and Management Lease Agreement at the Golf Course.

**FINANCIAL IMPACT:**

There is no financial impact at this time, although additional expense or savings could be realized through the negotiation or RFP process.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**



Strategy 202: Develop/expand and promote community gathering places that reflect the multicultural community in Madera.

Strategy 333: Ensure affordable, high-quality sports programs for participants of all ages.

Strategy 411: Enhance and expand recreational activities available to Maderans.

**ATTACHMENTS:**

1. Operation and Management Lease Agreement and Amendments

**MADERA MUNICIPAL GOLF COURSE  
OPERATION AND MANAGEMENT LEASE AGREEMENT**

This Operation and Management Lease Agreement ("Lease Agreement") is made and entered into this 7th day of October 2009 by and between the **City of Madera**, a municipal corporation of the State of California, hereinafter called "City" and SGM Inc. dba Sierra Golf Management Inc., Post Office Box 788 Chowchilla, California 93610, hereinafter referred to as "Sierra" both hereinafter collectively referred to as "the parties."

**RECITALS**

**WHEREAS**, the City owns and operates the Madera Municipal Golf Course, hereinafter called "Golf Course," for the use and benefit of the public; and;

**WHEREAS**, the City desires to provide the highest level of service to the community of Madera by providing an improved golf course facility and related operations: and:

**WHEREAS**, the City has determined to privatize the management and operation of the Madera Municipal Golf Course by leasing the entire facility, including the clubhouse, to Sierra; and;

**WHEREAS**, The City desires to provide pro shop sales and rental of golf equipment and supplies, conduct driving range, rental of carts, provide golf lessons and instruction, collect fees for services, perform course and facility related maintenance provide food, beverages service, provide banquet and other concession services for the convenience and enjoyment of the public at Golf Course; and Sierra is engaged in the such business, and is prepared, equipped and qualified to undertake such operations and provide all services required herein, at Golf Course; and

**WHEREAS**, Sierra has submitted a proposal to operate golf course operations dated September 10, 2009, attached hereto as Exhibit "A". Sierra has responded to a Request for Qualifications and has experience in golf course operations and related concessions. City and Sierra wish to enter into a contract for such services; and

**NOW, THEREFORE**, in mutual consideration of the terms, covenants, and conditions set forth herein, the parties agree as follows:

**TERMS**

**1. Leased Premises.** City hereby leases to Sierra and Sierra hereby leases from City the real property, and all the facilities and improvements situated thereon, located in the City of Madera, California, commonly known as Madera Municipal Golf Course located on Avenue 17 near the Airport in the City of Madera (the "Leased Premises") which Leased Premises consist of an eighteen-hole golf course, an adjacent parking area, a

driving range, a clubhouse, a banquet facility as well as other structures, buildings, facilities, equipment, and shop equipment (Exhibit B).

**2. Term.** This Lease Agreement shall commence on November 1, 2009 (the "Effective Date") and shall continue in full force and effect for a period of five (5) years ("Initial Term"), thereafter terminating on October 31, 2014 ("Termination Date"), unless extended sooner or otherwise terminated sooner as provided herein, save and except, Sierra's lease of the clubhouse and banquet facilities and food and beverage operation shall not commence until March 15, 2010, unless the current tenant agrees to terminate its tenancy and vacate earlier than March 15, 2010, and which shall terminate on October 31, 2014.

The City may, in its sole discretion, grant one (1) option to Sierra to extend this Lease Agreement ("Renewal Option"), for an additional five (5) year period ("Renewal Term"), which Renewal Option will only take effect upon the mutual written consent of the parties. The City shall give Sierra no less than 180 days written notice of its intent to extend the Lease for an additional five (5) year period, at which point the City shall enter into negotiations with Sierra to extend this Lease Agreement beyond the Renewal Term. The parties agree to negotiate in good faith. In the event City and Sierra are unable during such 180-day period to reach agreement on the lease terms, this Lease Agreement shall terminate and shall be of no further force and effect and except as may specifically be provided for elsewhere in this Lease Agreement, neither City nor Sierra shall have any further obligations hereunder.

**3. Holding Over.** In the event Sierra shall holdover or remain in possession of the Leased Premises with the express or the implied consent of the City after expiration of the Initial Term or any Renewal Term(s) thereof, such holding over or continued possession shall create a tenancy for month-to-month only, upon the same terms and conditions as are herein set forth and in effect the last month prior to the expiration of the then current term of this Lease Agreement. Rent during any such hold over period shall be calculated as set forth in Section 5.10 of this Lease Agreement.

**4. Use of the Leased Premises.**

**4.1. Condition of the Leased Premises.** Sierra acknowledges personal inspection of the Leased Premises and the surrounding areas and evaluation of the extent to which the physical condition of the Leased Premises and of the surrounding areas will or may effect the operation of the Leased Premises. Except as otherwise provided herein, Sierra expressly acknowledges its acceptance of the Leased Premises in its "As-Is, Where-Is" condition and acknowledges existing easements for roadways, sewer, and water lines, and further acknowledges the City has made no representations or warranties as to the condition of the Leased Premises or its fitness for the use intended hereunder. Sierra shall make no demands upon the City for any improvements or alterations of the Leased premises, except as provided herein.

**4.2. Warranty of Title.** The City warrants and represents that it has sole and exclusive rights and title to the Leased Premises, subject only to the rights of the United States of America, as more specifically set forth herein, and debt service on bond



obligations for the purchase of the real property, such that it may enter into this Lease Agreement. The City further warrants and represents that the execution, delivery or performance of this Lease Agreement will not conflict with or violate any other agreement by which the City is bound, or any law, rule, regulation or ordinance by which the City is bound.

**4.3. Zoning Classification.** Sierra understands and acknowledges the Leased Premises are located within a Public/Semi-Public Zoning District and that Sierra's management and operation of the Leased Premises shall be subject to those regulations applicable to that zoning district, in addition to all other applicable standards or provisions of federal, state or local law. The City represents that the operation of a municipal golf course is consistent with this zoning classification and the permissible uses within this zoning classification.

**4.4. Permitted Use.** The Leased Premises shall be used only and exclusively for a golf facility and such other purposes including, but not limited to, operation of an eighteen-hole golf course and practice facility; fee-based use by the general public of the golf course and the practice facilities; golf instruction; pro-shop sales and activities; fee-based business sponsored golf outings, including leagues and tournaments; and operation of a restaurant and banquet facility and associated food and beverage services. Any other uses shall require the express prior written consent of the City. Sierra shall work cooperatively with the City with regard to the use of the Leased Premises for City recreational programs and activities. All revenue generated by Sierra shall be the property of Sierra including one hundred (100) percent of all gross receipts from the sale of green fees, green fees packages, golf equipment, soft goods, supplies, lessons, driving range, cart fees, and food, beverage and banquet operations

**4.5. Prohibited Uses.** Except for those articles or commodities commonly used in the operation and maintenance of a municipal golf course and restaurant and banquet facility, Sierra agrees not to keep or use upon the Leased Premises, nor permit to be kept thereon, any article or commodity which would operate to increase the rate of insurance upon the Leased Premises because of its hazardous nature unless Sierra agrees to pay any increase in any insurance premiums payable to City as a result of the placement of any article or commodity on the Leased Premises within twenty (20) days after receipt of notice of such increase.

**4.6. Price Control.** All rates and fees charged by Sierra, including green fees, cart fees, memberships, merchandise, and food and beverage shall be sold at prices comparable to those prevailing for similar public golf course facilities in the San Joaquin Valley, taking into account the size, age, demographic characteristics, rent structure, and location of the Leased Premises in relation to other public golf facilities located in San Joaquin Valley.

**4.7. Federal Aviation Regulations.** Sierra understands and acknowledges that the Leased Premises are located on land adjacent to and owned by the Madera Municipal Airport. Sierra further understands and acknowledges that the Leased Premises and all activities conducted and services performed on the Leased Premises are subject to federal oversight and control including, but not limited to, the airspace

directly above the Leased Premises. Sierra further understands and acknowledges that portions of the Leased Premises are or may be subject to runway and airspace protection zones governed by federal and state authorities. Sierra will maintain the Leased Premises, operate its equipment, and direct its personnel in airspace sensitive areas consistent with federal and state requirements.

Other than with respect to the Leased Premises, Sierra, its employees and agents are expressly prohibited from accessing or gaining entry to any facilities owned or operated by either the Madera Municipal Airport or the Federal Aviation Administration located on or near the Leased Premises without prior consent of the Airport Manager. Sierra shall also employ all reasonable efforts to prevent its invitees and guests from accessing or gaining entry to such facilities. Sierra shall fully comply and cooperate with all security alerts and emergency activities related to airport operations.

## **5. Rent.**

**5.1. Base Rent.** Commencing on the Effective Date, Sierra shall pay to City monthly Base Rent for the use and occupancy of the Leased Premises, on the tenth day of each calendar month throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease Agreement. Base rent through the entire Initial Term and through the Renewal Term shall be as follows:

Year 1:	\$24,000 per year
Year 2:	\$30,000 per year
Year 3:	\$36,000 per year
Year 4:	\$36,000 per year
Year 5:	\$36,000 per year
Renewal Year 6:	\$40,000 per year
Renewal Year 7:	\$40,000 per year
Renewal Year 8:	\$40,000 per year
Renewal Year 9:	\$40,000 per year
Renewal Year 10:	\$40,000 per year

**5.2. Per Round Rate.** In addition to Base Rent, Sierra agrees to pay to the City a "per round" rate that establishes an initial rate of \$1.00 per round but increases in later years as set forth below. The rate per round will be paid on the tenth day of each calendar month throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease Agreement.

Year 1:	\$1.00 per round
Year 2:	\$1.00 per round
Year 3:	\$1.50 per round
Year 4:	\$2.00 per round
Year 5:	\$2.00 per round
Renewal Year 6:	\$2.00 per round
Renewal Year 7:	\$2.00 per round



Renewal Year 8: \$2.00 per round  
Renewal Year 9: \$2.00 per round  
Renewal Year 10: \$2.00 per round

**5.3. "Per Round Rate".** For purposes of this Lease Agreement the "per round rate" shall be applied to all golf course rounds played in which Sierra actually received revenue or compensation from golfers as a result of Sierra's operation and maintenance of the Leased Premises.

**5.4. Reporting for Per Round Rate.** Beginning as of the Effective Date of this Lease Agreement, no later than ten (10) days following the end of each month Sierra shall submit to City monthly financial reports in a form and manner satisfactory to the City showing the total gross revenues associated with Rounds of Golf played and or credited and received by Sierra during such month.

**5.5. Capital Improvement Account.** Commencing on the Effective Date and continuing through the Initial Term and Renewal Term, the City shall hold in reserves \$90,000 in the Golf Course Capital Improvement Account and shall make such funds available exclusively for capital improvement projects at the Leased Premises as an emergency action in case of catastrophic failure of systems at the golf course not within the maintenance and improvement responsibilities of Sierra as set forth in this Lease Agreement, including such items as well and pump stations. The distribution of funds from this Capital Improvement Account shall be at the sole discretion of the City, in consultation with Sierra, and any repairs, improvements, modifications or additions to be made using the funds maintained in this Capital Improvement Account shall have the prior written approval of the City

**5.6. Capital Improvements.** Commencing on the Effective Date, Sierra shall make Capital Improvements to the Leased Premises in order to improve the current condition of the golf course and clubhouse facilities, consistent with the Capital Improvement Plan identified in Exhibit A. The Capital Improvement Plan will serve as a guide for improvements; however for the purposes of this agreement, Sierra shall make an annual expenditure of not less than \$50,000 per calendar year for Capital Improvements to the Leased Premises throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease Agreement.

Year 1: \$50,000 per year  
Year 2: \$50,000 per year  
Year 3: \$50,000 per year  
Year 4: \$50,000 per year  
Year 5: \$50,000 per year  
Renewal Year 6: \$50,000 per year  
Renewal Year 7: \$50,000 per year  
Renewal Year 8: \$50,000 per year  
Renewal Year 9: \$50,000 per year  
Renewal Year 10: \$50,000 per year



**5.7. Late Charge.** Base Rent and Per Round payments are due on the tenth day of each month. In the event any payment of Base Rent is not received by the City by the twentieth calendar day of the month, Sierra shall pay to City in addition to the Base Rent and Per Round Payments a late charge of ten percent (10%) of the amount then owing for each thirty day period that such Base Rent or Per Round payments remains outstanding, to which Sierra acknowledges is a fair and reasonable estimate of the cost of the late payment to the City.

**5.8. Rent Payment and Per Round Payment.** Delay by the parties in computing or collecting the Base Rent and Per Round Payments or the acceptance by City of the incorrect amount of Base Rent or Per Round payments shall not relieve Sierra of its obligations to pay such rent to the City. Sierra waives any applicable statute of limitations which could defeat the City's right to collect the Base Rent. All rental payments due under this Section 6 shall be made payable to the City of Madera and shall be delivered to the City of Madera Finance Department at 205 W. Fourth Street Madera, California 93637. Any failure to make Base Rent Payments and/or Per Round Payments that is more than sixty (60) days delinquent shall constitute substantial breach of this Lease Agreement.

**5.9. Security Deposit.** There shall be no security deposit; however, at the expiration of this Lease Agreement, or any earlier termination thereof, Sierra shall return the Leased Premises to City in a comparable or better condition and repair as it existed as of the Effective Date, normal wear and tear, damage from casualty, and condemnation excepted.

**5.10. Hold Over Rent.** In the event Sierra fails to surrender the Leased Premises upon the termination date of the Initial Term or the Renewal Term as described in Section 3 of this Lease Agreement, the rent during such hold over term shall be equal to one hundred twenty-five percent (125%) of the last Base Rent amount payable prior to expiration of the then current term plus the Per Round Payments at the rate in effect on the termination date. Payment of this hold over rent by Sierra shall not otherwise limit the City's rights and remedies available under the law.

## **6. Termination.**

**6.1. Termination for Cause.** In addition to all other remedies available to the City under the law or in equity, this Agreement may be terminated by the City as provided herein below:

**6.1.1. Impairment or Prejudice of City's Interests.** The City reasonably determines that the conduct or performance of Sierra in performing the duties and obligations imposed upon it under this Lease Agreement is such that the interests of the City may be impaired or prejudiced and Sierra has not remedied such conduct within thirty (30) days after written notice thereof as directed by City; or

**6.1.2. Sierra's Failure to Perform.** The City reasonably determines that Sierra has failed in the performance or compliance with any of the covenants, agreements, terms or conditions contained in this Agreement and such failure continues

for a period of thirty (30) days after written notice thereof or, in the case such failure cannot with due diligence be cured within such period of thirty (30) days or such reasonable time as may be required to cure such default, but in no event to exceed sixty (60) days. Non-payment of Base Rent and/or Per Round Payments shall constitute failure to perform.

**6.2. Effect of Termination.** In the event that this Agreement is terminated by City, Sierra shall:

**6.2.1. Cessation of Services.** Upon receipt of written notice of such termination promptly cease all services performed under this Lease Agreement, unless otherwise directed by City; and

**6.2.2. Delivery of Documents and Reports.** Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audiotapes, and any other materials provided to Sierra or prepared by or for Sierra or the City in connection with this Lease Agreement. Such material is to be delivered to City in completed form.

**6.3. City's Assumption of Obligations.** In the event that this Agreement is terminated, City is hereby expressly permitted but not required to assume the obligations required under this Lease Agreement and complete them by any means, including but not limited to, an agreement with another party. City is further hereby expressly permitted but not required to take possession of the Leased Premises, including all improvements, equipment, and inventory located thereon, and use the same for the purpose of satisfying or mitigating any damage arising from Sierra's breach or default of this Lease Agreement.

**6.4. City's Failure to Perform.** This Agreement may be terminated by Sierra, upon no less than one hundred-eighty (180) days prior written notice, upon the failure of City to perform any of the obligations imposed upon it under this Lease Agreement, and for no other reason.

**6.5. Rights and Remedies Not Exclusive.** The rights and remedies of the City and Sierra provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement

**7. Responsibilities of Sierra.** In addition to those duties and obligations otherwise provided for herein, throughout the entire Initial Term and any Renewal Term(s) of this Agreement, Sierra shall be responsible for the following duties and obligations:

**7.1. Facility and Equipment Maintenance Services.** Sierra shall, at its sole cost and expense, maintain the Leased Premises and all buildings, structures, improvements, fixtures, equipment, shop equipment, trade fixtures, banquet facilities and utility systems in good, safe, operable, useable and sanitary condition throughout the Initial Term and any Renewal Term(s) thereof, providing for such repairs, replacements, rebuilding or restoration as may be required to comply with the requirements of this Lease Agreement. Sierra understands and acknowledges that,



except as set forth at section 5.5 above, or as otherwise specifically set forth herein, the City does not have any duty nor shall the City be called upon to make any improvements, replacements or repairs whatsoever to the Leased Premises or to any structures, improvements, fixtures, equipment, shop equipment, trade fixtures, banquet facilities, equipment or utilities located thereon during the Initial Term or any Renewal Term(s) hereof.

Sierra, at its sole cost and expense, shall furnish and shall maintain all equipment, supplies, and material of good quality and of sufficient number to fulfill the requirements of this Lease Agreement. Any equipment listed on Exhibit "B" shall be returned to the City, and may be declared surplus under the guidelines and accounting standards established by the City, at such time as Sierra no longer requires the use of equipment for the following reasons:

- Unusable in present condition, no longer useful
- Having value but requiring repairs to make useable and repair cost is 50% of replacement value or more
- Having no future value as a useable commodity in its present condition
- Broken or worn-out to the point of having no saleable scrap value

**7.2. Grounds, Golf Course and Custodial Maintenance.** Sierra shall be solely responsible for all grounds maintenance services including, but not limited to, the obligation to mow, edge, trim, reseed, fertilize, aerate, irrigate, maintain landscaped areas, provide annual color and renovate turf areas located on the Leased Premises, as well as provide weed, disease, and pest control, turf maintenance, tree trimming, lake maintenance and maintenance of irrigation and pumping systems. Sierra shall provide the necessary maintenance of any structures and equipment associated with the Leased Premises including landscaping adjacent as part of the parking lot and clubhouse facilities, road parking lot and cart path maintenance, course cleaning and repairing. Sierra to provide all golf course facility related custodial/janitorial maintenance, including but not limited to restrooms pro shop, restaurant and banquet facility, so as to maintain and operate all concessions and golf course premises in a clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at anytime during the term of the Agreement relating to sanitation, public health, safety and welfare.

All maintenance work shall be performed at least in a manner and of a quality and in accordance with the standards of other local public golf facilities so as to maintain the aesthetic level and proper playing conditions.

Sierra at its sole expense shall coordinate an annual USGA (United States Golf Association) annual turf advisory service. The annual turf advisory service shall serve as a baseline for course conditions and will provide Sierra and the City another tool for determining and prioritizing capital improvements and maintenance delivery plans.

**7.3. Scheduling and Use of the Leased Premises.** Sierra shall provide full organization, administration, and supervision of a golf facility and golf course operations



as well as restaurant and banquet operations on the Leased Premises including, but not limited to, opening and closing the Leased Premises, setting and collecting fees and charges, taking of reservations and scheduling of tee times, monitoring play on the golf course, rental of equipment, sale of merchandise and equipment, instructional and professional golf services, and facilitation and organization of instructional programs, clinics, leagues, and tournament play.

Sierra shall insure that controls are in play to monitor, enforce rules and regulate pace of play and safe conditions. Sierra at its sole expense shall provide marshals and starters sufficient to cover the daily rounds played and shall regulate play and conduct of all persons on the golf course and related facilities. Sierra shall provide, maintain and make available a sufficient number golf carts available for rent at the Golf Course. Golf cart must be kept in good condition and must be replaced and maintained on a regularly scheduled program.

Sierra shall have the exclusive rights, license, duty and privilege to utilize the food and beverage concession facilities within the restaurant and banquet building and patio at the Golf Course. Sierra recognizes that Sierra shall, at its sole cost and expense, be required to furnish all equipment, appliances, supplies, and the items necessary or convenient to Sierra's operation hereunder. Services provided by Sierra hereunder shall conform at least to the services, standards, and practices of the industry in the surrounding area.

**7.4. Public Use and Access.** Sierra shall ensure access to the Leased Facility and its programs and services to all members of the public, including those residing and/or visiting within the City of Madera and within Madera County, without regard to race, religion, color, national origin, sex or ability. Sierra shall allow access and use of by City for its Annual July 4<sup>th</sup> Celebration, including the closure of the golf course for Firework display setup. City is responsible for cleanup and security related to this event. Sierra agrees to cooperate with the City in the scheduling of air shows, public meetings, agricultural activities, tournaments and City activities that may occur on or near the Leased Facility premises.

**7.5. Cooperation With City Parks and Community Services Department** Sierra shall work cooperatively with the City in the promotion and support of golfing opportunities and programs through the City's Parks and Community Services Department.

**7.6. Hours of Operation.** Sierra shall operate and maintain the Leased Premises open from dawn to dusk every day of the year, with the exception of closures required by weather conditions and Christmas Day. Sierra shall be required to provide a minimum level of operation in compliance with standards contained herein.

**7.7. Irrigation.** Sierra shall be responsible for irrigating the necessary parts of the Leased Premises in a manner required to maintain the playability and usability of the Leased Premises and so as not to cause damage or destruction to any portion of the Leased Premises. Sierra shall monitor the quality of the irrigation water to ensure it

is acceptable to use for irrigation at the Leased Premises. Any deficiencies shall be immediately reported to City's representative in writing.

**7.8. Quality Assurance.** By executing this Lease Agreement, Sierra agrees that its management and operation of the Leased Premises pursuant to this Lease Agreement shall be performed in a fully competent manner. By executing this Lease Agreement, Sierra further agrees and represents to City that the Sierra possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Lease Agreement and that City relies upon the professional skills of Sierra to do and perform Sierra's work. Sierra further agrees and represents that Sierra shall follow the current, generally accepted practices in this area to perform the services required under this Agreement.

**7.9. Representative.** Sierra shall assign a single representative to have overall responsibility for the execution of this Lease Agreement for Sierra. An **Operations Director** will be designated as the representative for Sierra. Sierra shall provide the City with written notice of any changes in the designated representative.

**7.10. Repair and Maintenance.** Except as otherwise specifically provided in this Lease Agreement, Sierra shall be solely responsible for keeping the Leased Premises clean and in good condition and repair and for all repairs and maintenance necessary to keep the Leased Premises in good condition and repair. Sierra shall be responsible for all damage or destruction to the Leased Premises caused by any act(s) of Sierra or by Sierra's employees, agents, licensees or contractors, in addition to any invitees while such invitees are on the Leased Premises.

**7.11. Utilities and Services.** Sierra shall arrange to have furnished all utilities including electrical, power, gas, water, sewer, cable or satellite television, as well as janitorial services, and trash removal and shall pay to such person or entity providing such utilities and services during the term of this Lease Agreement. The City shall not be liable in any manner for any failure or interruption of any utility service furnished to the Leased Premises, and no such failure or interruption shall entitle Sierra to terminate this Lease Agreement.

**7.12. Failure to Maintain or To Repair.** If at any time during the Initial Term or any Renewal Term Sierra fails to maintain or to repair the Leased Premises as required under this Lease Agreement, City, upon at least ten (10) days' prior written notice (except in the case of an emergency when no such notice shall be required) may, but is not required to, perform the maintenance or make the repairs or replacements on behalf of Sierra. Any sums expended by the City in doing so shall be deemed immediately due from Sierra on demand of the City.

**7.13. Restaurant and Banquet Operations.** Sierra shall have the exclusive right to provide food and beverages at the Leased Facility throughout the term of this Lease Agreement. All revenue generated by the food, beverage and banquet operations Sierra shall be the property of Sierra. Sierra shall be authorized to sell food, beverages, and food products, including alcoholic beverages, or to subcontract for such



services, provided such services are provided in accordance with all applicable health and sanitation regulations and that all necessary permits and approvals are obtained in advance, including the necessary permits and approvals from the California Department of Alcohol and Beverage Control and Madera County. Sierra shall maintain a liquor license in accordance with applicable laws and regulations throughout the entire term of this Lease Agreement

Sierra shall provide a full level of service to the banquet facility which will include, without limitation, banquet booking, setup, food service, collection of fees and all services typical to the operation of a banquet facility. Unless agreed upon in writing, Sierra agrees to limit it's services under this agreement to the facilities at the Golf Course and will not under the auspices of this agreement provide catering services off of the Golf Course facility.

Sierra shall at its sole cost and expense perform all maintenance and repairs to kitchen and related facilities including but not limited to that necessary for proper functioning of stoves and refrigeration equipment as well as any/all septic tanks, grease fuels and traps, drains sinks and rodent and pest control.

Sierra shall remedy within forty-eight (48) hours any defective, dangerous or unsanitary conditions for which it has notice. City may, at any time at its option, do so at Sierra's sole cost and expense, for which City shall be reimbursed. Defective, dangerous or unsanitary conditions may include but need not be limited to kitchen maintenance, water leakage or other health and safety items upon demand.

**7.14. Collection of Fees and Revenues; Accounting.** Sierra shall have the sole authority and shall be solely responsible for collecting all fees and revenues generated by its operation and management of the Leased Premises during the term of this Lease Agreement. Sierra shall be solely responsible for the accounting for such revenues in accordance with accepted accounting methods and for the reporting of revenues to the City as more specifically provided herein.

**7.15. Accident Reports.** Sierra shall immediately report to the City, in writing, any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to person or property that occurs on or in connection with the Leased Premises. This written report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and any other pertinent information available to Sierra.

**7.16. Americans With Disabilities Act (ADA) and Title 24 Compliance.** With respect to any capital improvements made by Sierra during the term of this Lease Agreement including, but not limited to, those capital improvements made through the use of Capital Improvement funds established pursuant to Section 5.7 of this Lease Agreement, Sierra shall ensure that all buildings, structures, and other facilities constructed or improved by it are constructed or improved in such a manner as to be in compliance with the Americans With Disabilities Act (ADA) and Title 24. With respect to all other ADA or Title 24 required improvements, City shall be responsible for making



any repairs or improvements necessary to bring the buildings, structures, and other facilities into compliance with the ADA and with Title 24.

**7.17. Staffing.** Sierra shall provide competent personnel necessary for such operations and shall supervise them in their work. Staff at a minimum must include a Class "A" Head Professional, Class "A" Golf Course Superintendent and assistant professionals and superintendents necessary for the operations and maintenance of the golf course. Head Professional and Golf Course Superintendent must be easily accessible by the golfing public and organized groups. Professional certifications must be current at all times through the contract term. Sierra shall provide a Food and Beverage Manager who will have day to day responsibility for the operation of food, beverage and banquet concessions covered by this agreement.

**8. Responsibility of City.** To the extent appropriate to the projects to be completed by Sierra pursuant to this Agreement, City shall:

**8.1. Disclosure of Information.** Assist Sierra by placing at its disposal all available information pertinent to the Leased Premises, including but not limited to, previous reports and any other data relative to the Leased Premises. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

**8.2. Entry Upon Property.** Make provisions for Sierra to enter upon public and private property as required by Sierra to perform its services.

**8.3. Examination of Records.** Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Sierra, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of Sierra.

**8.3. Project Director.** The **Director of Administrative Services** shall act as City's representative with respect to the work to be performed under this Lease Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Sierra's services. City may unilaterally change its representative upon notice to the Sierra.

**8.4. Notice of Defects.** Give prompt written notice to Sierra whenever City observes or otherwise becomes aware of any defect or shortcoming in the performance of any duty or obligation of Sierra under this Agreement.

**9. Signs.** Sierra shall not erect any permanent signs upon the Leased Premises unless the City has first given its prior written approval.

**10. Advertising and Promotional Materials.** Sierra shall ensure that all brochures, scorecards, and other printed advertising and marketing materials always bear the name "Madera Municipal Golf Course" with the accompanying logos of the City and the City Parks and Community Services department as provided by the City.

**11. Name Change.** Sierra understands and acknowledges the name of the Leased Premises is "Madera Municipal Golf Course" and Sierra shall not change, alter or otherwise misrepresent the name of the Leased Premises in any advertisement, brochure or other notice.

**12. Gift Certificates or Credits.** Sierra understands and acknowledges that as of the Effective Date of this Lease Agreement gift certificates or credits, including those for greens fees, merchandise, and other items of interest, have been issued by the City and remain outstanding. Sierra agrees to acknowledge and to honor and receive such gift certificates and credits at the value issued for a period of twelve (12) months following the Effective Date; however, such gift certificates and credits shall not be considered gross revenues or as rounds played as that term is defined in Section 5.4 of this Lease Agreement for purposes of calculating Sierra's rent payment obligations and the City will reimburse Sierra for all such gift certificates and credits accepted and honored by Sierra, within 30 days after presentation of a statement of the amount of such items.

**13. Complaint Resolution.** The representative of Sierra designated herein shall serve as the contact person for the City in the event complaints are received from the community or from members of the public. Sierra shall investigate all complaints received from the City and shall make a good faith effort to resolve such complaints. Within thirty (30) days of Sierra's receipt of such complaint, Sierra shall provide the City with a written summary of the disposition and resolution of the complaint.

**14. Employees.** Sierra shall maintain an adequate number of qualified staff and/or volunteers to provide the services required under this Lease Agreement and shall ensure that a manager is present at the Leased Premises during all times the Leased Premises are open to the public for business. Sierra understands and acknowledges that all its employees must act in a courteous, professional manner at all times. The City shall promptly notify Sierra of any employee who the City has determined to be incompetent, disorderly, intemperate or otherwise objectionable. Sierra shall take whatever disciplinary action is deemed appropriate with regard to such employee including termination and replacement with a satisfactory employee.

It is understood and agreed that the City shall have no authority to discipline any of Sierra's employees and any decision to terminate or otherwise discipline any employee shall be solely that of Sierra. In the event that any action is brought against the City or the City is named in any action brought against Sierra for failure to hire or terminate an employee, Sierra will indemnify, defend, and hold harmless the City for any costs, expenses, damages or liabilities incurred or alleged as a result of such action.

**15. Sierra's Labor and Wage Rate.** There shall be paid to each person employed by Sierra or sub-contractor in the work under this Agreement, not less than the minimum legal wage rate required by law. Sierra will comply with all applicable wage and hour laws and shall indemnify, defend, and hold the City harmless from any and all claims, demands, losses or damages made as a result, whether direct or indirect, of Sierra's employment of personnel pursuant to this Agreement.



**16. Equipment and Materials.** Sierra shall, at its own cost and expense, furnish, maintain, and repair all necessary equipment, supplies, and materials of good quality and in the amounts necessary to comply with this Agreement. These equipment, supplies, and materials shall include, but not be limited to:

**16.1.** All equipment necessary or appropriate for the performance of services under this Agreement, together with all necessary gas, oil, and spare parts for all equipment used and maintained by Sierra;

**16.2.** All necessary top dressing, seed, fertilizers, fungicides, insecticides, irrigation materials and supplies and herbicides;

**16.3.** Bunker rakes, trash receptacles, and other similar golf course equipment, which shall be maintained and/or replaced as needed, as set for the in the Technical Maintenance Specifications; and

**16.4.** Sand for bunkers to maintain an appropriate sand depth.

City agrees to make available for purchase by Sierra equipment owned and used by the City to maintain the Golf Course and, in the event Sierra chooses to purchase such equipment from City, agrees to enter into a separate agreement for the purchase of such equipment. In the event Sierra purchases such equipment from City, such equipment shall become the property of Sierra and Sierra shall be fully responsible for the maintenance, care, and repair of such equipment.

**17. Materials Storage.** Sierra shall not store or maintain any dead, felled or trimmed plant or other vegetative waste on the Golf Course and shall remove such waste from the Golf Course in such manner and at such times as to prevent the same from becoming a fire hazard. Sierra shall be liable in all respects for any damage, liability, loss, injury or expense incurred as a result of any fire damage proximately caused by Sierra's storage of any such waste on the Golf Course and shall indemnify, defend, and hold the City harmless from any and all such damage, liability, loss, injury or expense.

**18. Liens and Encumbrances.** Sierra shall keep the Leased Premises free and clear of any liens or encumbrances of any kind whatsoever created by Sierra's acts or omissions.

**19. Taxes.** Throughout the Initial Term and any Renewal Term of this Lease Agreement, Sierra shall pay before they become delinquent all real property tax obligations of any kind assessed against the Leased Premises in addition to all taxes and assessments imposed on any personal property, equipment or trade fixtures belonging to Sierra and located on the Leased Premises. Beginning on the Effective Date and for each year thereafter, Sierra shall also be responsible for any applicable possessory interest tax assessed or levied against the Leased Premises and shall make timely payment thereof.

## **20. Improvements and Alterations.**

**20.1. Prior Consent Required.** With respect to alterations or improvements proposed by Sierra, City shall allow Sierra to complete such alterations or improvements only upon prior review and written approval of the City.

**20.2. Ownership of Tenant Improvement and Alterations.** All structural alterations or improvements made or installed on the Leased Premises by Sierra, or any other person or entity, shall be considered part of the Leased Premises and, on expiration of this Lease Agreement or sooner termination thereof, shall remain on the Leased Premises and shall become the property of the City unless City provides written notice to Sierra at the time City gives its consent to the alterations or improvements that such alterations or improvements be removed in which case Sierra shall remove the same prior to expiration or within thirty (30) days after early termination of this Lease Agreement. Notwithstanding the above, all items of equipment, machinery, furniture, furnishings, fixtures, and other personal property placed in or installed on the Leased Premises by Sierra shall remain the personal property of Sierra regardless of the manner or mode of attachment and may be removed by Sierra at any time throughout and including expiration of the then current lease term, provided that Sierra shall repair any damage caused by said removal, reasonable wear and tear excepted. Such personal property remaining after expiration of thirty (30) days after early termination of this Lease Agreement shall be deemed abandoned by Sierra and shall become the property of the City.

**20.3. Compliance with Laws.** All improvements and alterations to the Leased Premises, including those with regard to landscaping and installation of additional parking, shall be done in accordance with all applicable laws, regulations, and standards including, but not limited to, the Madera Zoning Code and all applicable development standards.

**20.4. Construction Management Fees.** There shall be no construction management fees charged by the City to Sierra for any improvements or alterations made to the Leased Premises.

**21. Liability for Damages.** Sierra shall be fully responsible for any and all damage done to the Golf Course property or equipment, damage to the personal property of private individuals or other property of the public, and for any injury to any individual, including any guest, employee, agent, licensee, invitee or member of City that results from the affirmative act and/or negligence of Sierra or Sierra's agents, employees, invitees or licenses. Except as otherwise required by local ordinances or this Agreement, lost shrubs and trees shall be replaced with shrubs and trees of appropriate same size, species and horticultural variety.

**22. Damage or Destruction of Leased Premises.** If the Leased Premises are totally or partially damaged or destroyed by fire, earthquake or other casualty not caused by the acts or omissions of Sierra, the City shall have the right, but not the obligation, to restore the Leased premises by repair or rebuilding. In the event the Leased Premises are so damaged as to materially and adversely affect Sierra's ability to conduct its



normal business operations from the Leased Premises, as reasonably determined by the City and by Sierra, Sierra shall have the right, at its option, to terminate this Lease Agreement upon written notice to City given within sixty (60) days following the date of such damage. The City shall provide to Sierra a written notice within thirty (30) days following the date of such damage stating whether the City has elected to terminate this Lease Agreement, or to repair the Leased Premises. If the City fails to provide such timely notice, Sierra may, upon ten (10) days' prior written notice, terminate this Lease. If the City provides such timely notice and therein elects to repair or rebuild, and thereafter is able to complete such restoration within ninety (90) days from the date of such damage, subject to the terms of this paragraph, this Lease Agreement shall remain in full force and effect. If the City is unable to restore the Leased Premises within this time, or if City elects not to restore, then Sierra may terminate this Lease Agreement by giving the City written notice. Upon such election to terminate, the rent due under this Lease Agreement shall be due and payable only up until the date of damage. If this Lease Agreement is not terminated, the Base Rent or per Round Rates due and payable under this Lease Agreement shall be reduced based on the extent to which the damage interferes with Sierra's reasonable use of the Leased Premises until such portion of the Leased Premises is restored.

If the City elects to repair and to restore, City shall restore the Leased Premises to substantially its condition to that prior to the occurrence or damage provided the City shall not be obligated to repair or to restore any alterations, additions, fixtures or equipment or improvements which have been installed by Sierra, whether or not Sierra has the right or obligation to remove the same or is required to leave the same on the Leased Premises as of the expiration or earlier termination of this Lease Agreement, unless Sierra, in a manner satisfactory to the city, assures payment in full of all costs as may be incurred by City in connection therewith. If there be any such alterations, fixtures, additions, equipment or improvements installed by Sierra and Sierra does not assure or agree to assure the payment of all costs of restoration or repair as aforesaid, City shall have the right to determine the manner in which the Leased Premise shall be restored so as to be substantially as the Leased Premises existed prior to the damage occurring of this Lease Agreement, as if such alterations, fixtures, equipment or improvements installed by Sierra had not then been made or installed.

In no event shall the City be responsible for any loss or interruption of Sierra's business caused by damage or destruction of the Leased Premises or during the repair or reconstruction thereof regardless of the cause of the damage or destruction or the extent of insurance coverage. The parties agree that the rights and obligations of the parties in the event of damage or destruction of the Leased Premises shall be governed by this Lease Agreement. Sierra waives the provisions of California Civil Code sections 1932 and 1933(4).

**23. Assignment and Subletting.** Except as otherwise specifically set forth herein, Sierra shall not have the right to assign, sublet, hypothecate or mortgage the Leased Premises, or any portion thereof, or to lease, license or otherwise enter into management agreements with any other individual or entity for any portion of the Leased Premises. Any attempted assignment, hypothecation, mortgage, lease, license or management without the express written consent of the City shall constitute a

material breach of this Lease Agreement and shall render this Lease Agreement void and of no longer any force and effect. Notwithstanding the foregoing, Sierra shall be permitted to sublease the restaurant and banquet facilities to an operator in accordance with the specific terms of this Lease Agreement.

**23.1. Merger or Consolidation.** It is recognized by the parties hereto that a substantial inducement to City for entering into this Lease Agreement was, and is, the professional reputation and competence of Sierra. This Lease Agreement is personal to Sierra and shall not be assigned and no part of the Leased Premises shall be sublet by Sierra without the prior express written approval of the City, which approval and consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this Lease Agreement, the term "assignment" shall include a transfer by Sierra to any related or successor entity, whether by merger, consolidation or otherwise, or to any entity or individual that purchases all or substantially all of Sierra's assets.

**23.2. Recapture.** City shall have the right to recapture the Leased Premises in the event of any sublease or assignment and no sublease or assignment shall constitute a release of Sierra from the obligations of performance or the terms and provisions of this Lease Agreement.

**24. Insurance.**

**24.1. Commercial General Liability, Property Insurance and Miscellaneous Coverage.** Sierra shall, throughout the duration of this Lease Agreement, maintain commercial general liability, property, and miscellaneous other insurance covering all operations of Sierra, its agents and employees, performed in connection with this Lease Agreement including but not limited to premises and automobile. The cost of such insurance shall be solely born by Sierra.

**24.2. Minimum Coverage Limits.** Sierra shall maintain the following limits:

*General Liability*

*Combined Single Limit Per Occurrence.....\$2 million*  
*General Aggregate.....\$5 million*  
*(The policy shall cover on an occurrence or an accident basis, and not on a claims made basis. The coverage shall be at least as broad as Insurance Services Office Form CG 00 01)*

*Automobile Liability*

*Combined Single Limit Per Occurrence.....\$1 million*  
*(The policy shall cover on an occurrence or an accident basis, and not on a claims made basis. The coverage shall be at least as broad as Insurance Services Office Form Number CA 00 01 using Code 1, Any Auto.)*



Worker's Compensation.....Statutory Limits

Employer's Liability Insurance:.....\$1  
million per employee and per accident for bodily injury or disease.

All Risk Property Insurance (Covering all real and personal property of the City and occupied or used by Sierra, and all real and personal property of Sierra utilized or stored on Leased Premises. Full replacement cost with no coinsurance penalty provision.)

Greens Protection.....\$300,000

Facility Replacement Coverage (Covering the golf course and all buildings, equipment, and structures located thereon and all furnishings or equipment owned by the City and also located thereon, in no event less than the full replacement value, against the perils of fire and extended coverage, including demolition.)

**24.3. Additional Insured By Endorsement.** All insurance companies with the exception of "Worker's Compensation" affording coverage to Sierra shall be required to add the City of Madera, its officers, employees, volunteers, and agents as additional "insured" by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insurance for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees, volunteers or agents

**24.4. Authorization to Conduct Business.** All insurance companies affording coverage to Sierra shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California and shall have an A.M. Best Rating of no less than A-VII.

**24.5. Cancellation or Reduction in Coverage.** Sierra shall provide no less than thirty (30) days written notice to the City should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

**24.6. Certificate of Insurance.** Sierra shall furnish the City with copies of the original certificates and endorsements, including amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms that conform to stated requirements. All certificates and endorsements are to be received and approved by the City before work commences; however, failure to do so shall not operate as a waiver of these insurance requirements. The City reserves the right to require complete, certified copies of all required insurance policies, including

endorsements effecting the coverage required by these specifications at any time. Each insurance policy required herein shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.. A statement on the insurance certificate which states that the insurance company "will endeavor" to notify the certificate holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon the Sierra, its agents or representatives" does not satisfy the requirements of this subsection. The Sierra shall ensure that the authorized representative of the insurance company strikes the above quoted language from the certificate.

**24.7. Substitution of Insurance.** Sierra shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. In the event Sierra is unable to provide a substitute certificate of insurance within the time prescribed in this subsection, Sierra shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

**24.8. Additional Insurance Coverage.** Sierra shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein. Maintenance of insurance by the Sierra as specified in this Agreement shall in no way be interpreted as relieving the Sierra of any responsibility whatever and the Sierra may carry, at its own expense, such additional insurance as it deems necessary.

**24.9. Applicability of Insurance.** When the term "Sierra" is used, it shall be deemed to include the parent and any other subsidiaries involved in any way with this Agreement.

**24.10. Deductible and Self-Insurance Limitations.** Any self-insured retentions must be declared and approved by the City. Any policy of insurance provided to meet the requirements of this section which has a deductible over \$25,000 shall not meet the requirements of this section unless it has first been approved by the City. Self-funding, policy fronting or other mechanisms to avoid risk transfer are not acceptable.

**24.11. Periodic Review of Insurance Coverage.** All insurance coverage and limits required under this section shall be subject to periodic review on every fifth anniversary of the Effective Date at which time the City may require additional or different coverage types and limits as set forth herein in order to meet changed circumstances or conditions that exist at the time of such periodic review.

**24.12. Waiver of Subrogation.** Sierra, to the extent and limits of insurance coverage applicable under any policy of insurance procured as required under this Lease Agreement, releases the City, its officers, employees, and agents from any claims for damage to any person or to the Leased Premises, or any part thereof including the buildings, fixtures, personal property, and other improvements or alterations located thereon, of either the City or Sierra, including loss of income, that are



caused by or result from risks insured against under any insurance policies required by this Lease Agreement and in force at the time of any such damage.

Sierra shall cause each such insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the City in connection with any damage covered by such policy. The City shall not be liable to Sierra or to any other party for any damage caused by fire or any other risk insured against under any property insurance policy carried under the terms of this Lease Agreement, to the extent and limits of coverage applicable under any policy of insurance procured as required under this Lease Agreement.

**25. Hazardous Substances.** Sierra represents and warrants that the services it will provide, the methods of application it will use, and the products it will use will not violate any federal, state or local environmental laws, statutes, ordinances, codes, rules, regulations, orders, decrees or similar authoritative pronouncements. Sierra understands and acknowledges the City is subject to a National Pollution Discharge Elimination System (NPDES) Permit. Sierra agrees to cooperate with the City in implementing best management practices and other strategies and techniques necessary to protect the quality of water runoff from the Madera Municipal Golf Course and to meet the requirements of the City's NPDES Permit including, but not limited to Integrated Pest Management (IPM) strategies.

For purposes of this Agreement "Hazardous Substances" shall have the meaning ascribed in and shall include those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §6901 et seq., as amended from time to time, and shall include any other elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state, local or quasi-governmental statute, ordinance, law, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, now existing or at any time hereafter in effect.

Sierra shall make and maintain any and all such records or reports as may be required under any federal, state or local law or regulation, in the proper form and for the proper time periods, regarding the handling, maintenance, storage or application of any pesticides or other hazardous materials whether or not specifically described in this section.

**26. Storage of Personal Property.** Sierra may store on the Leased Premises only personal property that Sierra owns, leases or rents, and shall not improperly store any flammable materials, explosives or other dangerous or hazardous materials. Notwithstanding the foregoing, Sierra shall not be in breach of this provision as a result of the presence on the Leased Premises of minor amounts of hazardous or toxic materials which are in compliance with all applicable laws, ordinances and regulations, including all applicable material data safety sheets, and which are customarily used in Sierra's normal business operations conducted from the Leased Premises.

**27. Right of Entry.** The City and its authorized officers, employees, and representatives shall have the right to enter the Leased Premises, or any part thereof, at all reasonable times, upon reasonable prior notice (except in the case of an emergency, when no such notice shall be required) for the purpose of inspecting the same and to take all such action thereon as may be necessary or appropriate for any such purpose provided for under this Lease Agreement or any other lawful purpose to include protecting the Leased Premises. No such entry shall constitute an eviction of Sierra or a disturbance of its quiet enjoyment to use and to occupy the Leased Premises. When entering upon the Leased Premises for any reason, the City and its authorized officers, employees and representatives shall use all commercially reasonable efforts to protect Sierra's property and personnel from loss and injury and to avoid interfering with the conduct of Sierra's business.

**28. Default by Sierra.** Sierra shall be in default of this Lease Agreement for any of the acts or omissions specifically set forth in this section.

**28.1. Abandonment.** Sierra's abandonment of the Leased Premises for more than thirty (30) days.

**28.2. Failure to Pay Rent.** Sierra's failure to pay rent when due.

**28.3. Failure to Operate.** Sierra's failure to perform or observe any of the other agreements, covenants or conditions of this Lease Agreement on the part of Sierra to be performed and observed and such failure shall continue for a period of thirty (30) days after written notice thereof to Sierra, or, in the case of a failure which cannot be cured by the payment of money and cannot reasonably be cured within thirty (30) days, Sierra shall fail to commence the curing thereof within said thirty (30) day period and thereafter shall fail diligently to prosecute such cure to completion.

**28.4. Failure to Maintain.** Sierra's failure to maintain the Leased Premises in accordance with the standards of this Lease Agreement, including the buildings, structures, and improvements located thereon, in a clean, sanitary, safe, and satisfactory condition, where such failure continues for a period of thirty (30) days after written notice from the City for corrections, or in the case of a failure which cannot be cured by the payment of money and cannot reasonably be cured within thirty (30) days, Sierra shall commence the curing thereof within said thirty (30) days, Sierra shall fail to commence the curing within said thirty (30) day period and thereafter shall fail diligently to prosecute such cure to completion.

**28.5. Insolvency.** Sierra shall become unable to pay its debts generally as they become due, voluntarily file a petition or other proceeding in or for dissolution or liquidation under any law or statute of any federal, state or local government, or any subdivision of either, now or hereafter in effect, make an assignment for the benefit of its creditors or consent to or acquiescence in the appointment of a receiver of itself.

**28.6. Receivership.** A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver over Sierra over the whole or any substantial part of the Leased Premises occupied by Sierra, and such order, judgment or decree



shall not be vacated, set aside or stayed within ninety (90) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside.

**28.7. Bankruptcy.** A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Sierra under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of any federal, state or local government, or any subdivision of either, now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within ninety (90) days from the date of entry of such order, judgment or decree, or any stay thereof be thereafter set aside, then any such events shall constitute an event of default by Sierra.

**29. City's Remedies Upon Sierra's Default.** Upon the occurrence of any such event of default by Sierra and so long as the same shall not have been remedied or cured by Sierra pursuant to the provisions of this Lease Agreement, the City shall have the following rights and remedies, in addition to all other rights and remedies of City provided hereunder or by law or in equity:

**29.1. Termination.** The right to terminate this Lease Agreement, in which event Sierra shall immediately surrender possession of the Leased Premises and pay to City all Base Rent, Rate per Rounds and all other amounts payable to the City hereunder to the date of such termination.

**29.2. Loss Recovery.** The right to bring suit or action against Sierra to recover as an award in such suit the worth at the time of award of the unpaid minimum Base Rent or Rate per Round and all other sums due hereunder which had been earned at the time of termination, or such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

**29.3. Right of Reentry.** If an event of default occurs, City shall also have the right, with or without terminating this Lease Agreement, to reenter the Leased Premises and to remove all persons and property from the Leased Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Sierra.

**29.4. Reletting of Leased Premises.** If an event of default occurs, City shall also have the right, with or without terminating this Lease Agreement, to relet the Leased Premises. If the City so elects to exercise its rights to relet the Leased Premises without terminating this Lease Agreement, then rentals received by the City from such reletting shall be applied as follows:

**29.4.1.** first to the payment of any indebtedness other than rent due hereunder from Sierra to City;

**29.4.2.** second to the payment of any cost of such reletting;

**29.4.3.** third to the payment of the cost of any alterations or repairs to the Leased Premises;

**29.4.4.** fourth to the payment of Base Rent or Rate per Round due and unpaid hereunder; and

**29.4.5.** fifth the residue, if any, shall be held by the City and applied in payment of future rent as the same may become due and payable hereunder.

Should the amount of rental received from such reletting during any month which is applied to the payment of rent hereunder be less than that agreed to be paid during that month by Sierra hereunder then Sierra shall pay such deficiency to City immediately upon the demand therefor by City. Such deficiency shall be calculated and paid monthly. Sierra shall also pay to City, as soon as ascertained, any costs and expenses incurred by the City in such reletting and not covered by the rentals received from such reletting. Such reletting costs shall not include decorations or alterations.

**29.5. Election to Terminate.** No reentry or taking possession of the Leased Premises by City pursuant to this Lease Agreement shall be construed as an election to terminate this Lease Agreement unless a written notice of such intention is given to Sierra or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Sierra because of any default by Sierra, City may at any time after such reletting elect to terminate this Lease Agreement for any such default.

**29.6. Waiver.** Any waiver by the City of any breach of any one or more of the covenants, condition, terms or agreement of this Lease Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of the City to require exact, full, and complete compliance with any of the covenants, terms, conditions or agreements herein contained be construed as in any manner changing the terms of this Lease Agreement or stopping the City from enforcing the provisions. No delay, failure or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

**29.7. No Limitation on Indemnification.** Notwithstanding the foregoing, nothing contained in this section shall be construed to limit the City's right to indemnification as otherwise provided in this Lease Agreement.

**29.8. City's Right to Cure.** Notwithstanding anything in this Lease Agreement to the contrary, the City may at any time after Sierra's uncured default under this Lease Agreement, cure the act of default for the account of and at the expense of Sierra. If City elects to pay any sum of money or to do any act that requires the payment of sum of money, or elects to incur any expenses, the sum or sums paid by the City shall be deemed to be an additional rent under this Lease Agreement and shall be due from Sierra to the City immediately upon receipt of written demand.



**30. Default by City.** If the City shall fail to fulfill any covenant or provision of this Lease Agreement on its part to be performed and fail to remedy such failure within thirty (30) days after Sierra shall have given the City written notice of such failure, then the same shall be an event of default and Sierra shall have all rights, powers, and remedies available at law or equity. Without limiting the rights described above, in the event that (i) City for any reason, other than by reason of any default by Sierra, fails to fulfill any covenant or provision of this Lease Agreement on its part to be performed, and (ii) such failure materially and adversely interferes with the conduct of Sierra's business conducted from the Leased Premises, as reasonably determined by Sierra; and (iii) such failure is not remedied within five (5) business days after the City receives actual notice of such failure, then Sierra shall have the right, but not the obligation, to remedy the City's failure and to charge the City for the reasonable cost of such remedy, which charges shall be payable by the City within ten (10) days of Sierra's demand therefor, and upon the City's failure to pay the same, Sierra shall have the right to credit against any future installments of rent until such cost is fully recouped by Sierra. In addition, if such failure is not remedied within thirty (30) days after Sierra shall have given City written notice of such failure, then Sierra shall have the right to terminate this Lease Agreement by giving the City written notice.

**31. Advisory Committee.** Sierra understands and acknowledges that an advisory committee (the "Madera Municipal Golf Course Advisory Committee") shall be formed to review services provided by Sierra pursuant to this Lease Agreement including, but not limited to, fees and rates charged by Sierra for the public's use of the Leased Premises, capital improvement projects, and other management and operations obligations performed by Sierra pursuant to this Lease Agreement. The powers and authority of the Madera Municipal Golf Course Advisory Committee shall solely advisory to the City and to Sierra and ultimate authority regarding the management and operation of the Leased Premises shall be with the Madera City Council and shall be as otherwise specifically set forth in this Lease Agreement. The City and Sierra shall work collaboratively to form and to manage the Madera Municipal Golf Course Advisory Committee.

**32. Indemnification.**

**32.1 Indemnification of City.** Sierra shall hold harmless, indemnify, and defend the City and its officers, employees, and agents from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life or damage to any property, or violation of any relevant federal, state or local law or ordinance, or other cause occurring on the Leased Premises or in connection with Sierra's specific use of the Leased Premises or in connection with any negligent or intentional acts or omissions of Sierra, its officers, employees, agents, contractors, subcontractors, and invitees, while such invitees are on the Leased Premises, including Sierra's default under this Lease Agreement. It is understood that the duty of Sierra to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code and that Sierra shall at its own expense, upon written request by the City, defend any such suit or action brought against the City, its officers, agents or employees. Acceptance of insurance certificates and endorsements required under this Lease Agreement does not relieve



Sierra from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined applicable to any of such damages or claims for damages. Sierra's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Lease Agreement, as to claims arising or accruing prior to the expiration or termination of this Lease Agreement. Sierra's duty to indemnify the City shall survive the expiration or other termination of this Lease Agreement.

**32.2 Indemnification of Sierra.** The City shall hold harmless, indemnify, and defend Sierra and its officers, employees, and agents from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life or damage to any property, or violation of any relevant federal, state or local law or ordinance, or other cause occurring on the Leased Premises prior to Sierra's specific use and occupancy of the Leased Premises under this Lease Agreement. It is understood that the duty of the City to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code and that City shall at its own expense, upon written request by Sierra, defend any such suit or action brought against the Sierra, its officers, agents or employees.

**33. Sub-Contractors.** Sierra shall be entitled, to the extent determined appropriate by Sierra, to subcontract any portion of the work to be performed under this Agreement. Sierra shall be responsible to the City for the actions of persons and firms performing subcontract work. The subcontracting of work by Sierra shall not relieve Sierra, in any manner, of the obligations and requirements imposed upon Sierra by this Agreement.

**34. Audit and Examination of Accounts.**

**34.1. Use Reports.** Sierra shall keep and shall maintain and shall provide to City on no less than a monthly basis, monthly activity reports showing the utilization of the Golf Course. The reports shall at a minimum include the number of rounds of golf played at the Leased Premises in detail satisfactory to the City Finance Director. Concurrent with submittal of payment of the monthly rent and rate per round, Sierra shall submit to the Finance Director a written report detailing the gross receipts related to rounds played during the preceding calendar month.

**34.2. Subcontractors.** Sierra shall keep and will cause any assignee or subcontractor this Agreement to keep accurate records and reports, as provided above.

**34.3. Accounting and Reporting Standards.** Any audit conducted of books and records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing. Sierra agrees to make its books, records of account and supporting document available to City, its agents, or auditors, for inspection, audit, copying, during usual business hours, as may be requested by the City from time to time throughout the term hereof, solely for the purpose of verifying information submitted by Sierra in any report or financial statement required pursuant to this agreement, and for City's purposes in verifying Sierra's compliance with the terms of this agreement.



**34.4. Availability of Records.** Sierra hereby agrees to disclose and make available any and all information, reports or books of records or accounts pertaining to this Agreement to City or state or federal government which provides support funding for the services rendered under this Agreement.

**34.5. Agreements With Assignees and Subcontractors.** Sierra hereby agrees to include the requirements of this section in any and all contracts with assignees or subcontractors under this Agreement.

**34.6. Maintenance of Records.** All records provided for in this section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than five (5) years, additionally any and all such records which pertain to actual disputes, litigation, appeals or claims shall be maintained and made available for a period of not less than five (5) years after final resolution of such disputes, litigation, appeals or claims.

**35. Records and Reporting.** In addition to any reporting or recordkeeping that may be required under this Lease Agreement, Sierra shall be responsible for making any regulatory reporting that may be required for any activities performed by it under this Lease Agreement and for performing all testing or monitoring that may be required for the proper performance of its obligations under this Lease Agreement. Sierra shall retain all records including, but not limited to, records and reports pertaining to the application and storage of pesticides, for the applicable time periods established under federal, state, and local law and regulations.

**36. Access to Records.** Sierra shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Lease Agreement on file for at least five (5) years. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Sierra's usual and customary business hours. Sierra shall provide proper facilities to City's representative(s) for such access and inspection.

**37. Ownership of Documents.** Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, computer software (if purchased on the City's behalf), video and audio tapes, software output, and any other materials with respect to work performed under this Lease Agreement shall vest with City at such time as City has compensated Sierra, as provided herein, for the services rendered by Sierra in connection with which they were prepared. Sierra acknowledges that any and all documents provided to City may become public records pursuant to California law. City agrees to hold harmless and indemnify Sierra against all damages, claims, lawsuits, and losses of any kind including defense costs arising out of any use of said documents, drawings, and/or specifications by City on any other project without written authorization of Sierra.

**38. Sierra's Assumption and Waiver.** Provided it is not caused by the City, its agents, employees or contractors, this Lease Agreement is made upon the express

condition that, and in consideration of City's leasing the Leased Premises as herein provided, Sierra voluntarily assumes all risk of loss, damage or injury to the person or property of Sierra, including the leasehold interest of Sierra herein, and of its officers, agents, employees, and invitees while such persons are on the Leased Premises, which during the term of this Lease Agreement may be caused by or arise in any manner from:

**38.1. Aircraft Flights.** flight of any aircraft of any and all kinds now or hereafter known in, through, across or about any portion of the airspace over the Leased Premises; or

**38.2. Proximity to Airport.** noise, vibration, currents or other effects of air, illumination or fuel consumption or fear thereof, arising or occurring from or during such flight, or from or during the use by such aircraft of Madera Municipal Airport facilities including, but not limited to, landing, storage, repair, maintenance, operation, warm-up, take-off of such aircraft, and the approach and departure of aircraft to or from said Airport; or

**38.3. Proximity to Agricultural Operations.** dust, fumes, agricultural spraying, or exposure to agricultural equipment and/or products and activities.

Sierra hereby waives and releases the City, its officers, employees, agents, and contractors from any and all claims or causes of action which it may now or hereafter have against the City, its officers, employees, agents or contractors, for any loss, damage or injury as outlined in this section.

**39. Lease Agreement Subordinate to Agreements with the U.S.A.** This Lease Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States of American relative to the development, operation or maintenance of the Madera Municipal Airport. The City covenants that Sierra's proposed use of the Leased Premises is not in violation of any existing agreement between the City and the United States if America and that if Sierra's use and/or access to the Leased Premises is at any time materially and adversely affected by any agreement between the City and the United States of American, Sierra has the right to terminate this Lease Agreement upon prior written notice to the City.

**40. War or National Emergency.** This Lease Agreement and all the provisions hereof shall be subject to whatever right the United States Government has affecting the control, operation, regulation, and taking over of the Madera Municipal Airport or the exclusive and non-exclusive use of the Madera Municipal Airport by the United States during the time of war or national emergency only. If Sierra's use of and/or access to the Leased Premises is at any time materially and adversely affected by such rights and activities of the United States Government, Sierra has the right to terminate this Lease Agreement upon prior written notice to the City.

**41. Use to Conform with Federal Aviation Regulations.** Sierra agrees that Sierra's use of the Leased Premises, including improvements, modifications or alterations



thereon, shall comply with applicable Federal Aviation Regulations now in force or those that may hereafter be adopted by Federal authority. City covenants that Sierra's intended use of the Leased Premises is not in violation of the Madera Municipal Airport regulations and if Sierra's use permitted under this Lease Agreement is ever prohibited by the Madera Municipal Airport regulations or Federal Aviation Regulations, Sierra shall have the right to terminate this Lease Agreement upon prior written notice to City.

**41.1. Protection of Aerial Approaches.** City reserves the right to take any action it considers necessary to protect the aerial approaches of the Madera Municipal Airport against obstruction, together with the right to prevent Sierra from erecting, or permitting to erect, any building or other structures on the Madera Municipal Airport which, in the opinion of City, would limit the usefulness of the Madera Municipal Airport or constitute a hazard to aircraft.

**41.2. Affect on Sierra.** If City's actions in response to the foregoing materially and adversely affect Sierra's use and access of the Leased Premises, Sierra shall have the right to terminate this Lease Agreement upon prior written notice to City.

**42. Waiver.** No waivers, alterations or modifications of this Lease Agreement or any agreements in connection therewith shall be valid unless in writing duly executed by both City and Sierra.

**43. Joint and Several Liability.** If Sierra consists of more than one person or entity, then all members of Sierra shall be jointly and severally liable hereunder.

**44. Compliance with Laws, Rules, and Regulations.** Sierra's use and occupancy of the Leased Premises pursuant to this Lease Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

**45. Exhibits Incorporated.** All exhibits referred to in this Lease Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease Agreement and any of the terms of any exhibit to the Lease Agreement, the terms of the Lease Agreement shall control the respective duties and liabilities of the parties.

**46. Independent Contractor.** It is expressly understood and agreed by both parties that Sierra, while using and occupying the Leased Premises and complying with any of the terms and conditions of this Lease Agreement, is a tenant of the City and is not an employee or agent of the City and this Lease Agreement is not intended, and shall not be construed, to create the relationship of agent, contractor, servant, employee, partnership, joint venture or association. Sierra expressly warrants not to represent, at any time or in any manner, that Sierra is an employee or agent of the City.

**47. Integration and Agreement.** This Lease Agreement represents the entire understanding of City and Sierra as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. No prior oral or written understanding shall be of any force and effect

with respect to those matters covered in it. This Lease Agreement may not be modified or altered except by amendment in writing signed by both parties.

**48. Jurisdiction.** This Lease Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease Agreement shall be in the State of California, in the County of Madera, or, if in the United States District Court, within the Eastern District of California.

**49. Severability.** If any part of this Lease Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Lease Agreement shall continue to be in full force and effect.

**50. Notices.**

**50.1. Notices to City.** Written notices to the City hereunder shall, until further notice by City, be addressed to:

City Administrator  
City of Madera  
205 W Fourth Street  
Madera, California 93637

With a copy to:

City Attorney  
City of Madera  
205 W Fourth Street  
Madera, California 93637

**50.2. Notices to Sierra.** Written notices to Sierra shall, until further notice by Sierra, be addressed to:

Sierra Golf Management  
P.O. Box 788  
Chowchilla, California 93610

**50.3. Authority of City Administrator.** The execution of any such notices by the City Manager of City shall be effective as to Sierra as if it were by resolution or order of the City Council, and Sierra shall not question the authority of the City Administrator to execute any such notice.

**50.4. Form and Manner of Notice.** All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.



**51. Force Majeure.** Neither City nor Sierra shall be deemed in breach of this Lease Agreement for failure to perform any of the obligations or duties imposed upon it under this Lease Agreement as the direct result of any reason beyond its reasonable control including, without limitation, acts of God, terrorist attacks, riots, strikes, fires, storms or any regulation of any federal, state or local government or agency thereof; however, such excuse shall continue only during the pendency of the particular occurrence or force majeure.

**52. Nondiscrimination.** For purposes of this Lease Agreement and for purposes of Sierra's use and occupancy of the Leased Premises, Sierra shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age or disability. Sierra shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age or disability.

**53. Non-Discrimination in Employment and Hiring.** During the performance of this Agreement, Sierra shall not discriminate against any employee or applicant for employment or subconsultant, including in the procurement of materials and leases of equipment, because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Sierra shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

**54. Headings.** The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Lease Agreement.

**55. Multiple Copies of Lease Agreement.** Multiple copies of this Lease Agreement may be executed, but the parties agree that the Lease Agreement on file in the office of the City Clerk is the version of the Lease Agreement that shall take precedence should any difference exist among counterparts of the document provided that the City provides to Sierra within ten (10) days of the filing thereof, a certified copy of the form of the Lease Agreement which was filed with the City Clerk.

**56. Attorney's Fees.** In case suit shall be brought to interpret or to enforce this Lease Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

**57. Rights and Obligations Under Lease Agreement.** By entering into this Lease Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Lease Agreement shall not create any rights in any party not a signatory hereto.

**58. Licenses.** If a license or permit of any kind, which term is intended to include evidence of registration, is required of Sierra, its representatives, agents or subcontractors by federal, state or local law, Sierra warrants that such licenses or permits have or will be obtained, are valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

**59. Counterparts.** This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**60. Environmental Representations.** City represents that the Leased Premises, the surrounding real property, and the existing use of the Leased Premises, and to the best of the City's knowledge, its prior uses, comply with, and the City is not in violation of, and has not violated, in connection with the ownership, use, maintenance or operation of the Leased Premises and the conduct of the business related thereto, any applicable federal, state, county, regional or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses and permits of any governmental authorities relating to environmental, health or safety matters (collectively, "Environmental Laws"). City shall, at its own expense, promptly observe and comply with all present and future Environmental Law, and all regulations or standards as are or may be promulgated thereunder. City represents that there is no fact pertaining to the physical condition of the Property or the area surrounding the Property which (i) materially and adversely affects or materially and adversely will affect the Property, or the use, enjoyment or value thereof, or Landlord's ability to perform the obligations contained in this Lease, and (ii) which Landlord has not disclosed to Tenant in writing prior to the date of this Lease. City represents that it has received no notices of any violation or claimed violation of any of the matters referred to above, or of any pending or contemplated investigation, lawsuit or other action relating thereto. The representations contained in this section shall survive the expiration or earlier termination of this Lease Agreement.

**61. Warranty of Authority.** Each party represents and warrants that it has the right, power, and authority to enter into this Lease Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Lease Agreement for it, to enter into this Lease Agreement.

**62. Legal Representation.** Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Lease Agreement and the matters and claims set forth herein, and that each of them has read this Lease Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Lease Agreement as an inducement to enter into this Lease Agreement.

**63. Joint Representation.** The language of all parts of this Lease Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Lease Agreement, or any part thereof, shall be applicable or invoked.



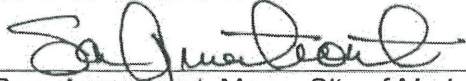
**64. Right to Reopen.** This Lease Agreement shall be subject to the right of either Party to reopen the terms and conditions of the Lease Agreement by written notice to the other Party within 180 days of the happening of one or more of the following events:

- The opening of North Fork Rancheria Casino within a two mile proximity to the Lease Premises;
- The catastrophic failure of wells and/or pump stations serving the Lease Premises;
- The opening and/or closing of public golf courses within a thirty (30) mile radius from the Lease Premises;
- The bankruptcy or insolvency of Sierra resulting from the operation of the Golf Course on the Lease Premises pursuant to this Lease Agreement; or
- A change in legal and/or regulatory requirements imposing a verifiable burden on the cost of Golf Course operations in excess of Fifty Thousand Dollars (\$50,000.00) in any calendar year, or otherwise directly and substantially limiting the number of rounds of golf played per calendar year.

During such negotiations, each Party shall make available to the other Party all non-privileged records and information in each Party's possession related to each subject of negotiations. The Reopener will exclusively be negotiated between Sierra and the City. The written notice of request to reopen the Lease Agreement shall set forth with particularity the facts supporting the exercise of the right to reopen and the issues to be negotiated.

**IN WITNESS WHEREOF**, the undersigned as authorized representatives of the City of Madera and of SGM, Inc. have entered into this Lease Agreement as of the date first written above.

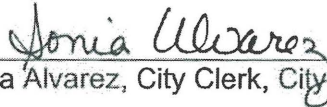
**CITY OF MADERA**

  
\_\_\_\_\_  
Sam Armentrout, Mayor City of Madera

**SGM INC.**

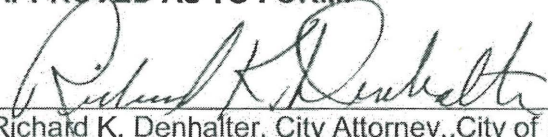
  
\_\_\_\_\_  
Jeffrey A. Christensen, President, SGM, Inc.

**ATTEST:**

  
\_\_\_\_\_  
Sonia Alvarez, City Clerk, City of Madera



**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard K. Denhalter, City Attorney, City of Madera  
10/8/09



## EXHIBIT A

### MADERA MUNICIPAL GOLF COURSE

#### RENT OPTIONS

SGM proposes a rent agreement based on a combination of the following revenue centers:

1. Base Fee
2. Price Per Round
3. Capital Improvement and Investment

Year	Base Fee	Per Round	Est Rounds	Est Rent To City	Capital Improvement
1	\$24k	\$1.00	40,000	\$ 64k	\$50k
2	\$30k	\$1.00	50,000	\$ 80k	\$50k
3	\$36k	\$1.50	53,000	\$ 116k	\$50k
4	\$36k	\$2.00	55,000	\$ 146k	\$50k
5	\$36k	\$2.00	56,500	\$ 149k	\$50k
6	\$40k	\$2.00	58,168	\$ 156k	\$50k
7	\$40k	\$2.00	59,913	\$ 160k	\$50k
8	\$40k	\$2.00	61,710	\$ 164k	\$50k
9	\$40k	\$2.00	63,561	\$ 167k	\$50k
10	\$40k	\$2.00	65,467	\$ 171k	\$50k

- Payments would be made on a monthly basis.
- Capital Improvements will be funded throughout the fiscal year along with a year-end report and itemizing of all improvements.
- Current Capital Improvement funds in account to be retained for future use
- Rent would include use of all current maintenance equipment

## **CAPITAL IMPROVEMENT PLAN**

We develop and utilize Capital Improvement Plan lists as a guide. All items listed in this report are important, however, we feel that in order to improve the current condition of the golf course the items of most importance are irrigation, equipment replacement and improvement of the greens. Note that many of these items have additional budget line item amounts already in the Operations Budget.

Maintenance Operations will be funded at a much higher level than previously, especially in the line items of irrigation repair, fertilization, herbicides, fungicides, labor and utilities (irrigation delivery).

### **YEAR 1:**

- ❖ **EQUIPMENT:**
  - Repair and replace existing old and dated equipment
- ❖ **GREEN IMPROVEMENT**
  - Begin proper scheduling of all fertilization programs
  - Begin Integrated Pest Management Program
  - Eliminate all noxious grasses. Begin herbicide program to eliminate crab grass and promote bent grass growth
  - Improve Nursery Green
- ❖ **IRRIGATION:**
  - Replace or repair any and all defective heads
  - Repair or replace valves
  - Repair defective wiring to satellites
  - Replace outdated satellites
  - Perform bi-annual system checks on all pump stations
  - Identify and repair drainage where needed
- ❖ **LANDSCAPING:**
  - Improve front landscaping, replace certain shrubs, add annual color to flower beds in front and back
- ❖ **SIGNAGE:**
  - Replace all Tee Markers on golf course
  - Improve and add signage to facility
- ❖ **GOLF SHOP**
  - Replace current POS system with new updated cash control system
  - Replace golf carts
- ❖ **PRACTICE FACILITY:**
  - Top dress and overseed top of hitting area
  - Develop additional target area, overseed
  - Develop and isolate "private practice area"
- ❖ **TEE BOX AREAS:**
  - Level, expand and add existing teeing areas where needed
  - Overseed all teeing areas in fall



- Eradicate all crabgrass and implement herbicide program
- Develop additional teeing areas on course
- ❖ CLUBHOUSE:
  - Paint interior of bar
  - Replace outside tables and Patio furniture
  - Replace current POS system with new updated cash control system
- ❖ BUNKERS:
  - Begin repair of defective drains. Add and reshape, replace sand

**YEAR 2:**

- ❖ LAKES:
  - Remove all tules and debris from main lake. Increase capacity
- ❖ SURROUNDS:
  - Overseed all surrounds and approach areas
- ❖ CLUBHOUSE
  - Improve banquet facilities
  - Begin replacement of furnishings in bar
  - Slurry and strip parking lot
- ❖ TEE BOX AREAS
  - Continue to enlarge existing tees and add additional teeing areas where needed
- ❖ CART PATH ADDITIONS
  - Identify areas for cart path extension and improvement in key high traffic areas
- ❖ TREE MANAGEMENT
  - Remove and replace dead trees
  - Prune and shape
  - Develop small tree nursery
- ❖ BUNKERS:
  - Continue repair of drains, reshaping and replacement of sand
- ❖ PRACTICE FACILITY
  - Add covered area for enhanced teaching
  - Develop additional practice area in rear of range
- ❖ CLUBHOUSE
  - Paint exterior of building
  - Develop RV parking spaces
- ❖ EQUIPMENT
  - Add or replace key major piece of maintenance equipment

**YEAR 3:**

- ❖ IRRIGATION
  - Add additional pump station to tie into new lake
- ❖ LAKE ADDITIONS
  - Line and cap additional lake feature
- ❖ GOLF SHOP
  - Paint exterior of shop
  - Improve wash station
- ❖ EQUIPMENT
  - Add or replace key pieces of maintenance equipment
- ❖ CART PATH ADDITIONS
  - Continue to add concrete paths in key, high traffic areas
- ❖ TEE BOX AREAS
  - Expand, enlarge and add teeing areas where needed
- ❖ PRACTICE FACILITY:
  - Add additional chipping, bunker practice areas
- ❖ CLUBHOUSE
  - Paint and refresh all restrooms

**YEAR 4:**

- ❖ LAKE ADDITIONS
  - Line and cap additional lake feature
- ❖ GOLF SHOP
  - Replace carpet
  - Paint interior
  - Replace golf carts
- ❖ CART PATH ADDITIONS
  - Continue to add concrete paths in key, high traffic areas
- ❖ EQUIPMENT
  - Add or replace key pieces of maintenance equipment
- ❖ CLUBHOUSE
  - Replace flooring where needed
  - Paint interior of banquet rooms

**YEAR 5:**

- ❖ CLUBHOUSE:
  - Create "Outside Arbor" for special events
- ❖ GREENS:



- Expand square footage on all smaller greens

- ❖ LAKE ADDITIONS

- Line and cap additional lake features

- ❖ TEE BOX AREAS

- Expand, enlarge and add teeing areas where needed

## EXHIBIT 'B'

### INVENTORY OF EQUIPMENT

QUANTITY	ITEM
1	John Deere 1000 Tractor Mounted Aerators
1	Planet Air Tow Behind Aerator
2	John Deere Diesel Utility Vehicle
1	Cushman Truckster Utility Vehicle
3	Suzuki Quad Runner
1	Super Star 2WD Trap Rake
1	Smithco Trap Rake
1	Turfco Topdressor Pull Behind Models
1	Spray Star Greens Sprayer
1	Smithco Fairway Boom Sprayer
1	3-Yard Dump Trailer
2	Kubota L3250-TS Tractor (a with front end loader)
1	Golf Equipment Lift
1	Grinder for Reel Mowers
1	Bed Knife Grinder
3	Spare Rollers, pull behind mower
3	Spare Verticut rollers
3	Spare Cutting Units
4	Shop Work Benches 3-wood, 1-metal
1	250 Amp Welder
Misc	Spare Tires
Misc	Equipment repairs parts and supplies
1	Air Compressor
1	Bench Grinder
2	Vise's-Bench Mount
2	Metal Racks and Shelves
Misc	Cup Cutters
Misc	Water Squeegee
Misc	Spare Flag Poles
Misc	Spare Cups
1	Ice Machine
1	Drag Mat
3	Sod Cutters
1	Trash Pump
2	Drop Spreaders
1	Power Washer
1	Flammable Storage Container



Misc	Fuel Cans
1	Oil Drum
2	Desk and Chairs, misc. office supplies
Misc	Irrigation Supplies
Misc	Concrete Tools
1	Motorized sod cutter
Misc	Hand Tools
2	Storage Sheds
1	Parts Washer
1	Core Harvester Unit
1	300 Gallon Diesel Tank
3	Spreaders
2	Hand Pumps
2	Edger's
1	Pull Behind Blower
2	Hand Held Blower
1	Back Pack Sprayer
1	24' Cargo Trailer
1	Lilly Spreader
1	Gannon Box Scrapper
1	12' Trailer
2	Ladders

**MADERA MUNICIPAL GOLF COURSE  
OPERATION AND MANAGEMENT LEASE AGREEMENT AMENDMENT**

This Operation and Management Lease Agreement ("Lease Agreement") is made and amended into this 18th day of November 2009 by and between the **City of Madera**, a municipal corporation of the State of California, hereinafter called "City" and SGM Inc. dba Sierra Golf Management Inc., Post Office Box 788 Chowchilla, California 93610, hereinafter referred to as "Sierra" both hereinafter collectively referred to as "the parties.

**RECITALS**

**WHEREAS**, the City owns and operates the Madera Municipal Golf Course, hereinafter called "Golf Course," for the use and benefit of the public; and;

**WHEREAS**, the City desires to provide the highest level of service to the community of Madera by providing an improved golf course facility and related operations; and;

**WHEREAS**, the City has determined to privatize the management and operation of the Madera Municipal Golf Course by leasing the entire facility, including the clubhouse, to Sierra; and;

**WHEREAS**, The City, through an agreement with Golf Operations Inc. was obligated to purchase Pro Shop Inventory at wholesale value at the termination of the agreement; and;

**WHEREAS**, SGM Inc. has submitted a proposal to purchase the inventory at a reduced cost and sell the inventory through the Pro Shop.

**AGREEMENT**

In consideration of the recital listed above and the mutual obligations of the parties herein, City and SGM Inc. hereby to amend the Agreement as follows:

Section 1. Section 7.1 of the agreement is amended to read as follows:

**7.1. Facility and Equipment Maintenance Services.**

Sierra, at its sole cost and expense, shall furnish and shall maintain all equipment, supplies, and material of good quality and of sufficient number to fulfill the requirements of this Lease Agreement. Any equipment listed on Exhibit



"B" shall be returned to the City, and may be declared surplus under the guidelines and accounting standards established by the City, at such time as Sierra no longer requires the use of equipment for the following reasons:

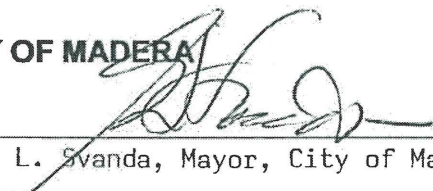
- Unusable in present condition, no longer useful
- Having value but requiring repairs to make useable and repair cost is 50% of replacement value or more
- Having no future value as a useable commodity in its present condition
- Broken or worn-out to the point of having no saleable scrap value

Sierra agrees to purchase from the City all Pro Shop Inventory (Attachment A) at a cost of 20% of agreed upon wholesale cost. Final inventory will be agreed upon by both parties less and products sold by previous operator between November 1, 2009 and November 17, 2009.

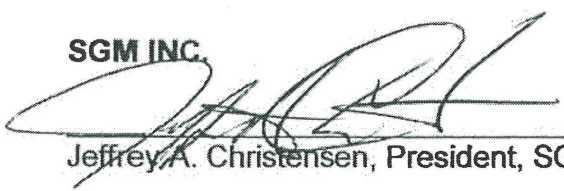
Section 2. All other provisions of the Agreement not inconsistent with the terms of this Amendment shall remain in full force and effect.

IN WITNESS HEREOF, the Parties execute this agreement on the date first written above

**CITY OF MADERA**

  
\_\_\_\_\_  
Gary L. Svanda, Mayor, City of Madera.

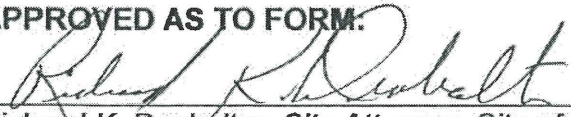
**SGM INC.**

  
\_\_\_\_\_  
Jeffrey A. Christensen, President, SGM Inc.

**ATTEST:**

  
\_\_\_\_\_  
Sonia Alvarez, City Clerk, City of Madera

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard K. Denhalter, City Attorney, City of Madera



12/31/09

# Madera Municipal Golf Course

Physical Inventory as of 10/25/2009

Attachment "A"

Sales Item	Qty	Unit Cost	Cost
Access.- Brush Tee Oversize 3-Pack	4.00	\$3.0000	\$12.0000
Access.- Chapstik	36.00	\$1.2793	\$46.0548
Access.- Daphne Headcovers	15.00	\$11.5000	\$172.5000
Access.- Disposable Handwarmers	4.00	\$1.0100	\$4.0400
Access.- Gauztex	11.00	\$0.7500	\$8.2500
Access.- Get Ballzee	4.00	\$4.1500	\$16.6000
Access.- Golf Ball Pick Up	5.00	\$1.1000	\$5.5000
Access.- Line Em Up Marking Tool	1.00	\$4.6500	\$4.6500
Access.- Pro Grip Wax	11.00	\$1.5000	\$16.5000
Access.- Sharpie 4-Pack	3.00	\$3.8500	\$11.5500
Access.- Spikes Scorpion	20.00	\$6.8000	\$136.0000
Access.- Spikes Stinger	38.00	\$5.8000	\$220.4000
Access.- Sunscreen	45.00	\$1.5000	\$67.5000
Access.- Wire Groove Brush	5.00	\$1.9900	\$9.9500
Access.- Yardage Books	187.00	\$0.0100	\$1.8700
Bags- Alpine / 3 Wheel	2.00	\$55.0000	\$110.0000
Bags- Callaway Stand	5.00	\$62.5000	\$312.5000
Bags- Mizuno Stand	1.00	\$61.0000	\$61.0000
Bags- Ping Hooper	7.00	\$105.0000	\$735.0000
Bags- Ping Latitude	2.00	\$117.0000	\$234.0000
Bags- Titleist Carry	6.00	\$98.0000	\$588.0000
Bags- Titleist Staff	2.00	\$170.0000	\$340.0000
Ball Callaway Hx Bite Doz.	12.00	\$26.0000	\$312.0000
Ball Callaway Hx Bite Slv.	14.00	\$8.0000	\$112.0000
Ball Callaway Hx Hot Doz.	5.00	\$20.6400	\$103.2000
Ball Callaway Hx Hot Slv.	16.00	\$6.1200	\$97.9200
Ball Callaway Tour Ix Doz.	24.00	\$36.2000	\$868.8000
Ball Callaway Tour Ix Slv.	22.00	\$8.1600	\$179.5200
Ball Experienced	432.00	\$0.0400	\$17.2800
Ball Madera Logo	248.00	\$0.8800	\$218.2400
Ball Nike One Tour Doz.	10.00	\$33.5000	\$335.0000
Ball Nike One Tour Slv.	8.00	\$6.5000	\$52.0000
Ball Pinnacle 15 Packs	82.00	\$10.6824	\$875.9568
Ball Pinnacle Platinum Doz.	27.00	\$35.0000	\$945.0000
Ball Pinnacle Platinum Slv.	43.00	\$4.0000	\$172.0000
Ball Titleist Dt Solo Doz.	10.00	\$16.2800	\$162.8000
Ball Titleist Dt Solo Slv.	8.00	\$3.5100	\$28.0800
Ball Titleist Nxt Doz.	3.00	\$24.0000	\$72.0000
Ball Titleist Nxt Slv.	20.00	\$5.2500	\$105.0000
Ball Titleist Pro V Doz.	24.00	\$38.0000	\$912.0000
Ball Titleist Pro V Slv.	14.00	\$8.8500	\$123.9000
Ball Top Flite 15 Pack XI	58.00	\$10.0000	\$580.0000
Ball Top Flite D2 6 Pak	11.00	\$4.0000	\$44.0000
Ball Top Flite Gamer Doz.	1.00	\$12.0000	\$12.0000
Ball Top Flite Gamer Slv.	6.00	\$4.2500	\$25.5000
Ball-Titleist Mlb	8.00	\$13.5000	\$108.0000
Cigar 13.95	12.00	\$3.4500	\$41.4000
Cigar 6.95	33.00	\$3.0000	\$99.0000
Cigar 7.95	35.00	\$4.5000	\$157.5000
Cigar 8.95	18.00	\$4.5000	\$81.0000



Sales Item	Qty	Unit C	Cost
Glove- Bagboy	108.00	\$2.5000	\$270.0000
Glove- Callaway Chev 18	103.00	\$5.5000	\$566.5000
Glove F3	2.00	\$8.2000	\$16.4000
Glove- Fresno State Fjoy	13.00	\$9.0000	\$117.0000
Glove Ladies Precept	2.00	\$7.2500	\$14.5000
Glove Mizuno	23.00	\$8.8800	\$204.2400
Glove Stacooler	1.00	\$6.4400	\$6.4400
Glove Titleist	2.00	\$8.2000	\$16.4000
Glove Weathersoft	37.00	\$6.8100	\$251.9700
Glove -Wintergloves	12.00	\$6.2500	\$75.0000
Glove Wolfe True Grip	4.00	\$5.1500	\$20.6000
Glove-Nike Dura Feel V	3.00	\$5.5000	\$16.5000
Grip Fancy	38.00	\$5.7975	\$220.3050
Grip Regular	23.00	\$2.4909	\$57.2907
Hat Cali Fame Straw	22.00	\$13.0000	\$286.0000
Hat Callaway	46.00	\$9.5600	\$439.7600
Hat Imperial	60.00	\$9.1000	\$546.0000
Hat Nike	2.00	\$11.5000	\$23.0000
Hat Titleist Mlb Hats	27.00	\$12.5000	\$337.5000
Hat Us Open	3.00	\$9.5000	\$28.5000
Iron Callaway Wedge Chrome	2.00	\$79.0000	\$158.0000
Iron Hogan Wedge	1.00	\$56.8500	\$56.8500
Iron Mizuno Raw Wedge	7.00	\$85.0000	\$595.0000
Iron Nike Wedge	1.00	\$72.0000	\$72.0000
Iron Ping Wedge	4.00	\$82.0000	\$328.0000
Iron Titleist Wedge -Vokey	1.00	\$79.4412	\$79.4412
Outerwear- Ashworth Sweatshirt	2.00	\$32.0000	\$64.0000
Outerwear- Callaway Half Zip Pullover	3.00	\$36.0000	\$108.0000
Outerwear- Callaway Sweater	8.00	\$33.0000	\$264.0000
Outerwear- Packaged Rain Suit Weather Co.	1.00	\$25.0000	\$25.0000
Outerwear- Vest Ashworth	3.00	\$18.5000	\$55.5000
Putter Clip	2.00	\$1.9500	\$3.9000
Putter Odyssey White Hot	3.00	\$87.0000	\$261.0000
Putter Ping G5/ I Series	2.00	\$83.0000	\$166.0000
Putter Ping Standard	1.00	\$60.0000	\$60.0000
Putter Titleist Scotty Cameron	2.00	\$179.6667	\$359.3334
Putter Tour Edge	3.00	\$25.0000	\$75.0000
Shirt Antigua	10.00	\$32.0000	\$320.0000
Shirt Ashworth Fancy	47.00	\$28.9600	\$1,361.1200
Shirt Ashworth Plain	58.00	\$24.4100	\$1,415.7800
Shirt- Callaway Ashworth Shirt Fancy	8.00	\$35.0000	\$280.0000
Shirt- Callaway Ashworth Shirt Plain	12.00	\$29.5000	\$354.0000
Shirt Heritage Cross Fancy	6.00	\$20.0000	\$120.0000
Shirt Heritage Cross Plain	25.00	\$14.0000	\$350.0000
Shirt- Ladies Heritage Cross	13.00	\$20.0000	\$260.0000
Shirt- Mock Womens Ashworth	3.00	\$18.5000	\$55.5000
Shirt Womens Ashworth	28.00	\$28.3100	\$792.6800

Sales Item	Qty	Unit c.	Cost
Shoe Laces Fjoy	25.00	\$0.5300	\$13.2500
Shoes- Fj Superlites	7.00	\$54.0000	\$378.0000
Shoes Fjoy Contour	1.00	\$65.7900	\$65.7900
Shoes Fjoy Dryjoy	5.00	\$72.5000	\$362.5000
Shoes Fjoy E-Comfort	8.00	\$54.2600	\$434.0800
Shoes Fjoy Greenjoys	35.00	\$35.6200	\$1,246.7000
Shoes Fjoy Reel-Fit	2.00	\$120.0000	\$240.0000
Shoes Fjoy Sandal	17.00	\$51.0000	\$867.0000
Shoes Golf Athletics	6.00	\$55.0000	\$330.0000
Shoes Ladies Lopro	3.00	\$62.0000	\$186.0000
Shoes-Fresno State Fj Contour	1.00	\$95.0000	\$95.0000
Shorts Ashworth	7.00	\$24.0000	\$168.0000
Shorts- Womens Ashworth	18.00	\$31.9565	\$575.2170
Socks Fjoy Ladies	1.00	\$2.7600	\$2.7600
Socks Jox Sox	51.00	\$2.9000	\$147.9000
Sunglasses Blink	6.00	\$20.0000	\$120.0000
Sunglasses Blink Polarized	13.00	\$25.0000	\$325.0000
Tees- Brush Tee Multi-Pack	5.00	\$5.2500	\$26.2500
Tees- Epoch Combo Pack	1.00	\$3.3500	\$3.3500
Tees- Long Package	253.00	\$0.3600	\$91.0800
Tees- Pride Sports Headercard 50 Pack	37.00	\$1.0900	\$40.3300
Tees- Pride Sports Headercard 75/100 Pack	90.00	\$2.0900	\$188.1000
Tees- Pro Length	7.00	\$2.5000	\$17.5000
Tees- Step Down	6.00	\$2.5000	\$15.0000
Towel Titleist	6.00	\$14.2500	\$85.5000
Towel-Global Madera Logo	21.00	\$9.7500	\$204.7500
Wood Adams Hybrid	4.00	\$120.0000	\$480.0000
Wood Callaway X460	1.00	\$224.4500	\$224.4500
Wood Cobra Hybrid Baffle	1.00	\$120.0000	\$120.0000
Wood Cobra Speed Driver	3.00	\$247.5000	\$742.5000
Wood Mizuno Mx 500	1.00	\$225.0000	\$225.0000
Wood Ping G5 / G10 Driver	1.00	\$220.0000	\$220.0000

**\$31,215.08**



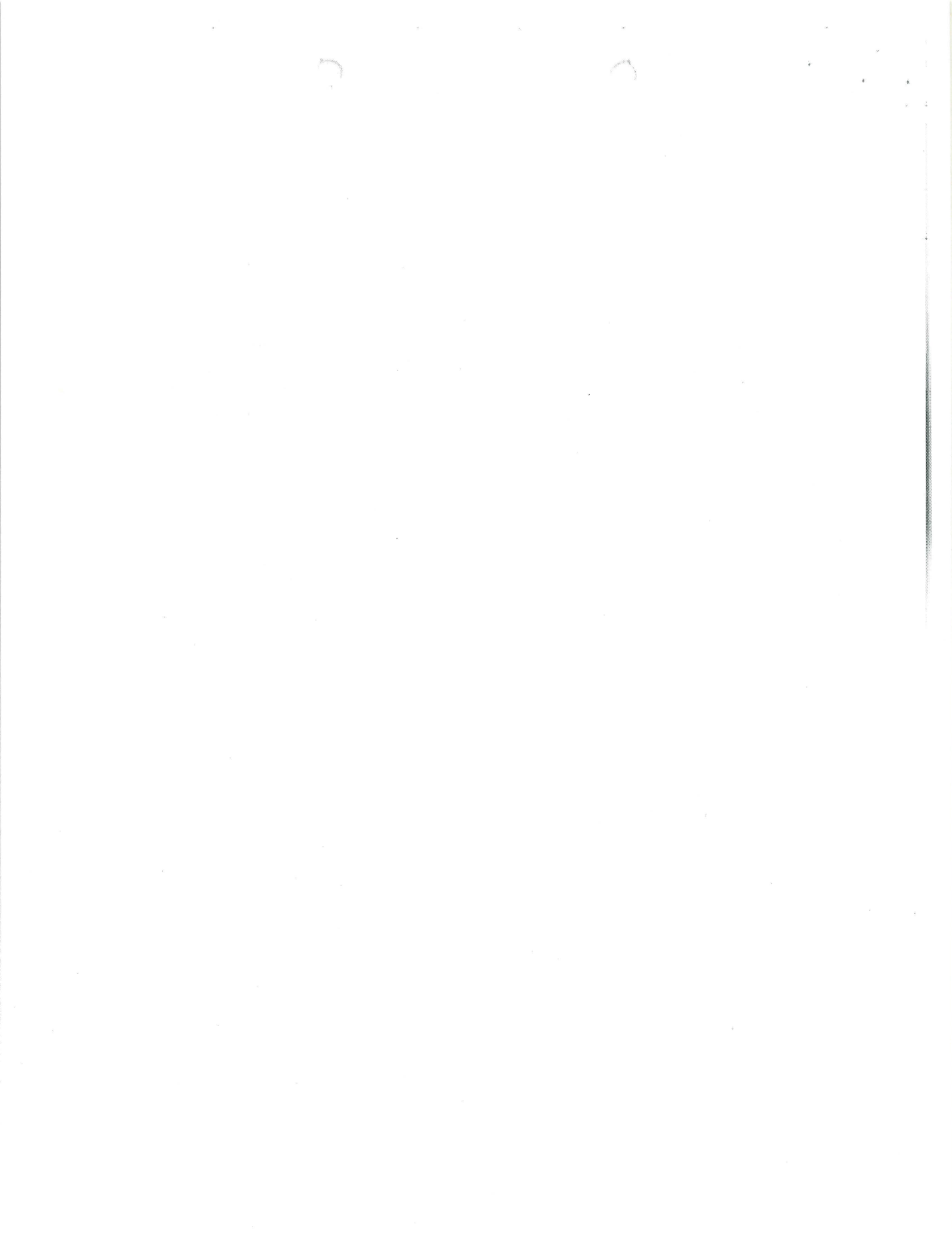
## EXHIBIT 'B'

### INVENTORY OF EQUIPMENT

QUANTITY	ITEM
1	Jacobson Gas Greens Mower
1	Jacobson Greens King 6 Greens Mower
2	Jacobson Greens King 5 Greens Mower
1	John Deere 1000 Tractor Mounted Aerators
1	Planet Air Tow Behind Aerator
2	John Deere Diesel Utility Vehicle
1	Cushman Truckster Utility Vehicle
3	Suzuki Quad Runner
1	Super Star 2WD Trap Rake
1	Smithco Trap Rake
1	Turfco Topdressor Pull Behind Models
1	Spray Star Greens Sprayer
1	Smithco Fairway Boom Sprayer
1	3-Yard Dump Trailer
2	Kubota L3250-TS Tractor (a with front end loader)
1	Golf Equipment Lift
1	Grinder for Reel Mowers
1	Bed Knife Grinder
3	Spare Rollers, pull behind mower
3	Spare Verticut rollers
3	Spare Cutting Units
4	Shop Work Benches 3-wood, 1-metal
1	250 Amp Welder
Misc	Spare Tires
Misc	Equipment repairs parts and supplies
1	Air Compressor
1	Bench Grinder
2	Vise's-Bench Mount
2	Metal Racks and Shelves
Misc	Cup Cutters
Misc	Water Squeegee
Misc	Spare Flag Poles
Misc	Spare Cups
1	Ice Machine
1	Drag Mat
3	Sod Cutters
1	Trash Pump

2	Drop Spreaders
1	Power Washer
1	Flammable Storage Container
Misc	Fuel Cans
1	Oil Drum
2	Desk and Chairs, misc. office supplies
Misc	Irrigation Supplies
Misc	Concrete Tools
1	Motorized sod cutter
Misc	Hand Tools
2	Storage Sheds
1	Parts Washer
1	Core Harvester Unit
1	300 Gallon Diesel Tank
3	Spreaders
2	Hand Pumps
2	Edger's
1	Pull Behind Blower
2	Hand Held Blower
1	Back Pack Sprayer
1	24' Cargo Trailer
1	Lilly Spreader
1	Gannon Box Scrapper
1	12' Trailer
2	Ladders





**SECOND AMENDMENT TO  
MADERA MUNICIPAL GOLF COURSE  
OPERATION AND MANAGEMENT LEASE AGREEMENT**

This Amendment (the "Amendment") to the previous agreement titled "Madera Municipal Golf Course Operation and Management Lease Agreement" dated October 7, 2009, as amended from time to time, (the "Agreement") is made and entered into this 3rd day of July, 2013 by and between the City of Madera, hereinafter called "City," and SGM Inc. dba Sierra Golf Management, hereinafter referred to as "Sierra."

WITNESSETH:

WHEREAS, the City owns and operates the Madera Municipal Golf Course for the use and benefit of the public; and

WHEREAS, the City and Sierra entered into a Lease Agreement dated October 7, 2009 for Operation and Management of the Madera Municipal Golf Course; and

WHEREAS, said Lease Agreement was amended November 18, 2009 by mutual consent of City and Sierra; and

WHEREAS, the City and Sierra desire to further amend said Lease Agreement to clarify each parties responsibilities regarding payment of Proposition 218 Benefit Assessments due annually to the Madera Irrigation District (MID).

NOW THEREFORE, it is hereby agreed that the Agreement between the parties is amended in the following particulars only:

**Amendment 1.** Section 19 of the Agreement is amended to read as follows:

19. Taxes. Throughout the Initial Term and Renewal Term of this Lease Agreement, Sierra shall pay before they become delinquent all real property tax obligations of any kind assessed against the Leased Premises in addition to all taxes and assessments imposed on any personal property, equipment or trade fixtures belonging to Sierra and located on the Leased Premises. Except as otherwise stipulated in Section 19.1, beginning on the Effective Date and for each year thereafter, Sierra shall be responsible for any applicable possessory interest tax assessed or levied against the Leased Premises and shall make timely payment thereof.


19.1 Madera Irrigation District (MID) Proposition 218 Benefit Assessments. City shall pay annual Proposition 218 Benefit Assessment as determined and invoiced by the Madera Irrigation District (MID) for Golf Course property including but not limited to that described by Madera County Assessor's Parcel # 013-010-039.



IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by and through their respective officers duly authorized on the date first written above.

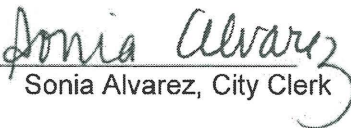
City of Madera

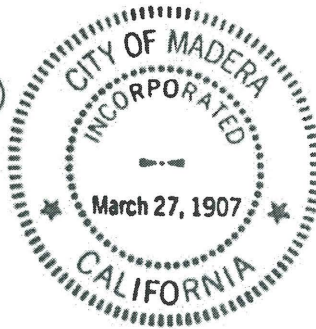
SGM Inc. dba Sierra Golf Management

By:   
Robert L. Poythress, Mayor

By:   
Jeffrey A. Christensen, President

ATTEST:

By:   
Sonia Alvarez, City Clerk



APPROVED AS TO FORM:

By:   
Brent Richardson, City Attorney

**THIRD AMENDMENT TO MADERA MUNICIPAL GOLF COURSE OPERATION AND MANAGEMENT LEASE AGREEMENT BETWEEN THE CITY OF MADERA AND SIERRA GOLF MANAGEMENT, INC.**

This 3rd Amendment to the previous Agreement titled "**MADERA MUNICIPAL GOLF COURSE OPERATION AND MANAGEMENT LEASE AGREEMENT**", dated **October 7, 2009** is made and entered into this **15<sup>th</sup>** day of **October 2014**, by and between the CITY OF MADERA, a California municipal corporation, (hereinafter referred to as "CITY"), and SGM Inc. dba Sierra Golf Management Inc., Post Office Box 788 Chowchilla, California 93610, hereinafter referred to as "Sierra" both hereinafter collectively referred to as "the parties."

WITNESSETH:

WHEREAS, CITY and SIERRA entered into an agreement on October 7, 2009, to contract with Sierra to provide services related to the operation and management of the Madera Municipal Golf Course (the "Agreement"); and

WHEREAS, CITY and Sierra desire to modify said Agreement by changing certain terms and conditions as detailed below.

NOW THEREFORE, it is hereby agreed that the Agreement between the parties is amended in the following particulars only:

1. Section 2. Term is amended to read as follows:

2. Term. This Lease Agreement shall commence on November 1, 2009 (the "Effective Date") and shall continue in full force and effect for a period of ten (10) years ("Initial Term"), thereafter terminating on October 31, 2019 ("Termination Date"), unless extended sooner or otherwise terminated sooner as provided herein, save and except, Sierra's lease of the clubhouse and banquet facilities and food and beverage operation shall not commence until March 15, 2010, unless the current tenant agrees to terminate its tenancy and vacate earlier than March 15, 2010, and which shall terminate on October 31, 2019.

The City may, in its sole discretion, grant one (1) option to Sierra to extend this Lease Agreement ("Renewal Option"), for an additional five (5) year period ("Renewal Term"), which Renewal Option will only take effect upon the mutual written consent of the parties. The City shall give Sierra no less than 180 days written notice of its intent to extend the Lease for an additional five (5) year period, at which point the City shall enter into negotiations with Sierra to extend this Lease Agreement beyond the Renewal Term. The parties agree to negotiate in good faith. In the event City and Sierra are unable during such 180-day period to reach agreement on the lease terms, this Lease Agreement shall terminate and shall be of no further force and effect and except as may specifically be provided for elsewhere in this Lease Agreement, neither City nor Sierra shall have any further obligations hereunder.



2. Section 5.1 Base Rent is amended to read as follows:

5.1. Base Rent. Commencing on the Effective Date, Sierra shall pay to City monthly Base Rent for the use and occupancy of the Leased Premises, on the tenth day of each calendar month throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease Agreement. Base rent through the entire Initial Term and through the Renewal Term shall be as follows:

Year 1:	\$24,000 per year	NOV 2009 - OCT 31 2010
Year 2:	\$30,000 per year	2010 2011
Year 3:	\$36,000 per year	2011 2012
Year 4:	\$36,000 per year	2012 2013
Year 5:	\$36,000 per year	2013 2014
Year 6:	\$40,000 per year	NOV 2014 OCT 31 2015
Year 7:	\$40,000 per year	
Year 8:	\$40,000 per year	
Year 9:	\$40,000 per year	
Year 10:	\$40,000 per year	
Renewal Year 11:	\$40,000 per year	
Renewal Year 12:	\$40,000 per year	
Renewal Year 13:	\$40,000 per year	
Renewal Year 14:	\$40,000 per year	
Renewal Year 15:	\$40,000 per year	

3. Section 5.2 Per Round Rate is amended to read as follows:

5.2. Per Round Rate. In addition to Base Rent, Sierra agrees to pay to the City a "per round" rate that establishes an initial rate of \$1.00 per round but increases in later years as set forth below. Sierra agrees to pay to the City a "per round" rate of \$1.00 per round for footgolf for the term of the Agreement. The rate per round will be paid on the tenth day of each calendar month throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease.

Year 1:	\$1.00 per round
Year 2:	\$1.00 per round
Year 3:	\$1.50 per round
Year 4:	\$2.00 per round
Year 5:	\$2.00 per round
Year 6:	\$2.00 per round
Year 7:	\$2.00 per round
Year 8:	\$2.00 per round
Year 9:	\$2.00 per round
Year 10:	\$2.00 per round
Renewal Year 11:	\$2.00 per round
Renewal Year 12:	\$2.00 per round

Renewal Year 13: \$2.00 per round  
Renewal Year 14: \$2.00 per round  
Renewal Year 15: \$2.00 per round

4. Section 5.6 Capital Improvements is amended to read as follows:

5.6 Capital Improvements. Commencing on the Effective Date, Sierra shall make Capital Improvements to the Leased Premises in order to improve the current condition of the golf course and clubhouse facilities, consistent with the Capital Improvement Plan identified in Exhibits A. The Capital Improvement Plan will serve as a guide for improvements; however for the purposes of this agreement, Sierra shall make an annual expenditure of not less than \$50,000 per calendar year for Capital Improvements to the Leased Premises throughout the Initial Term and the Renewal Term, without deduction, offset, prior notice or demand, except as otherwise specifically set forth in this Lease Agreement.

Year 1: \$50,000 per year  
Year 2: \$50,000 per year  
Year 3: \$50,000 per year  
Year 4: \$50,000 per year  
Year 5: \$50,000 per year  
Year 6: \$50,000 per year  
Year 7: \$50,000 per year  
Year 8: \$50,000 per year  
Year 9: \$50,000 per year  
Year 10: \$50,000 per year  
Renewal Year 11: \$50,000 per year  
Renewal Year 12: \$50,000 per year  
Renewal Year 13: \$50,000 per year  
Renewal Year 14: \$50,000 per year  
Renewal Year 15: \$50,000 per year

5. Section 5.8 Rent Payment and Per Round Payment is amended to read as follows:

5.8 Rent Payment and Per Round Payment. Delay by the parties in computing or collecting the Base Rent and Per Round Payments or the acceptance by City of the incorrect amount of Base Rent or Per Round payments shall not relieve Sierra of its obligations to pay such rent to the City. Sierra waives any applicable statute of limitations which could defeat the City's right to collect the Base Rent. All rental payments due under this Section 5 shall be made payable to the City of Madera and shall be delivered to the City of Madera Finance Department at 205 W. Fourth Street Madera, California 93637. Any failure to make Base Rent Payments and/or Per Round Payments that is more than sixty (60) days delinquent shall constitute substantial breach of this Lease Agreement.



6. Section 7.16 Americans With Disabilities Act (ADA) and Title 24 Compliance is amended to read as follows:

7.16 Americans With Disabilities Act (ADA) and Title 24 Compliance. With respect to any capital improvements made by Sierra during the term of this Lease Agreement including, but not limited to, those capital improvements made through the use of Capital Improvement funds established pursuant to Section 5.5 of this Lease Agreement, Sierra shall ensure that all buildings, structures, and other facilities constructed or improved by it are constructed or improved in such a manner as to be in compliance with the Americans With Disabilities Act (ADA) and Title 24. With respect to all other ADA or Title 24 required improvements, City shall be responsible for making any repairs or improvements necessary to bring the buildings, structures, and other facilities into compliance with the ADA and with Title 24.

7. Section 8.3 Project Director is amended to read as follows:

8.3. Project Director. The Director of Parks & Community Services shall act as City's representative with respect to the work to be performed under this Lease Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Sierra's services. City may unilaterally change its representative upon notice to the Sierra.


8. Exhibit "A" is replaced with new Exhibit "A" attached hereto.

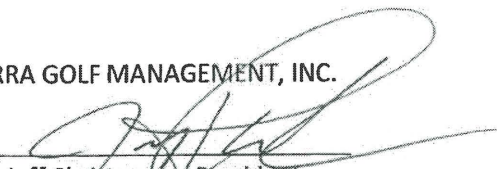
9. All other terms and conditions that are not hereby amended are to remain in full force and effect.

\* \* \* \* \*


IN WITNESS WHEREOF, the parties authorized agents have executed this Agreement as set forth below.

CITY OF MADERA

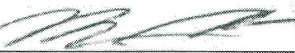
By:   
Robert L. Poythress, Mayor

SIERRA GOLF MANAGEMENT, INC.  
By:   
Jeff Christensen, President

ATTEST:

By:   
Sonia Alvarez, City Clerk

APPROVED AS TO FORM:

By:   
Brent Richardson,  
City Attorney





## Exhibit A

### MADERA MUNICIPAL GOLF COURSE

#### RENT OPTIONS

SGM proposes a rent agreement based on a combination of the following revenue centers:

1. Base Rent
2. Price per Round
3. Capital Improvement and Investment

YEAR	Base Fee	Per Round Golf	Estimated Rounds	Per Round Foot Golf	Estimated Rounds	Est. Rent to City	Capital Improvement
*6.	40k	\$2.00	46,000	\$1.00	1,200	\$133,200	\$50,000
7.	40k	\$2.00	47,858	\$1.00	1,400	\$137,116	\$50,000
8.	40k	\$2.00	49,791	\$1.00	1,600	\$141,182	\$50,000
9.	40k	\$2.00	50,787	\$1.00	1,800	\$143,374	\$50,000
10.	40k	\$2.00	51,803	\$1.00	2,000	\$145,606	\$50,000
11.	40k	\$2.00	52,839	\$1.00	2,000	\$147,673	\$50,000
12.	40k	\$2.00	53,896	\$1.00	2,000	\$149,792	\$50,000
13.	40k	\$2.00	54,000	\$1.00	2,000	\$150,000	\$50,000
14.	40k	\$2.00	54,000	\$1.00	2,000	\$150,000	\$50,000
15.	40k	\$2.00	54,000	\$1.00	2,000	\$150,000	\$50,000

\*Year 6 represents the 6<sup>th</sup> year of the Amended Lease Agreement to commence November 1, 2014.

- Payments would be made on a monthly basis.
- Capital Improvements will be funded throughout the fiscal year along with a year-end report and itemizing of all improvements.
- Current Capital Improvement funds in account to be retained for future use
- Rent would include use of all current maintenance equipment

**MADERA GOLF COURSE**  
**FIVE-YEAR CAPITAL IMPROVEMENT PLAN**

We develop and utilize Capital Improvement Plan lists as a guide. Items listed in this report are important, however, we (SGM) feel that in order to improve the current condition of the golf course the items of most importance are irrigation, equipment replacement and improvement of the greens. Note that many of these items have additional budget line item amounts already in the Operations Budget.

Maintenance Operations will be funded at a much higher level than previously, especially the line items of irrigation repair, fertilization, herbicides, fungicides, labor and utilities (irrigation delivery).

**2014-15**

- Add "Target areas" and Target greens" on driving range.
- Replace old carpet in Clubhouse.
- Continue irrigation improvement plan on perimeters.
- Parking lot improvement.

**2015-16**

- Paint exterior of clubhouse
- Replace Golf Shop carpet
- Mower replacement
- Irrigation improvement

**2016-17**

- Replace foggy windows
- Well upgrade
- Irrigation pump station upgrade
- Equipment addition

**2017-18**

- Remodel ladies bathroom
- Enhance Clubhouse bathrooms
- Add liners to greenside bunkers
- Purchase utility maintenance vehicles
- 

**2018-19**

- Landscape improvement around building
- Purchase Fairway mower
- Tree maintenance