



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

October 29, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Authorization for Disaster Management Director to sign HUD COVID -19
Grant Applications and Grant Agreements**

Purpose/Outcomes	Approval of the application for CARES ACT CDBG CV3 COVID funds for Clackamas County
Dollar Amount and Fiscal Impact	Application for \$1,867,702 in Community Development Block Grant Coronavirus (CDBG CV3) COVID 19 funds.
Funding Source	U.S. Department of Housing and Urban Development (HUD) No County General Funds are involved.
Duration	Effective March 13, 2020 and terminates on June 30, 2025
Previous Board Action	Board members approved the first allocation of these funds at the May 7, 2020 business meeting
Counsel Review	N/A
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Nancy Bush, Director 503-655-8665
Contract No.	NA

BACKGROUND: In response to the Coronavirus public health crisis, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 was signed into law on March 27, 2020 to help respond to the coronavirus outbreak. The CARES Act allocated additional Community Development Block Grant COVID funding for Clackamas County to be used to prevent, prepare for, and respond to the Coronavirus (COVID-19).

The Department of Health, Housing and Human Services (H3S) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis, which includes increases in homelessness, unemployment, and food insecurity. The current plan for use of this second allocation of Community Development Block Grant (CDBG CV3) COVID-19 funds is as follows:

\$1,567,702 of these CDBG CV3 COVID funds will be distributed to community based homeless services providers and county services as a combination of services for individuals and families impacted by the Coronavirus including:

- homeless prevention services,
- homeless shelter supplies (including the purchase of mobile shelter units),
- homeless shelter operations and staffing,



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- hotel and motel vouchers

Up to \$300,000 of these funds will be to support grants administration, contract monitoring and HUD reporting.

All COVID-19 projects and funding levels will be determined in coordination with the County's COVID-19 Emergency Operations Center activated on February 28, 2020. Clackamas County CARES dollars will be accepted and monitored by Clackamas Disaster Management, the Emergency Operations Center and the Health Housing and Humans Services Department.

RECOMMENDATION:

Staff recommends that the Board take the following actions:

Authorize the Director of the Department of Disaster Management to sign on behalf of Clackamas County all documents necessary for submitting CARES Act COVID 19 CDBG CV3 funds applications, certifications, grant awards and amending applications for programs and projects to meet all grant requirements.

Respectfully submitted,

Nancy Bush, Director

Attachments: HUD CDBG CV3 Letter 9/11/2020
Grant Life Cycle Form



ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

NB

BOARD OF COMMISSIONERS

September 11, 2020

SEP 28 2020

Mr. Jim Bernard
Chairperson Elect of the Board of Commissioners of Clackamas County
2051 Kaen Road
Oregon City, OR 97045-4035

Dear Chairperson Elect of the Board of Commissioners Bernard:

I am pleased to inform you of a special allocation to your jurisdiction of Community Development Block Grant funds to be used to prevent, prepare for, and respond to the coronavirus (COVID-19). This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis.

The CARES Act made available \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds. Of this amount, the Department immediately allocated \$2 billion on March 27, 2020, the same day President Trump signed the Act, based on the fiscal year 2020 CDBG formula; this constituted the first round of CDBG-CV funds. Next, \$1 billion was required by the Act to be allocated to States and insular areas within 45 days of enactment of the Act; HUD accomplished this on May 11, 2020, and this constituted the second round of CDBG-CV funds. Finally, the remaining \$2 billion in CDBG-CV funds was required by the Act to be allocated to states and local governments at the discretion of the Secretary on a rolling basis; HUD accomplished this on September 11, 2020, and this constituted the third round of CDBG-CV funds. Additionally, up to \$10 million will be set aside for technical assistance.

Accordingly, this letter informs you that your jurisdiction's allocation for the third round is \$1,867,702. Your cumulative amount for all allocation rounds is \$3,196,424.

The CARES Act adds additional flexibility for both the CDBG-CV grant and, in some cases, for the annual FY2019 and FY2020 CDBG grants in these unprecedented times. The public comment period is reduced to not less than 5 days, grantees may use virtual public hearings when necessary for public health reasons, the public services cap is suspended during the emergency, and States and local governments may reimburse costs of eligible activities incurred for pandemic response regardless of the date.

In addition, the CARES Act authorizes the HUD Secretary to grant waivers and alternative requirements of statutes and regulations the HUD Secretary administers in connection with the use of CDBG-CV funds and fiscal year 2019 and 2020 CDBG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements can be granted when necessary to expedite and facilitate the use of funds to prevent,

prepare for, and respond to coronavirus.

The CDBG CARES Act Federal Register Notice (FR-6218-N-01) was released on August 10, 2020. The notice describes the allocations and grant procedures applicable to the CDBG-CV grants. It also describes the program flexibilities, waivers, and alternative requirements that apply to the CDBG-CV grants as well as the fiscal year 2019 and 2020 CDBG grants. As further such flexibilities become available, they will be posted on HUD's website and distributed to grantees. The Department will also support grantees with technical assistance.

As you develop your plan for the use of these grant funds, we encourage you to consider approaches that prioritize the unique needs of low- and moderate-income persons and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. You should coordinate with state and local health authorities before undertaking any activity to support state or local pandemic response. CDBG-CV grants will be subject to oversight, reporting, and the requirement that each grantee have adequate procedures to prevent the duplication of benefits (DOB). HUD will provide guidance and technical assistance on DOB, the prevention of fraud, waste, and abuse, and on documenting the impact of this program for beneficiaries.

Reminder, all CPD Grantees must ensure they maintain active Dun and Bradstreet Numbering System (DUNS) numbers in the System for Award Management (SAM) system. Entities must have an active and unexpired DUNS before execution of grant agreements to avoid delays in the obligation of funds- which will delay your ability to drawdown funds in the Integrated Disbursement & Information System (IDIS). Grantees are required to maintain an active SAMs registration by re-activating their DUNS number annually in the SAM system for the entire drawdown period of their grants. DUNS numbers can be registered and renewed each year at the following website: <https://www.sam.gov/SAM/>.

The Office of Community Planning and Development (CPD) is looking forward to working with you to successfully meet the urgent and complex challenges faced by our communities. If you or any member of your staff has questions, please contact your local CPD Field Office Director or CPDQuestionsAnswered@hud.gov.

Sincerely,



John Gibbs
Acting Assistant Secretary
for Community Planning and Development
U.S. Department of Housing and Urban Development

Financial Assistance Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**** CONCEPTION ****

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: HEALTH HOUSING AND HUMAN SERVICES
Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No
If renewal, complete sections 1, 2, & 4 only
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: CARES COMMUNITY DEVELOPMENT BLOCK GRANT

Funding Source: Federal State Local
Requestor Information (Name of staff person initiating form): MARK SIROIS
Requestor Contact Information: marksir@dackamas.us
Department Fiscal Representative: Ed Johnson
Program Name or Number (please specify): CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANT COVID (CDBG CV3)

Brief Description of Project:

The Department of Health, Housing and Human Services (HHS) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis, which includes increases in homelessness, unemployment, and food insecurity. The current plan for use of this second allocation of Community Development Block Grant (CDBG CV3) COVID-19 funds is as follows:

\$1,567,702 of these CDBG CV3 COVID funds will be distributed to community based homeless services providers and county services as a combination of services for individuals and families impacted by the Coronavirus including:

- homeless prevention services,
- homeless shelter supplies (including the purchase of mobile shelter units),
- homeless shelter operations and staffing,
- hotel and motel vouchers

Up to \$300,000 of these funds will be to support grants administration, contract monitoring and HUD reporting.

Name of Funding Agency: U.S Department of Housing and Urban Development (HUD)

Agency's Web Address for funding agency Guidelines and Contact Information:

https://www.hud.gov/program_offices/comm_planning/covid-19

OR

Application Packet Attached: Yes No
Completed By: Mark Sirois October 14, 2020
Date

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application <input type="checkbox"/>	Non-Competing Application <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
CFDA(s), if applicable:	<u>CFDA 14 218</u>	Funding Agency Award Notification Date: <u>September 11, 2020</u>
Announcement Date:	<u>September 11, 2020</u>	Announcement/Opportunity #: <u>NA</u>
Grant Category/Title:	<u>Community Development Block Grant</u>	Max Award Value: <u>\$1,867,702</u>
Allows Indirect/Rate:	<u>yes</u>	Match Requirement: <u>None</u>
Application Deadline:	<u>NA</u>	Other Deadlines: <u>NA</u>
Award Start Date:	<u>When SF 424 signed by HUD</u>	Other Deadline Description: <u>NA</u>
Award End Date:	<u>80% spent by 2023, all by 2026</u>	
Completed By:	<u>Mark Sirois</u>	Program Income Requirement: <u>None expected - Any program income goes back into CDBG activities</u>
Pre-Application Meeting Schedule:	<u>NA</u>	

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

The Department of Health, Housing and Human Services (H3S) Vulnerable Populations Planning group has been working with the Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis which includes increases in homelessness, unemployment, and food insecurity.

2. What, if any, are the community partners who might be better suited to perform this work?

The H3S will work with community partners and the Emergency Operations Center to select the best allowable use of these funds for public services and projects in response to the coronavirus.

3. What are the objectives of this funding opportunity? How will we meet these objectives?

The Community Development Block Grant (CDBG) funds may be used for a range of eligible activities including projects and services that prevent and respond to the spread of infectious diseases such as the coronavirus.

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

No, this would be new additional homeless services in response to COVID. The Community Development Division has an annual allocation of CDBG non-covid funding.

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

The Department H3S working with County EOC command numerous divisions and community organizations are adequately staffed to utilize these COVID response funds as intended by HUD.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

No partnerships are required however contracts will be established with community based organizations. It is recommended that the County work with local health authorities to determine needs, select services and projects and distribute funds.

3. If this is a pilot project, what is the plan for sunsetting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

Not a pilot project.

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

This is onetime funding. The services will end once CDBG CV3 funding is expended.

Collaboration

1. List County departments that will collaborate on this award, if any.

Department of Health, Housing and Human Services (several divisions), County Emergency Operations Center

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

The Community Development Division will coordinate reporting. Project setup in the HUD Database: Integrated Disbursement and Information System (IDIS), financial reporting and project accomplishment reports in IDIS.

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Each activity funded will be tracked in the HUD Database: Integrated Disbursement and Information System (IDIS), financial reporting and project accomplishment reports in IDIS.

3. What are the fiscal reporting requirements for this funding?

Financial reporting will be completed in the HUD IDIS system. County Finance will provide information on expenditures.

Fiscal

1. Will we realize more benefit than this financial assistance will cost to administer?

Yes. County staff costs charged to this grant will increase the county's allocated costs revenue.

2. Are other revenue sources required? Have they already been secured?

No other revenues are required.

3. For applications with a match requirement, how much is required (in dollars), and what type of funding will be used to meet it (Cash-CGF, In-kind meaning the value from a 3rd party/non-county entity, Local Grant, etc.)?

No match requirement

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Yes the grant does cover indirect costs through administration/staff costs

Program Approval:

Mark Siros

October 14, 2020

Mark Siros

Digitally signed by Mark Siros
DN: cn=Mark Siros, o=Clackamas County, ou=Community
Development Division, email=msiros@clackamas.us, c=US
Date: 2020.10.14 14:43:41 -0700

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Mark Sirois	10/15/2020	Mark Sirois
Name (Typed/Printed)	Date	Signature

Digitally signed by Mark Sirois
DN: cn=Mark Sirois, ou=Colombia County, ou=Community
Development Division, email=msirois@colcountygov.com, c=US
Date: 2020.10.15 09:22:31 -0700

DEPARTMENT DIRECTOR (or designee, if applicable)		
ROD COOK FOR RICH SWIFT	10/20/2020	
Name (Typed/Printed)	Date	Signature

HBS Deputy / For
RICHARD SWIFT

FINANCE GRANT MANAGER		
Matt Westbrook	10/21/20	
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Nancy Bush	10/20/20	
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)
For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #: Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.



October 29, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Amendment #5 to the Contract with Total Golf Management Services, LLC for Management Services for the Operation of Stone Creek Golf Club

Purpose/Outcomes	The purpose is to extend the term of the current Contract with Total Golf Management Services, LLC for the Operation of Stone Creek Golf Club for five years through September 30, 2025 and make minor housekeeping amendments to the current contract. This extension was approved unanimously by the Parks Advisory Board at their October 20, 2020 meeting.
Dollar Amount and Fiscal Impact	The annual budgeted operating expenditures for Stone Creek Golf Club for fiscal year 20/21 are approximately \$3.1 million. Total estimated expenditures over a five-year period are approximately \$15.5 million.
Funding Source	Golf course sales and fees.
Duration	The contract was originally executed on January 13, 2005 and with this amendment #5 will expire on September 30, 2025.
Strategic Plan Alignment	<ul style="list-style-type: none"> • This agreement supports the BCC goal of growing a vibrant economy by enhancing our local community with a sought-after municipal golf course. • This agreement also supports the BCS Economic Development goal of providing services to policymakers, community partners and businesses so they can locate or expand their business in Clackamas County by maintaining public features that attract businesses and residents to Clackamas County.
Previous Board Action	<ul style="list-style-type: none"> • Initial contract signed on January 13, 2005, and continued for an initial period of five years with the opportunity for mutually agreeable five year extensions. • Amendment #1 was signed by former BCS Director Dan Zinzer on behalf of the Board of County Commissioners (BCC) on June 30, 2009 and extended the term from January 1, 2010 through December 31, 2014. • Amendment #2 extending the contract term was signed by BCC Board Chair John Ludlow on December 18, 2014, extending the term from January 1, 2015 through June 30, 2020. • Amendment #3 extending the contract term was signed by BCC Board Chair Jim Bernard on July 16, 2020, extending the term through September 30, 2020. • Amendment #4 extending the contract term was signed by BCC Board Chair Jim Bernard on September 24, 2020, extending the term through November 20, 2020.
Counsel Review	This amendment #5 was reviewed and approved as to form by County Counsel on September 8, 2020. ARN
Contact Person	Laura Zentner, BCS Director, 503-742-4351 Sarah Eckman, BCS Deputy Director, 503-742-4303

BACKGROUND:

Clackamas County has had a contract with Total Golf Management Services, LLC (TGMS) for management services for the operation of Stone Creek Golf Club since 2005. TGMS has done an exceptional job of managing the operations of the golf course and associated facilities.

Prior to this five-year extension, the agreement has had two five-year extensions. Business and Community Services intends to go out for a Request for Proposals for golf course operations prior to September 30, 2025, making this the last five-year extension of the current contract.

Business and Community Services staff presented this extension to the Parks Advisory Board (PAB) at their October 20, 2020 meeting where it was approved unanimously.

RECOMMENDATION:

Staff respectfully recommends the Board approve the attached Amendment #5 to the contract with Total Golf Management Services LLC for Management Services for the Operation of Stone Creek Golf Club and authorize BCS Director, Laura Zentner, or BCS Deputy Director, Sarah Eckman, to sign on their behalf.

ATTACHMENTS:

- Stone Creek Contract Amendment #5
- Stone Creek – TGM – Management of Stone Creek Golf Club – Original
- Stone Creek – TGM – Management Services for the Operation of Stone Creek Golf Course – Amendment #1
- Stone Creek – TGM – Management Services for the Operation of Stone Creek Golf Course – Amendment #2
- Stone Creek Contract Amendment #3
- Stone Creek Contract Amendment #4

Respectfully submitted,



Laura Zentner, CPA
Director, Business & Community Services

AMENDMENT #5

TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF COURSE

This Amendment #5 is entered into by and between Clackamas County, a political subdivision of the State of Oregon (“County”), and Total Golf Management Services, LLC (“TGMS”) and shall become part of the Contract entered into between both parties on May 1, 2014 (“Contract”).

The Purpose of the Amendment #5 is to make the following changes to the Contract:

1. ARTICLE 1, Section 1.1.5.2, **Additional Benefits**, is deleted and replaced with the following:

Subject to the County’s prior written approval, TGMS may provide no more than five (5) complimentary rounds of golf certificates per year. TGMS may offer charity rounds anytime between Monday through Friday, and on weekends or holidays any time after 2:00 p.m.

2. ARTICLE 1, Section 1.1.5.8, **Emergency Action**, is hereby amended to add the following:

The County has sole discretion to determine whether or not the Golf Course should continue to operate during an emergency. As used in this subsection, “emergency” means any emergency declared by either the State or the County under applicable law. In the event the County determines that the Golf Course should be closed during the pendency of an emergency, TGMS will take all reasonably necessary action to ensure the Golf Course is closed and secured to the maximum extent practicable. In the event the Golf Course is closed for a period of thirty (30) days or more, the parties will negotiate in good faith to amend the Agreement to adjust management fees, monthly expenses and reimbursements, costs, and other provisions impacted by the closure of the Golf Course. If the parties are unable to reach an agreement as to the terms of the amendment, either party may terminate the Agreement.

3. ARTICLE 1, Section 1.6.4, **County to Supply Working Capital**, is hereby deleted and replaced with the following:

The County shall furnish to TGMS an amount not to exceed \$150,000 to serve as working capital for the operation of the Golf Course. For purposes of this Agreement the term working capital shall mean an amount sufficient to pay, as they come due on a current basis, all approved accounts payable and other approved obligations for the operation of the Golf Course.

The parties will annually evaluate whether the not to exceed working capital amount needs to be adjusted. Any such adjustment will be made by execution of a written amendment on terms acceptable to both parties.

4. ARTICLE 2, Section 2.7.1. **Term of Agreement** is hereby amended as follows:

The Contract termination date is hereby changed from September 30, 2020 to **September 30, 2025**.

5. ARTICL 2, Section 2.7, **Term of Agreement**, is hereby amended to add the following:

2.7.7. **Non-Cause Termination.** The County may terminate this Agreement upon thirty (30) days' written notice if County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement; or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.

6. The Contract is hereby amended to add the following new sections:

3. **ARTICLE 3: ADDITIONAL TERMS AND CONDITIONS.**

6.1 Termination. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties; (B) County may terminate this Contract effective upon delivery of notice to TGMS, or at such later date as may be established by the County, if federal, state, or local laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; and (C) This Contract may be terminated for breach of contract pursuant to Section 33 of the Contract.

6.2 Tax Compliance Certification. TGMS shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. TGMS represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

6.3 PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, TGMS shall:

- 6.3.1** Make payments promptly, as due, to all persons supplying to TGMS labor or materials for the prosecution of the work provided for in the Contract.
- 6.3.2** Pay all contributions or amounts due the Industrial Accident Fund from such TGMS or subcontractor incurred in the performance of the Contract.
- 6.3.3** Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- 6.3.4** Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6.3.5** As applicable, TGMS shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. TGMS shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

6.3.6 If the Work involves lawn and landscape maintenance, TGMS shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

6.4 Force majeure. Neither County nor TGMS shall be held responsible for delay or default caused by events outside the County or TGMS's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, TGMS shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

6.5 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

6.6 Personal Property. Upon termination of this Agreement, TGMS will convey, assign, or otherwise transfer all of its rights, title, or interest in any personal property, leases, contracts, subcontracts, or other property acquired in performance of the Agreement including, but not limited to, any Golf Course equipment or Oregon Liquor Control Commission licenses, to the extent such conveyance, assignment, or transfer is permitted by applicable law.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #5, effective upon the date of the last signature below.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS	Total Golf Management Services, LLC
_____	<i>G. B. Tolbert</i>
James Bernard, Chair	By: <u>Gordon B Tolbert</u>
_____	Its: <u>President</u>
Date	<u>10.21.2020</u>
ATTEST:	Date

Clerk of the Board	
APPROVED AS TO FORM:	

County Counsel	

MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF CLUB

This Agreement ("Agreement") is by and between Clackamas County, a political subdivision of the State of Oregon (the "County"), and Total Golf Management Services, LLC, an Oregon limited liability company ("TGMS").

Recitals

A. The County owns certain real property located in Clackamas County, Oregon, and more particularly described as Stone Creek Golf Club (an 18 hole golf course) and golf related amenities (collectively, the "Golf Course").

B. The County desires to engage TGMS to provide consulting services regarding the operation and maintenance of the Golf Course. The County further desires to engage TGMS as the on site operator of the Golf Course for the purpose of operating and maintaining the Golf Course and the facilities and equipment associated therewith.

C. TGMS represents that they are an experienced professional management company, knowledgeable in the management, operation and maintenance of golf courses.

NOW, THEREFORE, in consideration of the foregoing recitals and representations, and in consideration of the mutual promises herein set forth and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1 ARTICLE I: MANAGEMENT

This Article I shall become effective upon the Commencement Date defined in Article II, Section 2.5 of this Agreement.

1.1 Operation of the Golf Course

1.1.1 Services to Be Performed by TGMS/County Control. Subject to the terms of this Agreement, the County directs TGMS as an agent of the County, on a fee for services basis, to direct, supervise, and operate the Golf Course including the playing and practice facilities, the clubhouse, restaurant, and all other related facilities. TGMS will employ all personnel necessary for these operations, and perform all other activities necessary to operate and maintain the Golf Course. TGMS agrees to operate and maintain the Golf Course pursuant to this Agreement and for County's account and shall determine the programs and policies to be followed in connection therewith. Such policies and programs shall be consistent with the standards set forth in Article I, Section 1.1.3, and shall be formulated in consultation with County and subject to County approval. After

granting such approval, County agrees to delegate to TGMS implementation of the approved programs and policies, subject to County review and oversight.

1.1.2 Preparation for Commercial Operation. Promptly upon execution of this Agreement, TGMS will prepare the Golf Course for commercial operation and fully equip the Golf Course with a reasonable stock of equipment, merchandise, supplies, spare parts and consumables necessary to operate the Golf Course in accordance with this Agreement.

1.1.3 Standards for Performance of Services. TGMS will:

1.1.3.1 Operate and maintain the Golf Course in a clean, safe, efficient and Environmentally Acceptable manner and in accordance with Prudent Industry Practices;

(i) "Environmentally Acceptable" means complying with all applicable federal, state and local laws, ordinances and regulations relating to Hazardous Substances.

(ii) "Prudent Industry Practices" means the practices, methods, level of care and equipment, as changed from time to time, that are commonly used to operate and maintain safely and consistently with applicable statutes, regulations and codes golf course developments of approximately the same size, quality and type as the Golf Course.

(iii) "Hazardous Substance" means:

(a) any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) and the rules and regulations promulgated thereunder, as each may be amended from time to time;

(b) any material which by reason of its composition or characteristics is a hazardous waste as defined in the Resource Conservation and Recovery Act (42 U. S.C. § 6901 et. seq.) and the rules and regulations promulgated thereunder, as each may be amended from time to time;

(c) any pesticide, insecticide, fungicide, rodenticide or other material or substance used for preventing, destroying, repelling or mitigating any pest, including any insect, rodent, nematode, fungus or weed;

(d) petroleum or any petroleum byproduct; and

(e) any other material, substance or waste described or defined as a “pollutant” or a “contaminant” or described as “hazardous”, “toxic”, or “radioactive” or by words of similar import under any applicable federal, state or local laws, rules or regulations, as each may be amended from time to time.

1.1.3.2 Perform the services to be provided hereunder in all material respects in a prudent and efficient manner and in accordance with:

- (i) all manufacturer’s warranties, the Operation and Maintenance Procedure Manuals and the Administrative Procedures Manual;
- (ii) all applicable rules, laws, regulations, codes, permits, licenses and standards;
- (iii) the Project Agreements; and
- (iv) this Agreement;

1.1.3.3 Use diligent efforts to perform in accordance with the applicable Annual Operating Plan;

1.1.3.4 Except as otherwise specified in this Agreement, obtain all licenses and permits required to allow TGMS to do business in the jurisdictions where its services are to be performed;

1.1.3.5 Use generally accepted practices and technologies with the object of (i) optimizing Golf Course revenues, (ii) optimizing the useful life of the Golf Course and equipment at the Golf Course, and (iii) minimizing the costs of operating the Golf Course; and

1.1.3.6 Devote such time and personnel as is reasonably necessary or advisable to perform its duties under this Agreement.

1.1.4 Representatives. The County designates the Transportation Engineering, Park & Property Management Manager as the representative who will act as principal operating liaison between County and TGMS. TGMS shall also designate in writing an officer or representative of TGMS, who will have responsibility for supervising the Golf Course and implementing this Agreement on behalf of TGMS. All matters and questions pertinent to this Agreement and the operation of the Golf Course shall be transmitted through the respective designees.

1.1.5 TGMS’s Responsibilities. County grants authority to perform and TGMS accepts responsibility to perform the following tasks:

1.1.5.1 Hiring. TGMS will employ, pay, supervise, and discharge all employees

and personnel necessary for the operation of the Golf Course. The County will reimburse TGMS for all reasonable payroll and benefit expenses and the payroll and related taxes of the employees hired by TGMS for the operation of the Golf Course. All employees hired by TGMS shall be employees of TGMS and not employees of the County.

1.1.5.2 Additional Benefits. TGMS may provide gratuitous food and other Golf Course use benefits consistent with industry standards and agreed upon by the County's authorized representative. The direct cost of providing these benefits shall be an operating expense of the Golf Course.

1.1.5.3 Books and Records. TGMS will maintain current, complete and accurate books, including the books of account and accounting procedures of the Golf Course, operating logs, records and reports documenting the operation and maintenance of the Golf Course, and current versions of all drawings, specifications, lists and other technical material consistent with industry standards and as required to operate and maintain the Golf Course.

1.1.5.4 Authority to Contract. Subject to the County's approval, TGMS may negotiate leases, licenses and concession agreements for the Golf Course. All such leases, licenses, or concessions will be in County's name, except as otherwise agreed by the County and TGMS or where prohibited by law, and will be executed only by officers of County or officers of TGMS. TGMS will obtain a license from the Oregon Liquor Control Commission to sell alcoholic beverages on the Golf Course.

1.1.5.5 Maintenance and Repair. With the funds available and subject to the approved budget described in Article I, Section 1.7.4, TGMS will maintain the Golf Course and all, furniture and equipment and operating supplies in good order, repair, and condition (ordinary wear and tear excepted), including without limitation, making necessary replacements, improvements, additions, and substitutions, to the end that the Golf Course shall be maintained and adequately furnished as a first-class, modern Golf Course.

1.1.5.6 Service Contracts and Utilities. TGMS will negotiate on behalf of County and in County's name, service contracts required in the ordinary course of business in operating the Golf Course, including, without limitation, contracts for electricity, gas, telephone, security agency protection, vermin extermination, housekeeping, maintenance, and other services which TGMS deems advisable and necessary. However, TGMS will not enter any contract that involves an expenditure of more than Five Thousand Dollars (\$5,000.00) in the aggregate or that is not terminable at will upon thirty (30) day's notice without County's approval.

1.1.5.7 Supervision of Purchasing. TGMS will supervise the purchase in the most economical manner of all inventories, provisions, and operating supplies, which in

the normal course of business are necessary and proper to maintain and operate the Golf Course.

1.1.5.8 Emergency Action. If an emergency occurs which affects the safety or protection of persons or endangers the Golf Course or property located at the Golf Course, TGMS shall take prompt action to attempt to prevent such threatened damage, injury or loss, and shall, as soon as practicable, notify County of the emergency. Reasonable costs incurred in such an emergency shall be operating and maintenance expenses. In considering the reasonableness of costs incurred during an emergency the parties will consider that the priorities during an emergency are the safety of the public, the safety of workers, the operation of the Golf Course in an Environmentally Acceptable manner and the continuing operation and preservation of the Golf Course, acknowledging that time may not permit the opportunity to obtain the lowest price for goods or services.

1.1.6 Subcontracting. TGMS may contract with any third party for the performance of any service work required by this Agreement, but no such contract shall relieve TGMS of its obligations to County hereunder.

1.1.7 Limitations on Authority. TGMS will not have the authority to undertake any of the following actions unless: (i) they are approved in the Annual Operating Plan, (ii) TGMS has received the prior written approval of County; or (iii) such actions are expressly authorized by this Agreement:

1.1.7.1 Disposition of Assets. The sale, lease, pledge, mortgage, conveyance, license, exchange or other transfer or disposition of any property or assets of County, including any tangible personal property acquired by TGMS under this Agreement, except for the consumption of supplies in the ordinary course of business and the replacement of equipment in the ordinary course of business.

1.1.7.2 Contracting. Making, entering into, executing, amending, waiving any rights, modifying or supplementing any oral or written contract, agreement or commitment on behalf of, binding upon, or in the name of County, or agreeing to do any of the foregoing.

1.1.7.3 Expenditures. Making any expenditure (if not provided for in the Annual Budget), unless an emergency or other event occurs which (i) may affect the safety of Persons, (ii) involves a release or threatened release of a Hazardous Substance or (iii) may endanger the full operating capacity of the Golf Course or property located at the Golf Course, in which case, TGMS may, without prior approval from County, take all reasonable actions to prevent the threatened damage, injury or loss and must promptly notify County of any such action. Reasonable costs incurred in this regard will be operating and maintenance expenses. In such an emergency, the County will not unreasonably withhold or delay approval of any necessary expenditure not provided in the Annual Budget and requested by TGMS.

1.1.7.4 Other Actions. Taking or agreeing to take any other action in material variance with the applicable Annual Operating Plan or the Annual Budget.

1.1.7.5 Lawsuits and Settlements. The settling, compromising, assigning, pledging, transferring, releasing or consenting to the same of any claim, suit, debt, demand or judgment against or due by County, TGMS on behalf of County, or submitting any such claim, dispute or controversy to arbitration, mediation or judicial process, or stipulating to a judgment, or consent to do the same. TGMS agrees that County shall retain sole control of any such claim, suit, debt or demand and any other litigation regarding the projects, except as to TGMS's individual liability.

1.1.7.6 Transactions on Behalf of Others. Engaging in any other transaction on behalf of County in contravention of this Agreement.

1.1.7.7 Governmental Licenses or Permits. Agreeing to any penalty, assessment or fine for violation of any permit.

1.2 Marketing

TGMS shall, at County's expense and subject to County's approval of an overall marketing plan, arrange for and conduct all advertising and promotion that TGMS reasonably deems necessary to maintain adequate Golf Course use levels consistent with budgeted revenue objectives.

1.3 Expenses Borne By County

1.3.1 Expenses. All expenses properly incurred by TGMS for and on behalf of County pursuant to this Agreement shall be borne by County from the operating revenue of the Golf Course or from any reserve fund the County may establish for that purpose.

1.3.2 Debts and Liabilities. All debts and liabilities of the County and all properly authorized debts arising in the course of business of the Golf Course shall be the obligation of County, and TGMS shall not be liable for any such obligations by reason of its management, supervision, and operation of the Golf Course undertaken in good faith and within the scope of this Agreement. Subject to certain limits, County shall defend, save harmless and indemnify TGMS, as an agent of the County, against tort claims or demands arising out of an alleged act or omission occurring in the performance of its duty under this Agreement, as more fully explained in Article II, Section 2.2.

1.3.3 Reimbursement for Expenses. TGMS shall be reimbursed monthly for reasonable expenses of any of its officers or employees which are incurred for travel as required for Golf Course business, and for meals, lodging, and out-of-pocket expenses incurred while on Golf Course business. TGMS will keep such expenses chargeable to the Golf Course operation at a minimum, and consistent with the approved budget.

1.3.4 Procedure for Reimbursement. County will reimburse TGMS for those expenses which are reimbursable under this Agreement subject to the funding procedures established by County.

1.4 Expenses Borne by TGMS

1.4.1 Supervisory Services. The supervisory services to be rendered by the personnel and staff of TGMS in connection with the operation of the Golf Course (exclusive of any mutually agreed upon specific projects not included in this Agreement), shall be provided by TGMS at its own expense and not charged to County.

1.4.2 Overhead. County shall not be charged with the general overhead, general administrative expense, salaries or wages of any officers, directors or employees of TGMS or any of its or their affiliated or subsidiary companies, except as otherwise specifically provided for in this Agreement.

1.5 Compliance With Laws

1.5.1 Compliance with Laws. TGMS shall ensure that the Golf Course complies with all laws, rules, regulations, requirements, orders, notices, determinations, and ordinances of any federal, state, or municipal authority relating to the operation of the Golf Course and the reasonable requirements of any insurance company covering any risk against which the Golf Course is insured.

1.5.2 County's Right to Contest. With respect to a violation of any such laws or rules, County shall have the right to contest the applicable law and to postpone compliance pending the determination of such contest, if so permitted by law, but County shall protect and indemnify TGMS from any loss, cost damage, or expense as a result of such protest.

1.6 Bank Accounts/Disbursement of Funds – Working Capital

1.6.1 TGMS Golf Account. TGMS shall establish a Golf Course operational account at the same bank or trust company at which the County Account is established. TGMS shall authorize two signatories to the TGMS Account. Funds deposited into the TGMS Account shall not be commingled with other funds of TGMS.

1.6.2 Deposit of Funds into the TGMS Golf Account. On or before the first day of each month County shall cause amounts to be disbursed from the County Account and deposited into the TGMS Account consistent with the Approved Budget and the Annual Operating Plan. Those funds shall be used for the payment of Golf Course operational expenses in the manner provided below.

1.6.3 Payment of Operating Expenses. All operating expenses, and previously

approved capital expenditures, contained in the Approved Budget will be paid from the TGMS Golf Account. Notwithstanding the preceding sentence, no payment or disbursement shall be made from the TGMS Golf Account for any expense, which, under the provisions of this Agreement requires the County's prior written approval, without receipt by TGMS of such prior written approval. Consistent with this restriction, TGMS may make payments and disbursements and reimburse itself for approved expenses incurred for operation of the Golf Course consistent with the terms of this Agreement.

1.6.4 County to Supply Working Capital. The County shall furnish funds sufficient to constitute working capital for the operation of the Golf Course. For purposes of this Agreement the term working capital shall mean an amount sufficient to pay, as they come due on a current basis, all approved accounts payable and other approved obligations for the operation of the Golf Course.

1.6.5 Deposit of Golf Course Revenue. All revenues earned from the operation of the Golf Course shall be deposited by TGMS into the County Golf Account and not into the TGMS Golf Account. In the event revenues are mistakenly deposited into the TGMS Golf Account, TGMS will immediately cause those revenues to be disbursed from the TGMS Golf Account and deposited into the County Golf Account.

1.7 Books, Records, Statements & Budgets

1.7.1 TGMS to Maintain Books of Account. TGMS shall ensure that full and adequate books of account and other records are kept reflecting the results of operations of the Golf Course on a cash basis, all in accordance with generally accepted accounting principles and as required by the provision of this Agreement. The books of account and all other records relating to, or reflecting the operations of the Golf Course, shall be reasonably available to County and its representatives at any reasonable time for examination, audit, inspection, and transcription. All such books and records, including, without limitation, books of account, at all times shall be the property of County and shall not be removed from the Golf Course by TGMS without County's prior approval and consent. Upon termination or expiration of the Agreement, all such books and records forthwith shall be turned over to County, to assure the orderly continuance of the operation of the Golf Course, but such books and records shall thereafter be available to TGMS at all reasonable times for examination, audit, inspection, and transcription.

1.7.2 Periodic Financial and Operational Reports. TGMS shall cause to be delivered to County at the end of each accounting period cash basis financial statements as requested by the County, of the operation of the Golf Course for the immediately preceding accounting period and the fiscal year-to-date. Such statements shall be (i) delivered monthly, (ii) in the form and detail as TGMS and County shall agree upon, and (iii) taken from the books and records maintained for the Golf Course.

1.7.3 Annual Audited Financial Report. Within ninety (90) days after the end of each fiscal year, TGMS will cause to be delivered to County a compiled financial statement prepared by an independent certified public accountant showing the results of operations

of the Golf Course during such fiscal year. The County may request an audit at year end. The cost of such audit, if required, shall be borne by County. TGMS shall provide the County a copy of their annual tax return.

1.7.4 Annual Operating Plan. At least sixty (60) days before the beginning of each new fiscal year (which for the purposes of this Agreement shall be the calendar year), TGMS shall cause to be prepared and delivered to County's representatives an operating plan for the next year and an operating budget (including a working capital budget and a projected statement of cash flows) in preliminary draft form setting forth an itemized statement of the estimated receipts and disbursement for the forthcoming fiscal year. Such budget shall be based upon any proposed increases, fees, anticipated labor costs, management incentives, and estimates of food and beverage sales and shall take into account the general condition of the Golf Course, including furnishings and operating equipment. The operating plan and preliminary budget shall be subject to the County's approval. After reflecting the changes made thereto by County, a revised budget shall be submitted in final draft form no later than thirty (30) days after the preliminary budget has been reviewed and returned to TGMS. Once approved by TGMS and the County, such budget shall constitute the agreed standard and plan to which TGMS shall adhere and shall define the Annual Budget or Operating Budget as such terms are used in this Agreement. Except in the case of emergency repairs permitted under the terms of this Agreement and expenses to accommodate unanticipated personnel changes described in Section 1.4.5, above, no expense may be incurred or commitments made by TGMS in connection with the maintenance, repair, or operation of the Golf Course in excess of the amounts allocated to the various classification of expense in the approved budget without the County's specific written approval. The budget shall be in the format generally accepted by accounting firms specializing in Golf Course accounting and shall separately set forth estimates of total sales and income, expenses and profit by department for golf, food and beverage (combined), rentals (if any), and miscellaneous income. General and other undistributed expenses not allocable to any given department shall include: (i) administrative and general expenses, (ii) advertising and sales promotion, (iii) energy and utilities, (iv) repairs and maintenance, (v) fire insurance and franchise taxes, (vi) real estate taxes, (vii) rent and (viii) provisions for capital expenditures. Incentive compensation shall be included in the budget as described in Article I Section 1.12.1.

1.7.5 Administrative Procedures Manual. No later than 30 days after the Commencement Date, TGMS shall submit for the review and approval by County a proposed Administrative Procedures Manual providing such information as (a) organization charts, (b) methods for reviewing all existing procedures, (c) procurement and contracting procedures, (d) accounting, bookkeeping and record keeping systems and (e) personnel procedures. Within 30 days of the receipt of the proposed Administrative Procedures Manual, County shall submit any written comments to TGMS. The Parties will meet to resolve all outstanding differences and to agree upon a final Administrative Procedures Manual, which must be approved in writing by both Parties. The Administrative Procedures Manual shall remain in effect for the term of this Agreement, subject to revision and amendment by written agreement of the Parties.

1.7.6 Operations and Maintenance Procedure Manuals. No later than 30 days after the Commencement Date, TGMS shall submit for review and approval by County proposed Operations and Maintenance Procedure Manuals providing operations and maintenance procedures. These procedures should include information regarding:

- (a) equipment operating procedures;
- (b) maintenance programs for the Golf Course and equipment;
- (c) safety programs;
- (d) environmental compliance and mitigation programs;
- (e) programs for complying with report requirements contained in this Agreement;
- (f) license and permit operating reporting requirements;
- (g) other regulatory reporting requirements;
- (h) cultural practices; and
- (i) golf operation rules and regulations.

Within 30 days of the receipt of the proposed Operations and Maintenance Procedure Manuals, County shall submit any written comments thereon to TGMS. The parties will meet to resolve all outstanding differences and to agree upon a final Operations and Maintenance Procedure Manuals, which must be approved in writing by both Parties. This final Operations and Maintenance Procedure Manuals will remain in effect for the term of this Agreement, subject to revision by written agreement of the parties.

1.8 TGMS Not Obligated To Advance Funds

TGMS shall not be obligated to advance any of its own funds to or for the account of County, nor to incur any liability unless County shall have furnished TGMS with funds necessary for the discharge thereof. However, if TGMS shall, for any reason, have advanced funds in payment of a permitted expense in the maintenance and operation of the Golf Course, County shall reimburse TGMS on demand, and TGMS shall have the right to reimbursement from the Agency Account.

1.10 Insurance

1.10.1 Insurance Maintained by County. TGMS shall provide and maintain insurance in the following amounts to protect the interests of the County and TGMS, paid for out of the TGMS Golf Account. Said coverage shall furnish to County and TGMS reasonable protection in the ownership, management, and operation of the Golf Course. All insurance coverages are to be written in companies acceptable to County and TGMS. TGMS shall furnish to County true copies of the original policies including current endorsements, and other attachments to those policies as well as all amendments made to those original policies after initial issuance.

Form of Coverage

(i)	Property insurance	minimum 80% of insurable value
(ii)	Comprehensive General Public & Product Liability (including Dram Shop Coverage)	
	Bodily Injury – Each Person	\$1,000,000
	Bodily Injury – Each Accident	\$1,000,000
	Property Damage – Each Accident	\$1,000,000
	Property Damage – Aggregate	\$1,000,000
(iii)	Excess Umbrella Coverage	\$4,000,000
(iv)	Workers Compensation	Statutory
	Employers Liability	
	Bodily Injury by Accident – Each Accident	\$500,000
	Bodily Injury by Disease – Each Employee	\$500,000
	Bodily Injury by Disease – Policy Limit	\$500,000
(v)	Employment Practices Liability	\$5,000,000
(vi)	Such other insurance coverages as the County may require	

1.10.2 In the policies described in paragraphs (i), (ii) and (iii) above the County shall be listed as named insured and TGMS shall be listed as additional insured, and those policies shall provide that the loss, if any payable thereunder, shall be adjusted by and payable to County.

1.10.3 Property insurance shall include fire and extended coverage on the buildings and all contents, in an aggregate amount which shall not be less than eighty percent (80%) of the full insurable value thereof and in no event below the minimum amount necessary to avoid the effect of co-insurance provisions of such policies, and at least the minimum coverage set forth above (or such greater amounts as may be required by any contract affecting the Golf Course), and in the form that it is satisfactory to County and TGMS.

1.10.4 TGMS shall have all policies of insurance provide that the insurance company, or companies, will have no right of subrogation against any party hereto, their agents, or employees. TGMS assumes all risks in connection with the adequacy of any insurance or self-insurance program, and waives any claim against County for any liability, cost, or expense arising out of any uninsured claim, in part or in full, in any nature whatsoever. Proof of premium payments, in accordance with each policy, shall be delivered to County within five (5) days of the premium due date.

1.11 Warranties

TGMS will ensure maintenance of all warranties and guaranties and to cause the reimbursement of expenses for maintenance, repairs, and replacement, and for labor and materials associated with all warranted or guaranteed equipment and furnishings.

1.12 Management Fees

1.12.1 For the management services to be rendered by TGMS hereunder, TGMS shall be entitled to receive base compensation on the first day of each month during the continuance of this Agreement the sum of Nine Thousand Dollars (\$9,000). Beginning in year two of this Agreement, the monthly compensation shall be subject to an increase based on the Portland Consumer Price Index. In addition to the base compensation, TGMS shall be entitled to incentive compensation in the amounts and subject to the formulas contained in the approved budget. Base compensation shall be paid to TGMS by County monthly out of the County Golf Account. Incentive compensation shall be paid the first month of the new budget year based upon the net revenue from the previous year per the following formula:

When 90 – 100 percent of the net revenue is achieved TGMS will earn a three (3) percent bonus of the net revenue.

- 100% – 105% of the net revenue is achieved earns a 4% bonus
- 105% – 110% of the net revenue is achieved earns a 5% bonus
- 110% – 115% of the net revenue is achieved earns a 6% bonus
- 115% – 120% of the net revenue is achieved earns a 7% bonus
- 120% - + of the net revenue is achieved earns a 8% bonus

1.12.2 If for any reason payment to TGMS is withheld, TGMS reserves the right to discontinue all management services pertaining to the Golf Course until payment of the account is made in full. All past-due amounts shall bear interest at the maximum rate allowable by law from the date payment is due until payment is received by TGMS. Any such termination of service by TGMS shall not adversely affect TGMS's right to compensation.

2 Article II: MISCELLANEOUS

2.1 Consent

Except as herein otherwise provided, whenever in this Agreement the consent or approval of TGMS or County is required, such consent or approval shall not be unreasonably withheld.

2.2 Indemnification

2.2.1. Indemnification by County. Subject to the limits of the Oregon Tort Claims Act, and Article 11 Section 10 of the Oregon Constitution, County agrees to indemnify, defend and hold harmless TGMS, its officers, and employees, all as agents of the County, from and against all tort claims or demands arising out of an alleged act or omission occurring in the performance of TGMS' duty under this Agreement, provided however that County's obligations under this section do not apply in case of malfeasance in office or willful or wanton neglect of duty by the party seeking indemnification.

2.2.2. Indemnification by TGMS. TGMS shall indemnify, defend and hold harmless County, and its officers and employees, from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or in connection with TGMS' performance of the work under this agreement, to the extent such claims and actions are not subject to defense and indemnification by the County under the preceding paragraph 2.2.1.

2.2.3 Nothing in this Agreement shall be construed as constituting the County and TGMS as partners or joint ventures, or otherwise imposing on TGMS any liability or obligation of County, or upon County any liability of TGMS except as such liability may arise under the terms of this Agreement.

2.3 Debt Service

County agrees to provide adequate funds to maintain current monthly payments on all debt obligations of the Golf Course or obligations, which are secured by the Golf Course's assets, if any, and on all leases. TGMS shall have no liability to County or any lender with respect to such financing.

2.4 Entire Agreement

This Agreement, along with the Request for Proposals for Management Services for The Operation Of Stone Creek Golf Course Clackamas County Oregon, dated September 29, 2004, and the proposal response from TGMS dated September 29, 2004, represent the entire agreement between the County and TGMS and supersedes any and all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by County and TGMS as appropriate under the circumstances.

2.5 Commencement Date

The commencement date of this Agreement shall be the first day of November, 2004.

2.6 Notification

All notifications related to this Agreement shall be deemed to be adequate if sent by first class United States mail and addressed to:

TGMS representative

Total Golf Management Services
19586 Kari Ann
Oregon City, Oregon 97045
Attn: Gordon Tolbert

County representative

Attn. Dan Zinzer, Parks Manager
9101 SE Sunnyside Blvd
Clackamas, OR 97015

2.7 Term of Agreement

2.7.1 This agreement shall be effective as of the Commencement Date and shall continue for an initial period of five (5) years with the opportunity for mutually agreeable five (5) year extensions.

2.7.2 Not later than twelve (12) months prior to the expiration of the then current Term, the Parties shall commence negotiations with each other concerning any extension and the changes, if any, to the Services or the provisions of this Agreement that they require to facilitate such an extension.

2.7.3 If the parties cannot agree upon a five year extension of this Agreement, the present contract terms shall be extended for one-hundred and eighty (180) days or upon the selection of a replacement contractor and then terminate.

2.7.4 Termination by County. County may terminate the Agreement with respect to TGMS at any time for cause. For the purposes of this section "cause" shall mean any of the following:

2.7.4.1. the death of Gordon Tolbert;

2.7.4.2. the permanent disability of Gordon Tolbert rendering him unable to perform the duties to be performed by TGMS;

2.7.4.3. the failure or refusal of TGMS to perform the services called for under the terms of this Agreement;

2.7.4.4. a finding that TGMS, Gordon Tolbert shall have been guilty of fraud, deceit or other similar act of dishonesty.

2.7.4.5. the dissolution, bankruptcy, liquidation, and/or cessation of business of TGMS.

2.7.4.6. TGMS's receipt of notice from County stating that TGMS has materially breached its obligations under this Agreement, and specifying the nature of the breach, unless TGMS cures the breach within such thirty (30) days. If cure cannot reasonably be completed within thirty (30) days, the cure period shall be continued for so long as TGMS diligently pursues the cure.

2.7.5. Termination by TGMS. TGMS may terminate the Agreement with respect to County at any time for cause. For the purposes of this section "cause" shall mean County's material breached of its obligations under this Agreement, provided that TGMS shall provide County notice stating that County has materially breached its obligations under this Agreement, and specifying the nature of the breach, and providing County thirty (30) days within which to cure the breach. If cure cannot reasonably be completed within thirty days, the cure period shall be continued for so long as County diligently

pursues the cure.

2.7.6 Effect of Termination. If this Agreement is terminated in accordance with this section, all services shall be deemed completed and all amounts due hereunder shall be paid through the termination date. Thereafter the parties herein shall have no further obligations to each other under this Agreement, except for the provisions of Article I, Section 1.8, and Article II, Section 2.2, which shall survive the termination of this Agreement.

2.8 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Oregon without regard to its choice of laws principles. Exclusive venue for any action will be in the Circuit Court of Clackamas County, Oregon.

2.9 Assignment

No interest in this Agreement may be assigned or duty delegated without the express prior written consent of the County.

2.10 Public Contracting

To the extent any activities of TGMS under this Agreement are or become subject to statutorily required provisions under the Oregon Public Contracting Law, TGMS agrees to comply with any such provisions.

2.11 Prevailing Wage Rate

To the extent TGMS hires workers to work on a project that constitutes public works, as that term is defined at ORS 279.348(3), TGMS shall be required to pay existing prevailing wage rates pursuant to ORS Chapter 279 and shall pay all necessary fees to the Oregon Bureau of Labor and Industries pursuant to ORS 279.352(2). Prevailing Wage Scales are available from the Oregon Bureau of Labor and Industries. It shall be the responsibility of TGMS to obtain and comply with such requirements.

2.12 Appropriations

This Agreement is subject to the appropriation and availability of County funds. In the event that the funds are not appropriated or are otherwise unavailable, County reserves the right to terminate this Agreement upon written notice to TGMS. Termination due to non-appropriation or unavailability of funds shall not be deemed an Event of Default by the County. Upon receipt of the written notice, TGMS shall cease all work associated with the Agreement. Should such an event occur, TGMS shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, TGMS shall have no right to recover from the