



September 24, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of Modification No. 1 to a Grant and Cooperative Agreement L18AC00108  
 Between Clackamas County and the Department of Interior  
Bureau of Land Management Oregon State Office for the Dump Stoppers Program

<b>Purpose/Outcomes</b>	Business & Community Services County Forest division manages the Dump Stoppers program, which provides illegal dumping prevention and cleanup services on county and federal forest lands. This amendment continues grant funding for the Dump Stoppers program.
<b>Dollar Amount and Fiscal Impact</b>	\$42,000 of BLM Oregon State funds has been awarded with Modification No. 1 to agreement number L18AC00108. There are no matching funds required for this grant.
<b>Funding Source</b>	BLM – OR-ST OFC Proc Mgmt Br (OR952)
<b>Duration</b>	September 8, 2018 through September 8, 2021
<b>Previous Board Action</b>	Approval of Grant and Cooperative Agreement L18AC00108 on September 20, 2018, Agenda Item No. G.1
<b>Strategic Plan Alignment</b>	<p>1. Approving this amendment aligns with the Business and Community Services output measure of # pounds of solid waste removed from our forests by supporting the Dump Stoppers solid waste removal program.</p> <p>2. The amendment supports the Board of County Commissioner’s goal to Honor, Utilize, Promote and Invest in our Natural Resources, by maintaining clean and healthy forests so they can contribute to goals of being carbon neutral by 2050.</p>
<b>County Counsel Review</b>	September 8, 2020, ARN
<b>Procurement Review</b>	<p>Was the item processed through Procurement? No</p> <p>As a grant amendment, the item was not subject to processing through Procurement.</p>
<b>Contact Person</b>	<p>Sarah Eckman, Deputy Director, 503-709-7900</p> <p>Tom Riggs, Interim County Parks &amp; Forest Manager, 503-781-3137</p>
<b>Contract No.</b>	L18AC00108

**BACKGROUND:** Business & Community Services County Forest division Dump Stoppers program was created in 2003 to address the chronic and growing problem of waste dumping on forested lands in Clackamas County. The program goals are to: 1) clean up identified dump sites on 790,000 acres of program partner lands; 2) enforce anti-dumping laws; and 3) educate the public about the negative consequences of illegal dumping. Funds through the Bureau of Land Management provide for Dump Stoppers staff labor, vehicle operation costs, and abandoned vehicle tow expenses.

**RECOMMENDATION:** Staff respectfully recommends the Board approve Modification No. 1 to BLM Grant and Cooperative Agreement L18AC00108. The agreement does not require signature by County representative.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura Zentner".

Laura Zentner, Director  
Business & Community Services

# Grant and Cooperative Agreement

CHOOSE ONE:  
 COOPERATIVE AGREEMENT  
 GRANT

CHOOSE ONE:     EDUCATION     FACILITIES     RESEARCH     SDCR     TRAINING

1. GRANT/COOPERATIVE AGREEMENT NUMBER L18AC00108	2. SUPPLEMENT NUMBER 0001	3. EFFECTIVE DATE 08/25/2020	4. COMPLETION DATE 09/08/2021
---	------------------------------	---------------------------------	----------------------------------

5. ISSUED TO NAME/ADDRESS OF RECIPIENT (No., Street, City/County, State, Zip) CLACKAMAS, COUNTY OF Attn: Sarah Eckman 2051 KAEN RD OREGON CITY OR 970454302	6. ISSUED BY    BLM OR-ST OFC PROC MGMT BR (OR952) <b>Mailing Address:</b> 1220 SW 3rd Avenue, 12th Floor PORTLAND OR 97204
--	---

7. TAXPAYER IDENTIFICATION NO. (TIN)	9. PRINCIPAL INVESTIGATOR/ORGANIZATION'S PROJECT OR PROGRAM MGR. (Name & Phone) Sarah Eckman 503-742-4303
8. COMMERCIAL & GOVERNMENT ENTITY (CAGE) NO. 3UFZ9	

10. RESEARCH, PROJECT OR PROGRAM TITLE  
BLM OR/WA Clackamas County Dumpstoppers

11. PURPOSE  
See Schedule

12. PERIOD OF PERFORMANCE (Approximately)  
09/08/2018 through 09/08/2021

13A.	AWARD HISTORY	13B.	FUNDING HISTORY
PREVIOUS	\$30,000.00	PREVIOUS	\$30,000.00
THIS ACTION	\$42,000.00	THIS ACTION	\$42,000.00
CASH SHARE	\$0.00	<b>TOTAL</b>	\$72,000.00
NON-CASH SHARE	\$0.00		
RECIPIENT SHARE	\$0.00		
<b>TOTAL</b>	<b>\$72,000.00</b>		

14. ACCOUNTING AND APPROPRIATION DATA  
See Schedule

PURCHASE REQUEST NO.	JOB ORDER NO.	AMOUNT	STATUS
See Schedule			

15. POINTS OF CONTACT

	NAME	MAIL STOP	TELEPHONE	E-MAIL ADDRESS
TECHNICAL OFFICER	PO James B Hughes		503-375-5668	jbhughes@blm.gov
NEGOTIATOR				
ADMINISTRATOR	Shelli Timmons		(503) 808-6295	srtimmons@blm.gov
PAYMENTS				

16. THIS AWARD IS MADE UNDER THE AUTHORITY OF:  
Federal Land Policy and Management Act of 1976 (FLPMA), 43 USC 1737 (b), PL 94-579, as amended.

17. APPLICABLE STATEMENT(S), IF CHECKED: <input type="checkbox"/> NO CHANGE IS MADE TO EXISTING PROVISIONS <input type="checkbox"/> FDP TERMS AND CONDITIONS AND THE AGENCY-SPECIFIC REQUIREMENTS APPLY TO THIS GRANT	18. APPLICABLE ENCLOSURE(S), IF CHECKED: <input type="checkbox"/> PROVISIONS <input type="checkbox"/> SPECIAL CONDITIONS <input type="checkbox"/> REQUIRED PUBLICATIONS AND REPORTS
---	---

<b>UNITED STATES OF AMERICA</b>	<b>COOPERATIVE AGREEMENT RECIPIENT</b>
---------------------------------	--

CONTRACTING/GRANT OFFICER	DATE	AUTHORIZED REPRESENTATIVE No Signature Required	DATE
---------------------------	------	--	------

# Grant and Cooperative Agreement

ITEM NO. (A)	ITEM OR SERVICE (Include Specifications and Special Instructions) (B)	QUANTITY (C)	UNIT (D)	ESTIMATED COST	
				UNIT PRICE (E)	AMOUNT (F)
00020	<p>CFDA Number: 15.233                      DUNS Number: 096992656                      Funding Opportunity Number: L18AS00022                      Required Cost Sharing/Matching: N/A                      Indirect Cost Rate: None</p> <p>Required Periodic Status Reporting                      Performance Reports: Annual                      SF425 Financial Reports: Annual</p> <p>E-mail Reports To: blm_or_so_fa_reports@blm.gov</p> <p>Refer to Attachment No. 1 for Award Terms and Conditions</p> <p>11. PURPOSE:                      The purpose of this modification is to continue support of the program and to add funds as previously approved and as shown in Box 13 and 14.                      In the event of a site/facility closure, the Recipient shall not perform or make deliveries to the site/facility until it is reopened by the Government, unless otherwise instructed by the Grants Management Officer or Program Officer.                      Key contacts have been revised.                      Legacy Doc #: BLM                      Admin Office:                          BLM OR-ST OFC PROC MGMT BR(OR952)                          1220 SW 3rd Avenue, 12th Floor                          PORTLAND OR 97204                      Period of Performance: 09/08/2018 to 09/08/2021</p> <p>#626 Support for the Dumpstopper program                      Obligated Amount: \$22,000.00                      Requisition No: 0020212061</p> <p>Continued ...</p>				22,000.00

# Grant and Cooperative Agreement

ITEM NO. (A)	ITEM OR SERVICE (Include Specifications and Special Instructions) (B)	QUANTITY (C)	UNIT (D)	ESTIMATED COST	
				UNIT PRICE (E)	AMOUNT (F)
00030	<p>Accounting Info:                      01 Account Assignm: K G/L Account: 6100.411C0                      Business Area: L000 Commitment Item: 411C00 Cost                      Center: LLORN01000 Functional Area:                      L63200000.DD0000 Fund: 20XL1116AF Fund Center:                      LLORN01000 PR Acct Assign: 01                      Funded: \$22,000.00                      Period of Performance: 08/25/2020 to 09/08/2021</p> <p>#2238 CLACKAMAS COUNTY DUMPSTOPPERS                      Obligated Amount: \$20,000.00                      Requisition No: 0020214702</p> <p>Accounting Info:                      01 Account Assignm: K G/L Account: 6100.411C0                      Business Area: L000 Commitment Item: 411C00 Cost                      Center: LLORN01000 Functional Area:                      L16440000.HO0000 Fund: 20XL1109AF Fund Center:                      LLORN01000 PR Acct Assign: 01                      Funded: \$20,000.00                      Period of Performance: 08/25/2020 to 09/08/2021</p> <p>KEY OFFICIALS                      Grants Management Specialist (GMS)                      Shelli Timmons                      Bureau of Land Management, OR/WA State Office                      PO Box 2965, Portland OR 97208                      Telephone: 503-808-6295                      Email: srtimmons@blm.gov</p> <p>Program Officer (PO)                      James Hughes                      Bureau of Land Management                      1717 Fabry Road SE                      Salem OR 97306                      Telephone: (503) 375-5668                      Continued ...</p>				20,000.00

# Grant and Cooperative Agreement

ITEM NO. (A)	ITEM OR SERVICE (Include Specifications and Special Instructions) (B)	QUANTITY (C)	UNIT (D)	ESTIMATED COST	
				UNIT PRICE (E)	AMOUNT (F)
	<p>E-mail: jbhughes@blm.gov</p> <p>Award Recipient Program Coordinator David Chase Clackamas County 150 Beaver creek Road Oregon City, OR 97045-4302 Telephone: 503-318-5579 Email: dchase@clackamas.us</p> <p>Award Recipient Administrative Analyst, Sr. Christina Dannenbring Clackamas County 150 Beaver creek Road Oregon City, OR 97045-4302 Telephone: 503-742-4663 Email: cdannenbring@clackamas.us</p> <p>Award Recipient Interim Division Manager Tom Riggs Clackamas County 150 Beaver creek Road Oregon City, OR 97045-4302 Telephone: 503-781-3137 Email: triggs@Clackamas.us</p>				

## Grant 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: Clackamas County Parks & Forest Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: BLM OR/WA 2018 Master Fish and Wildlife Restoration Access

Funding Source:  Federal  State  Local: \_\_\_\_\_

Requestor Information (Name of staff person Initiating form): Samantha Wolf

Requestor Contact Information: 503-742-4685

Department Fiscal Representative: Chris Dannenbring, Management Analyst, Sr.

Program Name or Number (please specify): Clackamas County Dump Stoppers

Brief Description of Project:

Since 2003, Dump Stoppers has waged a successful campaign to reduce illegal dumping on public and private forest lands in Clackamas County. Using Clackamas County Dump Stoppers part-time staff, we clean up and dispose of all kinds of waste illegally dumped on forest lands. In 2018, Dump Stoppers cleaned up 68,360 pounds of solid waste, 510 pounds of scrap metal, 136 tires, and towed 8 vehicles. Since the program began in 2003, we have collected 1,154,160 pounds of solid waste, 75,311 pounds of scrap metal, 11,087 tires, 8,912 pounds of hazardous waste, and towed 510 vehicles. A deputy provided by the Clackamas County Sheriff's office patrols over 790,000 acres of lands managed by program partners, both to locate and investigate illegal dump sites and to make contacts with forest recreationists to educate them about proper disposal of waste and potential consequences of dumping.

Name of Funding (Granting) Agency: USDI BLM OR/WA Office

Agency's Web Address for Grant Guidelines and Contact Information:

Stephanle McBride, Grant Management Specialist. Email: smcbride@blm.gov Phone: 503-808-6243

**OR**

Application Packet Attached:  Yes  No

Completed By: \_\_\_\_\_ Date \_\_\_\_\_

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

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

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: 10/28/2019

CFDA(s), if applicable: 15.233

Announcement Date: 10/28/2019

Grant Category/Title: Stewardship Contract Announcement/Opportunity #: \_\_\_\_\_

Allows Indirect/Rate: yes Max Award Value: \$20,000

Application Deadline: 11/20/2019 Match Requirement: none

Grant Start Date: date of award Other Deadlines: \_\_\_\_\_

Grant End Date: 9/8/2021 Other Deadline Description: \_\_\_\_\_

Completed By: Samantha Wolf, Program Planner

Pre-Application Meeting Schedule: \_\_\_\_\_

**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 support the Department's Mission/Purpose/Goals?*

The grant supports conservation and stewardship activities on public spaces and supports/promotes prosperous and healthy communities for our residents, businesses, visitors, and partners.

*2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)*

The grant supports the removal of debris from illegal dumpsites and dispersed and/or illegal campsites. This will enhance forest health, restore wildlife habitat, and remove harmful materials from entering our watersheds.

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

none

*4. What are the objectives of this grant? How will we meet these objectives?*

The objective of this grant are to support on-going stewardship activities on County Forests and Dump Stopper partners' forest lands, including BLM forestlands. The Dump Stoppers program meets this objective by identifying illegal dumps, cleaning up these sites, and documenting site locations and cleanup activities activities.

*5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?*

Yes, the Dump Stoppers program

**Organizational Capacity:**

*1. Does the organization have adequate and qualified staff? If yes, what types of staff are required?*

*If no, can staff be hired within the grant timeframe?*

Yes. Two part-time seasonal Dump Stoppers staff are needed nine months of the year for dumpsite cleanup activities. Program support to include monitoring grant expenditures, preparing financial and performance reports, facilitating needed materials and equipment purchases, and providing outreach to program partners is performed by County Parks & Forest administrative staff.

*2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?*

Yes. We are partnering with several large forestland owners within the County. Public agencies include USFS, BLM, ODF, USF&W, PGE, Weyerhaeuser, Olympic Resource Management, and Port Blakely Tree Farms. Other partners include public and private waste management entities for disposal services and non-profit conservation groups with volunteer clean-up events. These partners provide funding, advisory support, access to lands, outreach opportunities to forestland recreationists.

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

N/A

*4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted?*

*If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?*

N/A



**Collaboration**

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

Clackamas County Parks & Forest, Clackamas County Sherriff's Office, and Clackamas County Sustainability

**Reporting Requirements**

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

There is an annual Performance Progress report requirement

2. What is the plan to evaluate grant performance? 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?

Program staff tracks the amount of sites reported and number of sites cleaned up. Sites are recorded by ownership and major river drainage. They also track location of trash and take photographs and collect evidence from dump sites which qualify as law enforcement cases. The Dump Stoppers deputy tracks the number of public contacts that he makes and address-of-origIn information for license plates he runs

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

The modification of this Non-Title II grant agreement we have with the BLM will require a quarterly Financial Report via the SF-425 form with a Request for Reimbursement via an SF-270 form. Administrative staff will work with County Finance to comply with these reporting requirements.

**Fiscal**

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

This grant, when leveraged with our other grants and allocated resources, should provide more benefit than cost to administer.

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

This grant modification will provide \$20,000 which will meet about 13% of needed resources required to operate the program In CY 2020. We have recently secured additional funding from the USFS Title II grant along with allocated funds through DTD. Our goal is to obtain enough funding from these sources to operate the program for the 2020 field season.

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

None

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

Continuous. We have received BLM Non-Title II funding for the Dump Stoppers program annually from the USDI BLM since we first applied in 2012. We antcipate more funding from BLM non-Title II to cover consecutive years.

5. Does this grant 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.

Program Approval:

*Rick Loren*

Name (Typed/Printed)

11-27-19


Date

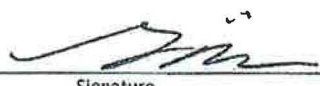
*[Signature]*

Signature

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

**Section IV: Approvals**

<b>DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)</b>		
Rick Bowen, <i>Forest Manager</i>	11/27/19	
Name (Typed/Printed)	Date	Signature

<b>DEPARTMENT DIRECTOR</b>		
<i>Greg Williams</i> BCS Deputy Dir.	12/3/19	
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR **FEDERAL FUNDS**, PLEASE SEND **COPY** OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. 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:**

<b>COUNTY ADMINISTRATOR</b>	Approved: <input checked="" type="checkbox"/>	Denied: <input type="checkbox"/>
<i>Gary Schmidt</i>	12/5/19	<i>Mary Smit</i>
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.



September 24, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

**Approval of Amendment #4 to the Contract with Total Golf Management Services, LLC for Management Services for the Operation of Stone Creek Golf Course**

<b>Purpose/Outcomes</b>	The purpose is to extend the term of the current Contract through November 20, 2020 to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term and for Business and Community Services to take the amendment before the Parks Advisory Board (PAB) at their October meeting. The amendment was scheduled for presentation at the September 15, 2020 PAB meeting; however, this meeting was cancelled due to the wildfires in Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	No fiscal impact as contract automatically extends for 180 days following June 30, 2020 if parties have not completed negotiations for a five-year extension of the agreement. County Counsel has advised that signing a limited extension would be preferable to relying on the 180 clause.
<b>Funding Source</b>	Golf course sales and fees.
<b>Duration</b>	The contract was originally executed on January 13, 2005 and as previously amended, expires on September 30, 2020. By execution of this Amendment #4, the parties agree to extend the term of the Contract through November 20, 2020 to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term.
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• This agreement supports the BCC goal of growing a vibrant economy by enhancing our local community with a sought-after municipal golf course.</li> <li>• 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.</li> </ul>
<b>Previous Board Action</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Counsel Review</b>	This amendment #4 was reviewed and approved as to form by County Counsel on September 16, 2020. ARN

<b>Contact Person</b>	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.

Per the terms set forth in the original agreement, the agreement has had two five-year extensions, and it is the intention of Business and Community Services to extend the contract for one more five-year term.

Due to COVID-19, BCS was unable to negotiate a contract renewal with TGMS prior to the expiration of the contract on June 30, 2020.

In addition to COVID-19, the recent wildfires have further delayed the ability to finalize the contract extension as it must be taken before the Parks Advisory Board (PAB) for review prior to submittal to the Board for review and approval.

Review by the PAB was scheduled for their September 15, 2020 meeting; however, this meeting was cancelled due to the wildfires burning in Clackamas County. The next opportunity for the PAB to review the proposed extension is at their October meeting.

BCS is asking for Board approval for an additional short-term extension of the current contract to allow time to negotiate a five-year extension with TGMS and for the extension to be reviewed by the PAB prior to submittal to the Board.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the attached Amendment #4 to the contract with Total Golf Management Services LLC for Management Services for the Operation of Stone Creek Golf Course.

**ATTACHMENTS:**

- Stone Creek Contract Amendment #4
- 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

Respectfully submitted,



Laura Zentner, CPA  
Director, Business & Community Services

**AMENDMENT #4  
TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC  
FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF  
COURSE**

This Amendment #4 is entered into between **Total Golf Management Services, LLC** (“TGMS”) and Clackamas County (“County”) and shall become part of the Contract documents entered into between both parties on **January 13, 2005** (“Contract”), as subsequently amended.

The Purpose of this Amendment #4 is to make the following changes to the Contract:

**1. ARTICLE 2, Section 2.7. Term of Agreement** is hereby amended as follows:

The Contract, as previously amended, expires on September 30, 2020. By execution of this Amendment #4, the parties agree to extend the term of the Contract for additional time to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term. The Contract termination date is hereby changed to **November 20, 2020**. Any potential future extension of the Contract shall only be effective upon execution of a written amendment on terms acceptable to both parties.

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 #4, effective upon the date of the last signature below.

**Total Golf Management Services, LLC**

**Clackamas County**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
,    Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

# 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

County any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

### **3.0 Title, Documents and Data**

3.1 Materials and Equipment. Title to all materials, equipment, supplies, consumables, spare parts and other items of tangible personal property purchased or obtained by TGMS for which County is obligated to pay TGMS shall pass immediately to and vest in County upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect TGMS's obligations as set forth in the other provisions of this Agreement.

3.2 Documents. All materials and documents prepared or developed by TGMS or its affiliates, employees, representatives, agents or contractors in connection with the Golf Course or the performance of its services hereunder, including all manuals, data, designs, drawings, plans, specifications, reports, and accounts, will automatically become the property of County when prepared, TGMS nor their affiliates, employees, representatives, agents or contractors may use these materials and documents for any purpose other than the performance of the services hereunder, without County's prior written approval. All these materials and documents, together with any materials and documents furnished to TGMS or to their affiliates, employees, representatives, agents or contractors by County, shall be delivered to County upon expiration or termination of this Agreement and before final payment is made to TGMS.

3.3 Review by County. In addition, all such materials and documents referred to above must be available for review by County at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for the approval of County shall be prepared and processed in accordance with the requirements and specifications set forth in the Administrative Procedures Manual. However, County's approval of materials and documents submitted by TGMS shall not relieve TGMS of its responsibility for the correctness thereof or of its obligation to meet all the requirements of this Agreement.

IN WITNESS WHEREOF, County and TGMS have executed this Agreement as of the date indicated.

**TOTAL GOLF MANAGEMENT SERVICES, LLC**

By: Gordon B. Tolbert  
Name: Gordon Tolbert  
Title: Managing Member  
Date: January 13, 2005

**CLACKAMAS COUNTY, OREGON  
BOARD OF COMMISSIONERS**

By: Martha Schrader  
Martha Schrader, Chair  
Date: January 13, 2005

By: Mary Raetke  
Recording Secretary  
Date: January 13, 2005

By: David W. Anderson  
*appeared as to form*  
County Counsel  
Date: January 13, 2005

AMENDMENT #1

To The Contract Documents with Total Golf Management Services LLC For Management Services for the Operation of Stone Creek Golf Course

This Amendment, when signed by the Contractor and the Director of Business and Community Services, as authorized by Board Order Number 2006-366 and Clackamas County LCRB Rules, will become part of the contract documents, superseding the original to the applicable extent indicated.

SECTION 1.14: Reads: The County designates the Transportation Engineering, Parks & Property Management Manager as the representative who will act as principle operating liaison between County and TGMS.

Change to Read: The County designates the Director of Business and Community Services as the representative who will act as principle operating liaison between County and TGMS.

SECTION 1.7.1 Reads: TGMS shall insure 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,....

Change to Read: TGMS shall insure that full and adequate books of account and other records are kept reflecting the results of operations of the Golf Course on an Accrual basis,.....

SECTION 1.12 Reads: 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).

Change to Read: 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 Ten Thousand Four Hundred Dollars (\$10,400)

SECTION 2.5 Reads: The commencement date of this Agreement shall be the first day of November 2004.

Change to Read: The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this Agreement, the extension periods shall be January through December. This first 5 year extension period shall be January 1, 2010 through December 31, 2014 inclusive.

SECTION 2.6 Revise: Address for County to read: Clackamas County  
BCS Director  
150 Beaver Creek Rd  
Oregon City OR 97045

SECTION 2.7 Delete: Section 2.7.4.1 and 2.7.4.2

Total Golf Management Services LLC  
19586 Kari Ann Court  
Oregon City OR 97045

Gordon B. Tolbert  
Gordon Tolbert

6-24-09  
Date

CLACKAMAS COUNTY BOARD of  
COUNTY COMMISSIONERS by:

Dan Zinzer  
Dan Zinzer, Director  
Business and Community Services

6/30/09  
Date



Gary Barth  
Director

**BUSINESS AND COMMUNITY SERVICES**

Development Services Building  
150 Beaver Creek Road, Oregon City, OR 97045

**MEMO**

**To:** Gordon Tolbert, Total Golf Management Services, LLC  
**From:** Gary Barth, Director Business and Community Services  
**Date:** September 18, 2013  
**Subject:** Addendum to Contract between Clackamas County Business & Community Services and Total Golf Management Services, LLC (TGMS)

Clackamas County Business & Community Services has an active and ongoing contract with Total Golf Management Services, LLC regarding the operation and maintenance of Stone Creek Golf Club and its related amenities.

Section 1.1.5.2 Additional Benefits, specifically states:

*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.*

However the contract does not clarify or quantify the extent to which the "Additional Benefits" are anticipated.

At the inception of the contract, though nothing formal was provided, the County authorized representative and TGMS agreed to a limit of Five (5) complimentary round certificates per year, to be utilized as Business & Community Services deemed appropriate. Charity rounds may be used Monday through Friday anytime and after 2:00 p.m. on weekends and holidays.

For the purpose of clarifying the ambiguous nature of the contract itself, the prior mentioned informal commitment continues to meet acceptable standards and expectations and will be the agreed upon provision until such time as both parties agree to alter it.

  
\_\_\_\_\_  
Gary Barth, Director  
Business & Community Services  
Date 9/23/13

  
\_\_\_\_\_  
Gordon Tolbert, Managing Member  
Total Golf Management Services, LLC  
Date 9-26-13



AMENDMENT #2

**To The Contract Documents with Total Golf Management Services LLC For the Management Services for the Operation of Stone Creek Golf Course**

This Amendment, when signed by the Contractor and Board of County Commissioners will become part of the contract documents, superseding the original to the applicable extent indicated.

**SECTION 1.6.1:** Reads: 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 comingled with other funds of TGMS.

Change to Read: TGMS shall establish a Golf Course operational bank account which will include two signatories on the TGMS Golf Course Account. Funds deposited into the TGMS Golf Course Account shall not be comingled with other funds of TGMS.

**SECTION 1.6.4:** Reads: The County shall furnish funds sufficient to constitute working capital for the operation of the Golf Course.

Change to Read: The County shall furnish funds, not to exceed \$150,000, that are sufficient to constitute working capital for the operation of the Golf Course.

**SECTION 1.7.4:** Reads: 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)...

Change to Read: At least sixty (60) days before the beginning of each new fiscal year (which for the purposes of this Agreement shall be the County fiscal year of July 1<sup>st</sup> through June 30<sup>th</sup>).....

**SECTION 1.10.1:** Reads:

**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	

Change to Read:

**Form of Coverage**

(i)	Property insurance	minimum 80% of insurable value
(ii)	Commercial 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
	General-Aggregate	\$2,000,000
(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	
	Each Occurrence	\$2,000,000
	Aggregate	\$3,000,000
(vi)	Such other insurance coverages as the County may require	

**SECTION 1.10.5: Add to Read:** In section (iv) Workers Compensation above, TGMS, as an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. TGMS shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 bodily injury by disease each employee, and \$500,000 each policy limit.

**SECTION 1.10.6: Add to Read:** In the policies described in paragraph (v) above, TGMS shall be listed as named insured and the County shall be listed as additional insured.

**SECTION 1.12.1: Reads:** 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 Ten Thousand Four Hundred Dollars (\$10,400). 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 entitle 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

**Change to Read:** 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 Ten Thousand Four Hundred Dollars (\$10,400). Beginning in year two of this Agreement, the monthly

compensation shall be subject to an increase based on the Portland Consumer Price Index. Base compensation shall be paid to TGMS by County monthly out of the County Golf Account. 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. Incentive compensation shall be paid by the end of the second month of the new fiscal year based upon the net revenue from the previous fiscal year per the following:

- Net proceeds in excess of \$600,000 shall be split 80% to the County and 20% to TGMS. TGMS shall annually agree to Annual Operating Plan which shall outline as specified in 1.7.4 the details of how "net" revenue is calculated.

**SECTION 2.3**     Delete:             Section 2.3 Debt Service

**SECTION 2.5**     Reads:             The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this Agreement, the extension periods shall be January through December. This 5 year extension period shall be January 1, 2010 through December 31, 2014 inclusive.

Change to Read: The commencement date of this Agreement shall be the first day of November 2004. For the purpose of extension of this agreement after December 31, 2014, this second five year extension shall be five and a half years to accommodate changing from a calendar year to a fiscal year, and shall be January 1, 2015 through June 30, 2020, inclusive. Thereafter, extension periods shall be five years, July through June.

Total Golf Management Services LLC  
19586 Kari Ann Court  
Oregon City, OR 97045

Gordon Tolbert  
Gordon Tolbert

12/10/2014  
Date

CLACKAMAS COUNTY BOARD of COUNTY  
COMMISSIONERS by:

John Ludlow  
John Ludlow, Chair

12-18-14 E.I.  
Date

**AMENDMENT #3  
TO THE CONTRACT DOCUMENTS WITH TOTAL GOLF MANAGEMENT SERVICES, LLC  
FOR THE MANAGEMENT SERVICES FOR THE OPERATION OF STONE CREEK GOLF  
COURSE**

This Amendment #3 is entered into between **Total Golf Management Services, LLC** ("TGMS") and Clackamas County ("County") and shall become part of the Contract documents entered into between both parties on **January 13, 2005** ("Contract"), as subsequently amended.

The Purpose of this Amendment #3 is to make the following changes to the Contract:

1. **ARTICLE 2, Section 2.7. Term of Agreement** is hereby amended as follows:

The Contract, as previously amended, expires on June 30, 2020. By execution of this Amendment #3, the parties agree to extend the term of the Contract for an additional three months to allow the parties to negotiate a potential renewal of the Contract for an additional five-year term. The Contract termination date is hereby changed to **September 30, 2020**. Any potential future extension of the Contract shall only be effective upon execution of a written amendment on terms acceptable to both parties.

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 #3, effective upon the date of the last signature below.

**Total Golf Management Services, LLC**

Gordon B Tolbert      7.8.20  
Authorized Signature      Date

Gordon B Tolbert  
Printed Name

**Clackamas County**

Jim Bernard      7-16-2020  
Jim Bernard, Chair      Date

July 16, 2020 C.2  
Date