

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT General Services		(2) MEETING DATE May 23, 2006		(3) CONTACT/PHONE Duane P. Leib (805) 781-5200		cm/iw
(4) SUBJECT Request to approve a Contract for Services between the County of San Luis Obispo and Comerford Inc., a California corporation, doing business as Fairway Management, for the operation of the Pro Shop, Restaurant, Bar and Banquet Facilities at Dairy Creek Golf Course						
(5) SUMMARY OF REQUEST Approval of the attached contract will allow Comerford Inc., a California corporation, doing business as Fairway Management to operate, on the County's behalf, the Pro Shop, Restaurant, Bar and Banquet facilities located at Dairy Creek Golf Course						
(6) RECOMMENDED ACTION The Department of General Services recommends your Board approve by a 4/5's vote the Contract and instruct the Chairperson to sign the document						
(7) FUNDING SOURCE(S)		(8) CURRENT YEAR COST		(9) ANNUAL COST		(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel						
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____						
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input checked="" type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board	
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A			
(18) NEED EXTRA EXECUTED COPIES? <input checked="" type="checkbox"/> Number: _____ 1 _____ <input checked="" type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A			
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A    Date <u>08/16/2005</u>	
(23) ADMINISTRATIVE OFFICE REVIEW						

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5/23/06*



COUNTY OF SAN LUIS OBISPO

## Department of general services

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200

DUANE P. LEIB, DIRECTOR

**TO: BOARD OF SUPERVISORS**

**FROM: *D. Leib*  
DUANE P. LEIB, GENERAL SERVICES DIRECTOR**

**DATE: MAY 23, 2006**

**SUBJECT: REQUEST TO APPROVE A CONTRACT FOR SERVICES BETWEEN THE COUNTY OF SAN LUIS OBISPO AND COMERFORD INC., A CALIFORNIA CORPORATION DOING BUSINESS AS FAIRWAY MANAGEMENT, FOR THE OPERATION OF THE PRO SHOP, RESTAURANT, BAR AND BANQUET FACILITIES AT DAIRY CREEK GOLF COURSE**

### **RECOMMENDATION**

The Department of General Services recommends your Board approve by a 4/5's vote the contract and instruct the Chairperson to sign the document.

### **DISCUSSION**

#### History:

When the Dairy Creek Golf Course concessionaire contracts were first established in March of 1997, there were two contracts, one for Pro Shop operations and one for Food and Beverage operations. The initial start-up term for both contracts was for a period of two years.

On March 10, 1998, the County approved an assignment of the Food & Beverage Contract, which had a beginning term date of March 18, 1997, from Fore-4-Fore, a California corporation to Black Hill's Golf Corporation, a California corporation ("Assignee"). At that time, the Assignee was also the Food & Beverage operator at the Morro Bay State Park Golf Course. In an effort to coordinate multiple contract expiration dates, the term of the Dairy Creek Food & Beverage contract was amended in the assignment to reflect the contract expiration date of the Morro Bay contract, which was August 6, 2000.

On August 4, 1998, the County approved Amendment #3, which served to assign and modify the Pro Shop Contract that had a beginning term date of March 11, 1997, from Fore-4-Fore, a California corporation to Comerford, Inc., a California corporation doing business as Fairway Management. As a part of the assignment, the termination date for the contract was amended

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to August 6, 2000. From August 6, 2000 to January 16, 2001 the Pro Shop contract operated on a month-to-month basis.

On January 16, 2001, a new contract was entered into for Pro Shop Services at Dairy Creek Golf Course between the County and Comerford, Inc., a California corporation doing business as Fairway Management. The term of the contract was for a period of five years, expiring on January 31, 2006. Since February 1, 2006, Comerford Inc. has continued to provide services on a month-to-month basis.

On January 16, 2001, as the result of a Request For Proposal, a Food and Beverage Contract for Dairy Creek Golf Course was entered into between the County and Ryan Comerford, an individual doing business as Fairways Restaurant. The term of the contract was for a period of three years, with one 2-year option. The term expiration date was January 31, 2006. Since February 1, 2006, Fairways Restaurant has continued to provide services on a month-to-month basis.

Present:

The attached contract is combined and is for the Dairy Creek Golf Course. The contract services include the right to maintain and operate both a pro shop and food and beverage services at the Dairy Creek Golf Course. The term of the contract is for a period of 5 years and will expire on January 31, 2011. In addition, there is one 5-year option, which could be exercised upon mutual agreement of both parties. The County proposes to enter into the contract agreement for both services with Comerford, Inc., doing business as Fairway Management.

Fairway Management has continued to provide solid and reputable golf services for the residents of our county. As well, Fairway Management is recognized statewide and nationally as an excellent provider of professional golf opportunities.

At the same time, Ryan Comerford of Fairways Restaurant has developed dining and banquet offerings at Dairy Creek Golf Course into a venue well known for its excellent food and service. Ryan has been featured in many local magazines and has received recognition for his high quality dining services and his community involvement.

The Department of General Services has developed a stable and reliable business relationship with both entities and desires to continue that contractual relationship under one contract for an additional 5 years.

The new contract continues to be governed by a substantial number of the original contract terms and conditions as a result of the golf course construction being financed by public issue tax-exempt government bonds. These Management Contract Guidelines, which are provisions of the Internal Revenue Service tax law requirements for imposing limits on public tax-exempt

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bonds, include requiring that revenue be managed so as not to allow a Contractor to unduly benefit from the tax-exempt financing. In addition, Government code section 25536 allows that your board with a 4/5's vote may approve contracts entered into for recreational purposes. Therefore the Department of General Services recommends your Board approve by a 4/5's vote the combined Contract with Comerford Inc. for continued services at the Dairy Creek Golf course for Pro Shop, Restaurant, Bar and Banquet services.

### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has approved the Contract as to form and legal effect.

### **FINANCIAL CONSIDERATIONS**

The Contractor will collect for the County all greens fees, all revenue from sales of golf discount cards, and all golf course development surcharge fees. In addition, the County will receive 23% of the monthly Golf Cart Revenue, which is increased from the prior contract requirement of 18%. The contractor will retain 100% of the revenue for the Driving Range, Pro Shop, and Food and Beverage services. This Contract has been re-structured to equal, if not exceed, past revenue from the separate contracts at the Dairy Creek Golf Course.

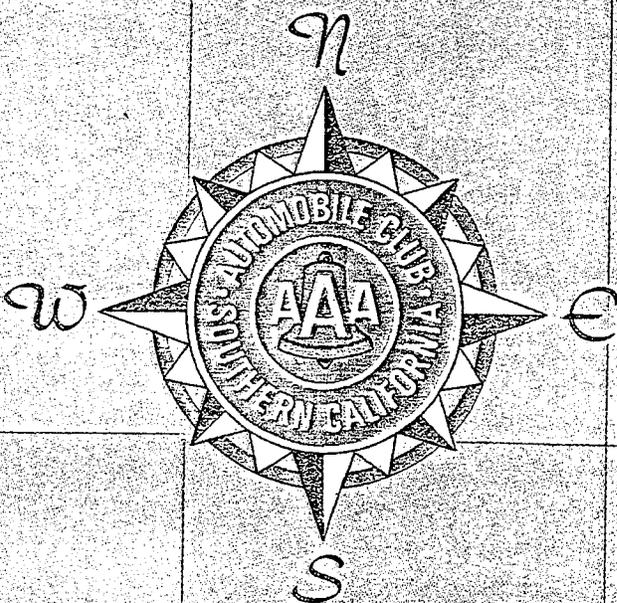
### **RESULTS**

Approval of the Contract by a 4/5's vote will authorize Comerford Inc. to provide both Pro Shop and Food and Beverage services at Dairy Creek Golf Course, a recreational facility, for a period of 5 years.

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EXHIBIT "A"

VICINITY



MORRO BAY

BAYWOOD PARK

AVILA BEACH

PORT SAN LUIS

SHELL BEACH

PISMO BEACH GROVER BEACH

PISMO STATE BEACH OCEANO MEMORIAL CO. STATE HIGHWAY 101

Handwritten numbers 36, 35, 55 and other markings

**DAIRY CREEK GOLF COURSE**

**CONTRACT**

**A CONTRACT FOR SERVICES OF AN INDEPENDENT CONTRACTOR**

This Contract, made and entered into this \_\_\_ day of \_\_\_\_\_, 2006, by and between the County of San Luis Obispo, a public entity in the State of California, hereinafter referred to as "County", and **Comerford, Inc., a California corporation, doing business as Fairway Management**, hereinafter referred to as "Contractor".

**WHEREAS**, said County, may grant Contract for services at said golf course; and

**WHEREAS**, pursuant to Government Code section 25536, this Contract for services of a golf pro shop operator and for services of a food and beverage operator and is commercial development incidental to the San Luis Obispo County's ownership and management of the recreational facility known as Dairy Creek Golf Course.

**WITNESSETH:**

In consideration of the mutual covenants, conditions, promises, and agreements herein contained, the County and Contractor hereby mutually covenant and agree as follows:

1. **Description of Premises:** The purpose of this Contract is to obtain services of a pro shop operator and to obtain services for of a food and beverage operator for San Luis Obispo County's Dairy Creek Golf Course. The license to enter and use the underlying real property and any improvements that are real property are **incidental to and flow from** the status necessary to provide services and operate a pro shop and restaurant on public property. The use of the real property, improvements and fixtures does not grant Contractor any incidents of ownership or easement. No interest in land or fixtures is granted.

County holds title to real property, the buildings, and capital improvements as a Trustee for the benefit of the People of the County of San Luis Obispo. Said Dairy Creek Golf Course, as a capital asset, was constructed and financed with public issue tax-exempt government bonds. County and Contractor expressly and explicitly acknowledge that this Contract shall be read and interpreted in a manner that will not jeopardize the tax-exempt bond financing. If any provisions herein violate the Internal Revenue Service or other federal or state laws imposing limits on public tax-exempt bonds, those provisions of this Contract

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shall be separate and severable. Those provisions shall also be null and void and without any force or legal effect from the beginning as a violation of public policy.

The County, for and in consideration of the promises hereinafter made, grants to Contractor the right and privilege to maintain and operate a pro shop and to maintain and operate a food and beverage contract, within the Dairy Creek Golf Course. A vicinity map is provided on Exhibit "A" and the contract site of the Premises is more fully designated on Exhibit "B" both attached hereto and incorporated by this reference.

No rights, other than those expressly given in this Contract, are granted, and any other implied rights are hereby denied Contractor under this Contract.

2. **Condition of Premises:** The taking of possession of the subject Premises by Contractor shall, in and of itself, constitute acknowledgment that the Premises are in good and tenable condition. Contractor agrees said Premises are in their presently existing condition, suitable to this Contract, "as is"; and the County shall not be obligated to make any alteration, additions or betterment thereto.

3. **Term:**

A. Term of this Contract shall commence February 1, 2006 and shall expire January 31, 2011, unless terminated sooner as specified in this subparagraph. Without penalty or cause, any time at the end of the first year of the Contract term, including renewal or extension, either party may give 12-month advance written notice by certified mail or personal delivery, of its intention to terminate this Contract. County and Contractor can mutually agree, in writing, to exercise a five (5) year extension or renewal of this Contract to be exercised separately, on the same covenants, terms, and conditions as those of this Contract, to commence February 1, 2011, and terminate January 31, 2016. In absence of said written mutual agreement, this Contract shall terminate on January 31, 2011.

B. As a condition precedent to Contractor commencing occupancy, use and operations, Contractor shall place copies of all insurance policies and bond required by *Paragraphs 23 and 24* hereof in the hands of the County. All insurance companies and the bond sureties must be admitted in California and certified, as to admission, by the California Insurance Commissioner. Out of state and off shore Insurers do not qualify. Proof of admission must be submitted and said proof shall be dated within 30 days of execution of this Contract. Failure to provide proof shall make this Contract null and void. All insurance shall be delivered to the County of San Luis Obispo at the following address:

County of San Luis Obispo  
Department of General Services  
1087 Santa Rosa  
San Luis Obispo, CA 93408  
Attn: Property Management

At the expiration or termination of this Contract, Contractor shall quit and surrender the said Premises including real property improvements, if any, in a good state of repair, damage by matters over which Contractor has no control excepted, provided that such exculpatory provisions shall not extend to any risk which Contractor is required to insure against as herein provided.

**4. Revenue from Operations:**

**A.** Dairy Creek Golf Course is a public works project funded by public bonds. The County's Arbitrage and Use of Proceeds Certificate requires compliance with "Management Contract Guidelines" (hereinafter "Guidelines") attached hereto as Exhibit "D" and incorporated herein by reference. In no event shall any of the terms of this agreement be construed or interpreted to conflict with the Guidelines. The Guidelines shall control.

**B.** Contractor shall act on behalf of, and as agent for, County in the collection of **One Hundred Percent (100%)** of greens fees, revenue from sales of all golf discount cards, and golf course development surcharge fees, hereinafter referred to as "County Revenue." On a regular basis, Contractor shall deposit County Revenue into a designated bank account maintained and controlled exclusively by County.

**C.** Contractor shall act on behalf of, and as agent for, County in the collection of **One Hundred Percent (100%)** of golf cart revenue generated by the operation of the golf course pro shop, including revenue generated from leased golf carts and revenue generated from golf *cart* registration cards, hereinafter referred to as "Golf Cart Revenue."

Except as provided in *Subparagraph F* below, as compensation for this service, Contractor shall retain **Seventy-Seven Percent (77%)** of monthly Golf Cart Revenue, and shall pay County on a monthly basis the remaining **Twenty-Three Percent (23%)** of monthly Golf Cart Revenue collected on County's behalf. Contractor shall pay County on the fifteenth day of the second calendar month after term the Contract begins and shall continue each and every month on the 15th day of each month including the month following termination of the Contract.

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D. Hereinafter, "Contractor Revenue" shall be defined as the sum of (1) **Seventy-Seven Percent (77%)** of Golf Cart Revenue, (2) **One Hundred Percent (100%)** of driving range operations revenue, (3) **One Hundred Percent (100%)** of Pro Shop activities revenue which includes revenues from golf club rentals, electric and manual handcart rentals, golf lessons, transaction/reservation charges, and any other income derived from Pro Shop operations, and (4) **One Hundred Percent (100%)** of food and beverage sales.

E. As provided herein, Contractor shall be paid a fixed fee of \$800,000 per year (the "Fixed Fee") for services rendered pursuant to this contract irrespective of the gross revenues of the Dairy Creek Golf Course. The Fixed Fee shall be paid as follows: Each month, Contractor shall retain the lesser of (i) Contractor Revenue, or (ii) \$66,666.67 ("Monthly Fixed Fee"). If the amount of Monthly Fixed Fee in any month is less than \$66,666.67, such deficiency shall carry forward and be paid in the succeeding months, but in no event shall exceed the Contractor Revenue in any month except as provided herein. Any deficiency carried over and not otherwise paid shall be paid on or before the anniversary of this Contract. Contractor shall also be paid an incentive fee equal to the lesser of (i) the Fixed Fee or (ii) the Contractor Revenue collected annually in excess of \$800,000.

Upon the occurrence of any event or circumstance set out in *Paragraph 21* of this Contract, which necessitates complete closure of the Dairy Creek Golf Course, the Fixed Fee shall abate in its entirety during such time of complete closure. Notwithstanding the foregoing, if a portion of the Dairy Creek Golf Course remains open to the public, or patronage is adversely impacted as a result of an event or circumstance set out in *Paragraph 21*, the County shall be entitled to adjust the Fixed Fee during such time. Any diminution of the Fixed Fee as a result of partial use or reduced patronage of the Dairy Creek Golf Course shall be determined to such extent as is fair and reasonable under the circumstances. The County, in its sole discretion, shall determine whether and to what extent the Dairy Creek Golf Course shall remain open to the public upon the occurrence of an event or circumstance set out in *Paragraph 21*, below.

F. Notwithstanding *Paragraph 5* below, County and Contractor agree to meet and review detailed accounting statements of all Pro Shop and Food and Beverage activities through the close of the preceding three quarters for the then current Contract year and annually thereafter. Said verified detailed accounting statement shall include **all** County Revenues collected on County's behalf, **all** Golf Cart

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Revenues, and **all** Contractor Revenues. Contractor shall provide said verified detailed accounting statements at the third quarter meeting.

The terms "County Revenue", "Golf Cart Revenue", and "Contractor Revenue" whenever used in this Contract, are intended and shall mean all monies, property or any other thing of value received by Contractor through the operation of said Contract, without any deduction or deductions; it being understood, however, that the terms "County Revenue", "Golf Cart Revenue", and "Contractor Revenue" shall not include any sales or excise taxes imposed by any governmental entity.

**G.** Contractor shall maintain records and accounts, as the County Auditor-Controller shall require. County may audit Contractor's records and accounts at any time. County shall have the right through its representative, at all reasonable times, to inspect books and records, including State of California Sales Tax Records; and Contractor agrees that all books and records are available to the County. All Federal Tax returns of Contractor, relative to Contract, shall be made available to the County for accounting examination purposes.

County reserves the right to examine all books and records at any time during a five (5) year period following the termination of the Contract.

Contractor agrees that as part of Contractor's record keeping activity, Contractor shall install and maintain cash register equipment and maintain computer equipment deemed necessary and provided by the County.

**H.** Contractor shall be responsible for paying all costs and expenses of Pro Shop and Food and Beverage operations and activities except those costs and expenses that this Contract expressly provides are to be borne by the County.

**5. Fee Collection:** Contractor hereby agrees and is required to collect green fees, and revenue from sales of all discount cards, golf course development surcharge fees, and golf cart revenue, hereinafter "fees", for County on a daily basis. Contractor is the fiduciary agent for the County relative to the handling of said fees. Contractor will deposit said fees regularly directly into a designated bank account maintained and controlled exclusively by County. Contractor is required and hereby agrees to forward the cash register tapes, bank deposit receipts, and/or information to County on a regular basis. Contractor shall be solely responsible **and liable** to the County of San Luis Obispo, for the collection, recordation, and deposit of said fees into the County's bank account.

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**6. Use of Premises:**

**A.** Contractor acknowledges golf course is a public recreation facility located in a multi-use public park, constructed with public funds and agrees to operate said course open to the public without discrimination or exclusivity and on an equal basis open to all and to the extent allowable, keeping in mind the health, safety and welfare of the general public.

**B.** Contractor shall not use or permit the subject Premises to be used in whole or in part during the term of this Contract for any purpose other than as set forth without prior written consent of the County.

**C.** Contractor expressly agrees at all times during the term of this contract, at his own cost and expense to maintain and operate such Premises and areas adjacent, in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or at any time during the term of this contract in force, relating to sanitation or public health, safety or welfare; and Contractor shall at all times faithfully obey and comply with all laws, rules and regulations of Federal, State, County or other governmental bodies or department of officers thereof, and this contract is expressly subject to the provisions and requirements of any existing or future agreements between the County and the United States of America or the State of California relative to the development, operation or maintenance of the golf course and food and beverage facilities. Contractor shall remedy without delay any defective, dangerous or unsanitary conditions.

**D.** Contractor shall provide trained professional staff for the operation of the contract as granted herein and shall keep the Premises equipped in a first-class manner throughout the term of this Contract.

**E.** Contractor is encouraged to have staff members maintain current certification in Adult Cardiopulmonary Resuscitation ("CPR") and First Aid.

**F.** Contractor shall operate the pro shop, driving range facility, and food and beverage facility in a businesslike manner and to the satisfaction of the General Services Director ("Director").

**G.** Contractor shall provide a well-stocked pro shop offering a selection of golf clothing, golf supplies for sale and/or rental, and golf equipment repairs.

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**H.** Contractor will be responsible for providing and maintaining, renting, staging, and daily cleaning of golf cart fleet, consisting of a minimum of 74 electric carts. Individual carts within the cart fleet shall not exceed four (4) years in age at any time during the contract, with the exception that carts may be allowed to reach a maximum of five (5) years in age if they have been exceptionally well maintained and with the written approval of the County Parks Manager. Contractor will be responsible for the preventive maintenance and repairs of the golf cart fleet. Contractor shall not rent the electric golf carts or handcarts on such days as the Director, or his designee, determines that the use of such equipment would damage the golf course turf. Contractor shall operate the golf course driving range, including provision, management, maintenance, and replacement of range balls. The Contractor will provide, maintain and replace as necessary, driving range equipment to include range ball baskets (large and small), range ball picker, County-owned and County-provided ball management system, range driving mats, range dividers, range bag stands, yardage signs, target green flags, utility vehicle for driving range. County shall provide routine maintenance of the driving range and driving range tee.

**I.** Contractor shall offer daylight to dark hours of operation to the golfing public seven (7) days a week starting no later than 6:00 a.m. and continuing until golfers and golf carts are off the course. Starting times are to be taken in a manner established by County, and may be modified to suit seasonal influences. County policy is subject to revision at County discretion.

**J.** Contractor shall offer professional golf lessons and shall have use of the practice area for the teaching or imparting of instruction in the game of golf.

**K.** Contractor shall organize, implement and supervise a community golf program, as approved by County Parks Manager, designed to introduce, instruct and promote golf to area residents.

**L.** Contractor shall follow County policy regarding tournament play. The County policy is subject to revision at County's sole discretion, at any time without prior notice. Contractor shall follow County policy regarding free play. The County policy is subject to revision at County's sole discretion, at any time without prior notice.

**M.** Contractor shall employ, at a minimum, one Class A Member in good standing of the Professional Golf Association, or Ladies Professional Golf Association.

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N. Contractor shall be responsible for all activity on the golf course including the enforcement of such rules and regulations relating to the conduct of patrons on the golf course that may be adopted by the County.

O. Contractor shall be solely responsible for all aspects (including recruitment and supervision) of marshaling of all activity on the golf course relating to the conduct of patrons thereon. At a minimum, marshaling shall address course etiquette, safety, and speed of play and verification of fees paid. Marshaling need not involve salary expense to Contractor for marshals.

P. Contractor shall be solely responsible for providing of all services, equipment, supplies, and personnel for the administration, staffing, operation and maintenance of the pro shop and food and beverage Premises. Contractor shall install at Contractor's expense, a satellite dish or cable television and big screen, or multiple televisions, for patron viewing, in the snack bar area. These improvements shall remain the personal property of the Contractor and may be removed upon termination of the Contract. Upon removal of the improvements, the Premises shall be restored to its original condition. Contractor shall be solely responsible for payment of all associated satellite or cable services.

Q. Contractor shall have the right and duty to manage, operate and control the Contract facilities and all of the mentioned activities in this paragraph, and to do all things necessary in the exercise of such management, operation and control subject to the regulations and policies of the Director, and in accordance with the terms and conditions set forth in this contract.

R. Contractor enters into this agreement solely and exclusively as an independent contractor and only in that capacity and not as a partner or employee, or other agent of the County. All services performed by Contractor relating to operation and management of the Premises in combination with payment of the percentages set forth in *Paragraph 4* and fee collection as specified in *Paragraph 5*, are intended as consideration supporting this Contract.

S. Contractor shall offer food and beverage service, including alcoholic beverages, to the golfing public from the Premises. Contractor shall offer food and beverage service to the outside public and groups, but recognize that the booking of outside functions must not adversely impact the golfing public to the facility. Contractor shall coordinate food and beverages for tournaments and other golf related events.

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T. Contractor shall provide the following additional services/improvements to the Dairy Creek Golf Course at no cost to the County;

(1) Contractor shall routinely inspect parking lot and Pro Shop Premises and monitor for cleanliness compliance and trash removal.

(2) Contractor shall maintain a County provided computerized central reservation system utilizing County provided program software. Upgrades to said software is County's responsibility. Ownership of the database created with the County owned software remains with the County.

(3) During the term of the Contract, Contractor shall assume responsibility for booking reservations. At the termination of this Contract, Contractor agrees to surrender the list of all future reservations and the list of associated deposits to County.

7. **Contractor Right to Contract for Third Party Services:** County shall permit Contractor to contract for specialized services, such as golf ball retrieval from the course ponds, subject to the following conditions;

A. The Director shall approve any specialized service need.

B. Any specialized service contractor shall be fully licensed and insured, a reputable contractor in his field, and shall name the County as additional insured on his insurance policy, of which said policy shall be in conformance with County insurance requirements.

C. Service shall be provided to Contractor at no cost or expense to the County. The Director shall have sole and final right to decide any contracted issues.

D. Any Contract for specialized services shall contain the County's indemnification clause in favor of the County. Consideration for said clause shall be the right to enter County Premises to perform specialized services.

8. **Janitorial:** Contractor shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies, lamps and tubes for the proper maintenance of the clubhouse Premises as defined on Exhibit "B" attached hereto. In addition, Contractor shall maintain the golf cart staging area and golf cart storage barn.

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9. **Utilities:** Contractor shall be solely responsible for provision and payment of utilities, including but not limited to water, sewer, electric, and trash and natural gas service to the building in its entirety. Contractor shall provide and pay for telephone services to the Premises, including the golf reservation line, fax lines, as well as electric services for the golf cart storage barn.

The County shall be solely responsible for the establishment and payment of the alarm system for the building in its entirety.

10. **Maintenance/Repairs:** Contractor shall be responsible for the first Fifteen Hundred Dollars (\$1,500) in "each instance" of maintenance and repair costs to the Premises, as outlined in Exhibit "B," including, but not limited to, electrical, plumbing, heating and air conditioning systems, sound systems, walls, doors, appliances, exterior building maintenance, and roof. "Each instance" shall mean the entire repair effort made to restore proper function to a repaired item, whether the attempt is singular and successful or a series of repair efforts or cumulative instances of repair.

County shall be responsible for any amount in excess of Fifteen Hundred Dollars (\$1,500.00) in "each instance" of the maintenance and repair costs to the Premises.

Contractor shall submit any maintenance or repair cost in excess of Fifteen Hundred Dollars (\$1,500) in "each instance" to the Director for review and written approval **prior** to any repair or maintenance work being performed.

Should Contractor fail or neglect to make maintenance or repairs in a timely manner, and such delay results in maintenance or repair cost greater than Fifteen Hundred Dollars (\$1,500) in "each instance," Contractor shall be responsible for the full cost of the maintenance or repair. Contractor shall not, at any time, commit or suffer to be committed any waste, neglect, nuisance, or unlawful act thereon. Should Contractor fail or neglect to make repairs deemed necessary by the Director to protect the health, safety or welfare of individuals using the Premises or fail or neglect to make a repair required to protect the structural integrity of the Premises pursuant to the terms set forth in this Contract, County may, after written notice to Contractor, make said repair and charge Contractor for the full cost of said repair, which shall be reimbursed to the County upon written demand.

Contractor may employ, pay and supervise maintenance personnel to perform required services. Maintenance personnel shall be responsible to Contractor and cooperate with County personnel. Contractor shall employ personnel of good moral character and who are physically able to handle their duties and must

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be promptly replaced when derelict in their duties. There shall be no drinking of liquor, or other alcoholic beverages in or around the Premises by Contractor's employees while on duty.

Contractor shall, at all times and at his own expense do all things reasonably necessary to protect the facilities used by Contractor.

The County also reserves the right to do any and all work of any nature necessary for the preservation, maintenance and operation of the Premises in any areas within the confines of said Premises. Contractor shall be given notice when such work may become necessary and will adjust Premises operations in such a manner that the County may proceed expeditiously.

The Contractor shall not grant, with respect to said Premises, easements, rights-of-way, licenses or permits.

11. **Minor Supplies and Equipment:** Contractor owns all minor supplies and equipment.

12. **Significant Value/Fixed Assets:** Contractor agrees to accept County's significant value/fixed assets (current value not less than \$2,500 per asset, or deemed significant value by County due to permanent nature of asset) including furnishings, machinery, equipment, and supplies at the Premises as described in Exhibit "C" (Significant Value/Fixed Assets Inventory) attached hereto and incorporated herein by this reference.

Contractor shall accept the equipment inventoried in the aforementioned Exhibit "C" in an "as is" condition on the effective date of this Contract. Contractor shall be obligated to provide, maintain, and replace as necessary with equipment of equal or greater quality and/or type, the inventory specified in Exhibit "C". Specified inventory in Exhibit "C" is exempt from *Paragraph 10 Maintenance/Repairs* above, and Contractor shall be solely responsible for any and all costs associated with repairs, maintenance, and replacement of said inventory. County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense in improving and/or changing the condition of the specified inventory in Exhibit "C".

Contractor shall use said Inventory at the Premises only during the term of this Contract without payment to County. Such equipment shall be used only for the activities permitted in this Contract and shall not be removed from the Premises for other purposes and shall be kept in good maintenance and repair by Contractor.

Contractor shall replace any equipment, as detailed in Exhibit "C", which is stolen, lost, damaged, or worn beyond repair or useful life, with equipment of equal or greater quality and/or type. Upon said

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Inventory item becoming worn beyond repair, useful life or useful salvage benefit, Contractor shall return said item to County for disposal. Upon termination of this Contract, all such equipment listed in Exhibit "C" and furnished by County and/or replaced by Contractor shall be returned to County without cost, in reasonable operating condition.

Contractor shall not be obliged to return to County additional equipment or furnishings purchased by Contractor of a type or use not provided, specified, or required of Contractor by County.

Title to all equipment described in Exhibit "C" shall remain vested in County. Said Inventory Exhibit "C" shall be updated from time to time, as necessary.

**13. Capital Improvements:** Any and all Capital Improvements to be undertaken hereunder shall be administered as follows:

Contractor agrees to submit to the Director for review and approval, all plans including specifications, working drawings, bid prices, and other information required by the Director covering the projects to be accomplished by Contractor. Said plans shall be submitted to the Director for the Director's approval at least sixty- (60) days in advance of the initiation of any such projects. If the Director objects to all or any portion of such plans, the Director shall state the objections specifically, and the Contractor shall make the changes specified and resubmit the plans as revised for the Director's approval as herein provided.

No improvement or alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by Director, or his designee. Approval and authorization by the Director shall not be unreasonably withheld. Nothing contained herein shall be construed by Contractor to be a waiver by the Director of Contractor's need to acquire building and construction permits to include, but not be limited to, required permits from the Planning and Building and Environmental Health Departments and other applicable licenses through governmental processes.

**14. Ownership of Improvements:** The County retains title to improvements on the Premises at the commencement of this Contract. This Contract is subject to any rights of ownership in the improvements. The ownership of all approved improvements constructed by the Contractor, if any, shall remain in Contractor until expiration, or sooner termination, of the term of this Contract.

All improvements on the Premises at the expiration of the term (or sooner termination of this Contract), including any fixed assets included in capital improvement request submitted by Contractor and approved by County in accordance with aforementioned *Paragraph 13*, shall, without compensation to

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Contractor, become County property free and clear of all claims to or against them by Contractor or any third person, and Contractor shall defend and indemnify the County against all liability and loss arising from such claims or from the County's exercise of the rights conferred by this paragraph.

15. **Personal Property:** Title to all personal property provided by the Contractor shall remain in the Contractor. Personal property is exempt from *Paragraph 10 Maintenance/Repairs* clause above. County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense regarding personal property of Contractor.

16. **Advertising/Public Relations:** All public relations are for the benefit of County and shall be conducted in County's best interest. County has ultimate, sole discretion over all public relations matters. Contractor and County expressly agree that public relations, advertising, and promotions are key and critical components to the economic success of Dairy Creek Golf Course. Contractor shall diligently pursue at Contractor's sole expense, a comprehensive program of multi-media advertising, publicity, and promotion designed to increase the use of the golf course facilities. Said advertising, publicity and promotion shall be in good taste and reported to the County and all advertising matter to be published or circulated by or on behalf of the Contractor shall be submitted to and approved by the Director, or his designee, prior to publication or circulation.

17. **Exclusive Management:** Contractor shall **not** have the right to operate and/or promote any other business from the Premises without prior written consent from the County Parks Manager. Contractor shall and hereby agrees to conduct any and all pro shop related services in such a way so as not to create a conflict of interest with other County of San Luis Obispo owned and/or operated golf course(s).

18. **Signs and Approval of Name:** No signs, names or placards shall be inscribed, painted or affixed upon said Premises without notification and/or written consent of Director.

19. **Termination:** If any of the following occur, the Director shall have the right to terminate this Contract effective immediately for cause upon giving written notice to the Contractor and Contractor shall have thirty (30) days to remove personal property from the Premises:

A. Contractor fails to fulfill in a timely and professional manner its legal and contractual obligations under this Contract; or

B. Contractor, or its agents or employees, fail to exercise good behavior during working hours that is of such a nature as to bring discredit upon the County.

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**20. Quality of Service and Control of Rates and Charges:**

Contractor agrees that Contractor will provide the described services offered in a first class manner equal to or exceeding the standard met by comparable business of Contractors providing similar services during the entire term of this Contract.

The County shall have access to, and the right to inspect the schedule of prices and rates for goods sold or services rendered or performed upon the subject Premises, which are not set by the Board of Supervisors. If the County determines that any price or prices are unreasonable or inappropriate for the services rendered, or the item sold, the same shall be modified as directed by the Director; provided that Contractor prior to such modification shall be given a reasonable opportunity to confer with the Director and justify such prices.

The Director reserves the right to prohibit the sale of any item that is deemed objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. A competent employee of Contractor shall be on the Premises at all times while the Premises are open and in operation. Contractor agrees that he shall and will furnish and maintain a high standard of service.

**21. Closure:** At any time, should an occurrence such as war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, act of God, strike, or similar act or other event which necessitates the closing of the Dairy Creek Golf Course, or a portion thereof, to the general public, and prevent performance of this Contract in accordance with the rights and privileges granted herein, Contractor shall have no recourse by law or equity to County for losses incurred.

**22. Hold Harmless Agreement:** The Contractor shall indemnify and save harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, or liability arising out of this Contract or attempted performance of the provisions hereof, including, but not limited to, those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, Premises liability, liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board with respect to Contractor's "independent Contractor" or "Contractor" status that would establish a liability for failure to make social security and income tax withholding payments, or any act or omission to act, whether or not it be willful,

intentional or actively or passively negligent on the part of Contractor or his agents, employees or other independent Contractors in the chain of contractual privity with Contractor; providing further that the foregoing shall apply to any wrongful acts or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by Contractor or Contractor's agents, employees or other independent Contractors and the County or State, its agents, employees or independent Contractors. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of the County.

23. **Insurance:** Contractor shall obtain and maintain for the entire term of the Contract and Contractor shall not perform any work under this Contract until after he has obtained insurance complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the County, and obtained County approval of all such policies. Companies authorized to do business in the State of California shall issue said policies. Contractor shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. **Commercial Liability Insurance:** Contractor shall maintain in full force and effect for the period covered by this Contract, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from any act or occurrence arising out of Contractor's operations in the performance of this Contract, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

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**B. Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Contractor has any employees, Contractor is required to be insured against liability for workers' compensation or to undertake self-insurance. Contractor agrees to comply with such provisions before commencing the performance of this Contract.

**C. Additional Insureds to be Covered:** The commercial general liability policies shall name the "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Contractor's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

**D. Certification of Coverage:** Prior to commencing work under this contract, Contractor shall furnish County with the following for each insurance policy required by this Contract:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty- (30) days prior written notice to the County.

(2) A copy of the Contractor's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, the Contractor shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operations pursuant to this Contract. Further, County's act of acceptance of an insurance policy does not waive or relieve Contractor's obligations to provide the insurance coverage required by the specific written provisions of this Contract.

**E. Effect of Failure or Refusal:** If Contractor fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish County with the certifications required by *Subparagraph D* above, County shall have the right, at it's option, to forthwith terminate the Contract for cause.

**24. Performance Bond Requirements:** The Contractor agrees to furnish a faithful performance bond in the sum of **\$20,000** (or a cashier's check, or a bank letter of credit, or certificate of deposit in name

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of County with interest payable to Contractor, in lieu thereof), it being understood and agreed that such bond shall be in force at all times during the term of this Contract; and, if canceled, the Contractor shall immediately seek and obtain a similar replacement bond or this Contract shall be terminated effective immediately. This security shall guarantee faithful performance of this Contract including all Contractor's obligations and responsibilities under this Contract. Said bond shall be kept by Contractor in full force and effect during the entire term of this Contract to insure faithful performance by Contractor of all the covenants, terms and conditions of this Contract, inclusive of, but not restricted to, the payment of all rentals, fees and charges. The surety company issuing said bond or bonds shall give County notice in writing at least thirty- (30) days prior to any expiration of the bond or bonds of Contractor.

**25. Taxes:** During the term of this Contract, Contractor hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Contractor's operation thereof, including without limitation, taxes on Contractor's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. **Contractor is hereby informed that a possessory interest subject to property taxation shall be created by this agreement and that the party to whom the possessory interest is vested (Contractor) shall be subject to the payment of property taxes levied on such interest and must pay such taxes prior to delinquency.**

**26. Contractor's Responsibility for Compliance:** Contractor shall at all times observe and comply with, and shall cause all his agents, employees and sub-Contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Contract and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the County and said legislative enactment has any impact fiscal or otherwise on Contractor, and if Contractor does not make a timely objection to County during the course of legislative process, Contractor will be deemed to have waived any right to object at a later time and waives all damages flowing there from.

**27. Notices:** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by U.S. Postal Service, first class, or certified, or registered mail as follows:



To the Contractor at: Comerford Inc.  
D.b.a. Fairway Management  
Attn: Ryan Comerford  
2990-A Dairy Creek Rd.  
San Luis Obispo, CA 93405

To the County at: County of San Luis Obispo  
Department of General Services  
1087 Santa Rosa  
San Luis Obispo, CA 93408  
Attn: Property Manager

The address to which the notices may be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein before provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

28. **Breach:** This Contract is granted by County upon the express condition that in the event the Director deems objectionable or improper any conduct on the part of the Contractor, its employees or agents, which shall not have been remedied or corrected within a period of thirty (30) days after written notice thereof by County to Contractor; or if default or breach of Contract be made by Contractor in any of the covenants herein contained and Contractor shall continue in such default or breach; or should any attachment, garnishment or execution be levied against the Contractor or County's property and not be removed within ten days after written notice from County; or if Contractor shall cease its operations under this Contract for causes other than destruction of the Premises, either with or without legal process, on giving 10 days notice of intention to do so, and upon expiration of said notice, County, or its officers, agents or employees, shall be entitled to the immediate possession of the contract Premises and this Contract shall terminate effective immediately and Contractor shall have thirty (30) days to remove personal property.

The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

29. **Assignment of Contract:** Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor shall not assign, transfer, delegate, or sublet this Contract or any interest therein without the prior written consent of County, and any such assignment, transfer, delegation, or sublet without the County's written approval shall be considered null and void.

Any proposed assignee shall have at least three (3) years of experience in the management and/or operation of a pro shop and food and beverage operation substantially the same as the business operated by the Contractor in the Premises.

In lieu of such actual experience, the proposed assignee shall provide satisfactory evidence to the County that the proposed assignee will hire as employees or independent Contractors personnel competent to inventory, merchandise, market and operate the pro shop, restaurant, bar, and banquet facility duties and business being conducted on the Premises.

County may at its option sell, assign, transfer to or delegate the Premises and/or Dairy Creek Golf Course to another governmental agency provided that such sale, assignment transfer or delegation shall not terminate this Contract.

**30. Waiver of Claim:** Contractor hereby waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Contract, or any part thereof or by any judgment or award in any suit or proceeding declaring this Contract null, void or voidable, or delaying the same or any part thereof from being carried out.

**31. Duration of Public Facilities:** By entering into this Contract, the County makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the golf course.

**32. Eminent Domain:** If the whole of the Premises is taken or condemned by any competent authority under power of eminent domain for a public or a quasi-public use or purpose, then the services Contract hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Contractor shall be entitled to receive any award for the taking of or damage to Contractor's equipment, fixtures, or any improvements made by Contractor to the Premises which the Contractor would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract.

In the event that there shall be partial taking of the Premises during the Contract term under the power of eminent domain, this Contract shall terminate as to the portion of the Premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Contract shall at County's option, continue in full force and effect. The compensation and damages for such partial taking shall belong to and be sole property of County, provided, however, that Contractor shall be entitled to

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receive any award made by Contractor to the Premises which Contractor would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract, and, in the event that this Contract is continued as to the portion of the Premises not condemned, any award made for alterations, modifications or repairs which may be reasonably required in order to place the remaining portion of the Premises not taken in a suitable condition shall belong to County.

33. **Non-Discrimination:** Contractor shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

34. **Americans With Disabilities Act:** County shall be responsible for alterations necessary to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., as currently enacted and in accordance with applicable laws.

35. **Sexual and Gender Harassment Warranty and Liability:** Contractor and **all** Contractor's employees have a contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law as sexual and/or gender harassment and at all times to comply with and ensure that all persons performing this Contract comply with an appropriate standard of conduct. Contractor or any of Contractor's employees who violate sexual and/or gender harassment laws shall be liable to the County for all claims, demands, damages, costs, expenses, and attorney's fees incurred by the County as a result of behavior of Contractor or any of Contractor's employees performing this Contract.

36. **Drug Free Workplace:** Contractor and Contractor's employees shall comply with County's policy of a drug free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Contractor's facilities or County facilities or worksites. If any employee of Contractor is found to be under the influence of or in possession of any illegal substance at or on County's Premises, that employee may not return to any of County's Premises. Further return shall be a breach of this Contract. If Contractor becomes aware that any of Contractor's employees, during the course of their employ with Contractor, are convicted or plead nolo contendere to a criminal substance abuse statute, Contractor shall be responsible for notifying the Director within seventy-two (72) hours of becoming aware of said conviction or plea. Violation of this notification provision shall constitute grounds for termination of this Contract.

Handwritten signature or initials in the bottom right corner, possibly reading "B. B. 25".

37. **Smoking:** Entire indoor portion of the building shall be a non-smoking building and therefore, no smoking shall be allowed in the indoor portion of the Premises. Smoking on the patio portion of the Premises is permitted.

38. **Inspection of Premises:** County, its agents and employees, shall have access to and the right to enter upon the Premises at any time to examine the condition thereof, and to direct Contractor to make such repairs as may be necessary and, in the event of an emergency, to take such action therein as may be required for the protection of persons or property, at the expense of Contractor.

To this end, County may make such reasonable rules and regulations pertaining to the pro shop and food and beverage operations, which shall serve to protect the health, safety, and welfare of the public and to protect the golf course as a physical asset.

39. **Hazardous Waste:** Contractor and County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials"). Contractor shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (a) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Contractor's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or (b) Contractor's or County's failure to comply with any Hazardous Materials Law. Contractor's or County's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Contractor and County and shall survive the expiration or earlier

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termination of the term of the Contract. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or Subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

40. **Severability**: The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

41. **Remedies Not Exclusive**: The use by either party of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of or limit the application of, any other remedy provided by law.

42. **Law**: This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California.

43. **Venue**: San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

44. **Entire Agreement and Modifications**: This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in the Contract and no other contracts or oral discussions prior to entering this Contract.

45. **Corporate Authority**: Any individual executing this Contract on behalf of Contractor represents and warrants that he is duly authorized to execute and deliver this Contract on behalf of said Contractor, and that this Contract is binding upon said Contractor in accordance with its terms.

46. **Surrender**: Contractor shall surrender the Premises unto County on the last day of the term or sooner termination of this Contract in the same condition as when received, reasonable use and wear excepted.

47. **Successors**: The agreements herein made shall apply to, bind and inure to the benefit of the successors and assigns of Contractor, and the successors and permitted assigns of County.



48. **Provisions Deemed Covenants and Conditions:** The parties hereto agree that all the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions are used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representative, successors and assigns.

49. **Estoppel:** Each party, within ten (10) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Contract is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of monthly rent, the dates to which the rent has been paid in advance, and the amount of any prepaid rent.

50. **Binding Effect of Law:** Subject to any provisions hereof restricting assignment or subletting by County and subject to the provisions of *Paragraph 29*, this Contract shall bind the parties, their personal representatives, successors and assigns.

51. **Prior Agreements:** This Contract contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Contract may be modified in writing only when signed by the parties in interest at the time of the modification. Except as otherwise stated in this Contract, Contractor hereby acknowledges that neither the broker (if applicable) acting as agent for Contractor nor any cooperating agent on this transaction nor the County or any employee or agents of any said persons has made any oral or written warranties or representations to Contractor relative to the condition or use by Contractor of the Premises.

////////////////////////////////////NOTHING FURTHER PAST THIS POINT////////////////////////////////////

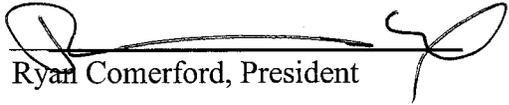
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IN WITNESS WHEREOF, County and Contractor have executed this Contract on the day and year first hereinabove set forth.

COUNTY OF SAN LUIS OBISPO

Contractor: Comerford, Inc., doing business as Fairway Management, a California Corporation

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

By:   
Ryan Comerford, President

Approved by the Board of Supervisors on \_\_\_\_\_, 2006

Date: 03.15.06

ATTEST:

Corporate Certificate

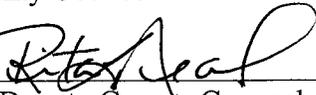
\_\_\_\_\_  
Clerk of the Board of Supervisors

I, Ryan Comerford, certify that I am the Secretary of the Corporation named in the foregoing Contract; that **Ryan Comerford**, who signed said Contract on behalf of the corporation, was then **President** of said Corporation; and said Contract was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

APPROVED AS TO FORM AND LEGAL EFFECT:

(CORPORATE SEAL) Secretary

JAMES B. LINDHOLM, JR.  
County Counsel

By:   
Deputy County Counsel

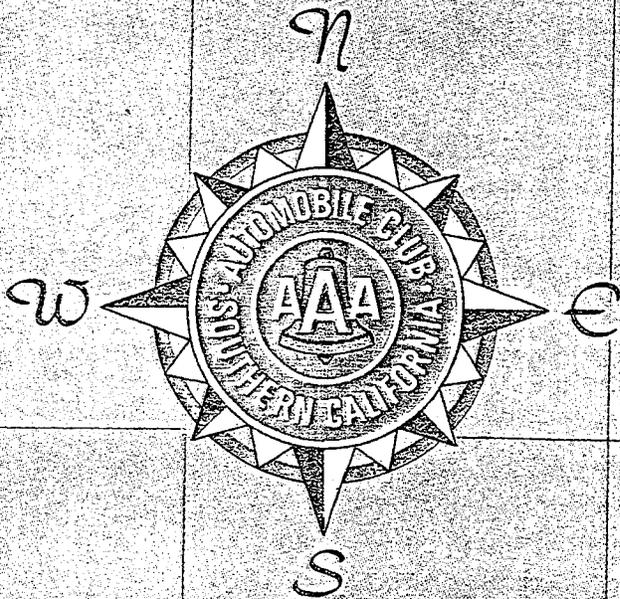
Date: 5/5/06

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# EXHIBIT "A"

VICINITY



MORRO BAY

BAYWOOD PARK

LOS OSOS

DE ORO

Lion Rock  
DIABLO CANYON  
NUCLEAR POWER PLANT

AVILA BEACH

PORT SAN LUIS

SHELL BEACH

PISMO BEACH

GROVER BEACH

LE SAGE RIV.

PISMO STATE BEACH

OCEANO MEMORIAL CE

OCEANO DI

STATE

VEHICULAR

REC. AI

CI

PRESE

NO. 18.

RANCHO CUADALUPE

DUNES CO. PARK

Mussel Rock

SA

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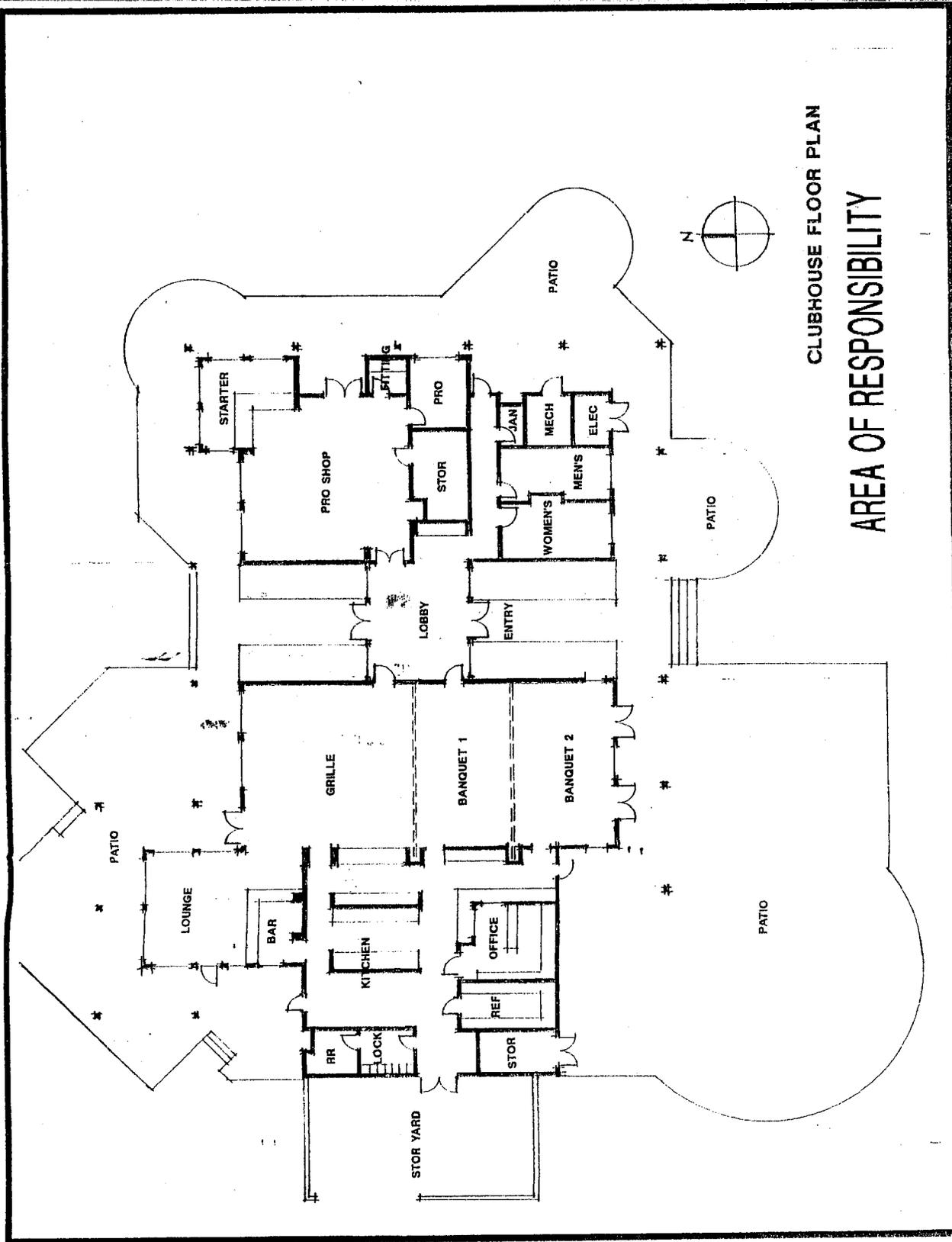
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CLUBHOUSE FLOOR PLAN  
 AREA OF RESPONSIBILITY

DIETRICH POST REORDER NO. 16439

**EXHIBIT B**

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## EXHIBIT "C"

### DAIRY CREEK GOLF COURSE CONTRACT SIGNIFICANT VALUE/FIXED ASSET INVENTORY

#### Kitchen Equipment

K3	1 ea	Char Broiler
K4	1 ea	Range with oven
K5	1 ea	Salamander broiler
K6	1 ea	Griddle range with oven
K7	1 ea	Fryer
K8	1 ea	Double convection oven
K11	1 ea	Reach-in freezer
K12	1 ea	Hot food table
K13	2 ea	Utility stand
K14	1 ea	Refrigerated sandwich counter
K16	1 ea	Overshelf
K18	1 ea	Wall shelf
K19	1 ea	Pass thru shelf
K20	1 ea	Hand sink
K21	1 ea	Preparation table
K22	1 ea	Mixer (Hobart A200-2B)
K23	1 ea	Slicer (Hobart 1612E)
K24	1 ea	Disposer
K25	2 ea	Wall shelves
K26	1 ea	Fire control system(& hood - Ansel)
K27	1 ea	Soiled dishtable
K28	1 ea	Disposer
K30	1 ea	Dishwasher
K31	1 ea	Vapor hood
K32	1 ea	Booster heater
K33	1 ea	Clean dishtable
K34	1 ea	Rack shelf
K35	1 ea	Wall shelf
K36	1 ea	Fly fan (35")
K41	1 ea	Storage cabinet
K42	1 ea	Fly fan (60")
K44	1 ea	Ice machine
K45	1 ea	Ice storage bin
K47	1 ea	Walk-in freezer & refrigerator
K49	1 lot	Cooler shelving
K50	1 lot	Freezer shelving

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DAIRY CREEK CONTRACT  
SIGNIFICANT VALUE/FIXED ASSET  
PAGE 2

- K51 1 lot Dry storage shelving  
*(consists of 16 gold shelves marked "SLO County" on pink tags)*
- K56 1 ea Banquet counter
- K57 1 ea Undercounter refrigerator
- K61 1 ea Ice storage bin
- K67 1 ea Service counter
- K68 1 ea Undercounter refrigerator
- K69 1 ea Wall shelves (4ea)
- K76 1 ea Drawer warmer
- K79 1 ea Serving counter
- L2 1 ea Bottle cooler
- L3 1 ea Blender station
- L5 1 ea Ice chest
- L6 1 ea Sink unit
- L7 1 ea Back bar refrigerator
- L9 1 ea Back bar shelving
- K81 1 ea Ice cream freezer
- K82 1 ea Cup dispenser

Pro Shop Equipment

- 1 ea Golf ball management system

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# EXHIBIT "D"

THE FOLLOWING MANAGEMENT CONTRACT GUIDELINES APPLY TO:

(I) ANY MANAGEMENT CONTRACT ENTERED INTO, MATERIALLY MODIFIED OR EXTENDED (OTHER THAN PURSUANT TO A RENEWAL OPTION) ON OR AFTER MAY 16, 1997; OR

(II) ANY CONTRACT WITH RESPECT TO WHICH THERE HAS BEEN A MATERIAL REVISION OF THE COMPENSATION ARRANGEMENT ON OR AFTER MAY 16, 1997.

HOWEVER, AN ISSUER MAY APPLY THESE MANAGEMENT CONTRACT GUIDELINES TO MANAGEMENT CONTRACTS ENTERED INTO PRIOR TO MAY 16, 1997.

The following "Management Contract" requirements must be satisfied in order for management agreements for the operation of Bond-financed facilities by a non-Qualified User not to result in private business use under provisions of federal tax law:

1. Parties to a Management Contract.

(a) Governmental Obligations. For purposes of these Guidelines, for facilities financed or to be financed with proceeds of bonds that do not constitute Private Activity Bonds (as defined below), the parties to the Management Contract are the following:

(i) Qualified User - the state or local governmental unit or any instrumentality thereof (but not the United States or any agency or instrumentality thereof) that is the owner of the bond-financed facility.

(ii) Service Provider - the operator (whether a for-profit or not-for-profit entity) that is operating all or a portion of the bond-financed facility to be operated pursuant to the Management Contract.

(b) Section 501(c)(3) Obligations. For purposes of these Guidelines, for facilities financed or to be financed with proceeds of bonds that constitute Qualified 501(c)(3) Bonds (as defined below), the parties to the Management Contract are the following:

(i) Qualified User - any state or local governmental unit or any instrumentality thereof (but not the United States or any agency or instrumentality thereof) or the 501(c)(3) organization (assuming the use is not in furtherance of an unrelated trade or business) that is the owner of the bond-financed facility.

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(ii) Service Provider - the operator (i.e., a non-Qualified User) that is operating all or a portion of the bond-financed facility to be operated pursuant to the Management Contract.

2. **General Definitions.** For purposes of these Guidelines, the following terms have the following meanings:

(a) "Adjusted Gross Revenues" means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.

(b) "Capitation Fee" means a fixed periodic amount for each person for whom the Service Provider or the Qualified User assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. (For example, a Capitation Fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance Organization plan for whom the provider agrees to provide all needed medical services for a specified period). A Capitation Fee may include a variable component of up to 20 percent of the total Capitation Fee designed to protect the Service Provider against risks such as catastrophic loss.

(c) "Management Contract" means a management, service, or incentive payment contract between a Qualified User and a Service Provider under which the Service Provider provides services involving all, or a portion of, or any function of, a facility. The following arrangements are not treated as Management Contracts:

(i) contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

(ii) the mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of *de minimis* services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

(iii) a contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the Service Provider and reasonable administrative overhead expenses of the Service Provider; and

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(iv) a contract to provide for services, if the only compensation is the reimbursement of the Service Provider for actual and direct expenses paid by the Service Provider to unrelated parties.

(d) "Periodic Fixed Fee" means a stated dollar amount for services rendered for a specified period of time. (For example, a stated dollar amount per month is a periodic fixed fee). The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. (For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards). Capitation Fees and Per-Unit Fees are not Periodic Fixed Fees.

(e) "Private Activity Bonds" mean any bonds issued as part of an issue where either (i) (A) more than 10 percent of the proceeds of the issue are to be used for any private business use and (B) the payment of debt service on more than 10 percent of the proceeds of such issue is secured by property used in a private business or derived from payments in respect of property used in a private business or (ii) the amount of the proceeds of the issue which are to be used to make or finance loans to persons other than governmental units exceeds the lesser of 5 percent of such proceeds or \$5,000,000.

(f) "Qualified 501(c)(3) Bonds" mean an issue of bonds where (i) all bond-financed property is to be owned by a 501(c)(3) organization or a governmental unit and (ii) the test set forth in (i)(A) and (B) of the definition of Private Activity Bonds herein is satisfied after substituting 5 percent for 10 percent.

(g) "Renewal Option" means a provision under which the Service Provider has a legally enforceable right to renew the contract. (For example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed)).

### 3. General Compensation Requirements.

(a) General Requirement. The Management Contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility. Reimbursement of the Service Provider for actual and direct expenses paid by the Service Provider to unrelated parties is not by itself treated as compensation.

(b) Share of Net Profits. Compensation based on either (i) a percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both, (ii) a Capitation Fee or (iii) a Per-Unit Fee, is generally not considered to be based on a share of net profits.

(c) Productivity Reward. A productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits.

4. Permissible Arrangements. The Management Contract must satisfy the requirements set forth in (a), (b), (c), (d), (e) or (f) of this section 4.

(a) 95 Percent Periodic Fixed Fee Arrangements.

(i) At least 95% of the compensation for services for each annual period during the term of the contract is based on a Periodic Fixed Fee; and

(ii) The term of the contract, including all Renewal Options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years.

(b) 80 Percent Periodic Fixed Fee Arrangements.

(i) At least 80% of the compensation for services for each annual period during the term of the contract is based on a Periodic Fixed Fee; and

(ii) The term of the contract, including all Renewal Options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years.

For purposes of arrangements (a) and (b) of this section 4, a fee does not fail to qualify as a Periodic Fixed Fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

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(c) Special Rule for Public Utility Property. If all of the financed property subject to the contract is a facility or system of facilities consisting of predominantly public utility property (as defined in §168(i)(10) of the Internal Revenue Code of 1986, as amended), then

(i) "20" years is substituted for "15" years in (a)(ii) of this section 4 and

(ii) "20" years is substituted for "10" years in (b)(ii) of this section 4.

(d) 50 Percent Periodic Fixed Fee Arrangements.

(i) Either:

(A) At least 50 percent of the compensation for services for each annual period during the term of the contract is based on a Periodic Fixed Fee, or

(B) All of the compensation for services is based on a Capitation Fee or a combination of a Capitation Fee and a Periodic Fixed Fee;

(ii) The term of the contract, including all Renewal Options, must not exceed 5 years; and

(iii) The contract must be terminable by the Qualified User on reasonable notice, without penalty or cause, at the end of the third year of the contract term.

(e) Per-Unit Fee Arrangements in Certain 3-Year Contracts.

(i) All of the compensation for services is based on a Per-Unit Fee or a combination of a Per-Unit Fee and a Periodic Fixed Fee;

(ii) The term of the contract, including all Renewal Options, must not exceed 3 years; and

(iii) The contract must be terminable by the Qualified User on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(f) Percentage of Revenue or Expense Fee Arrangements in Certain 2-Year Contracts.

(i) All of the compensation for services is based on a percentage of fees charged or a combination of a Per-Unit Fee and a percentage of revenue or expense fee. (During the start-up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues, or expenses of a facility);

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(ii) The term of the contract, including Renewal Options, must not exceed 2 years; and

(iii) The contract must be terminable by the Qualified User on reasonable notice, without penalty or cause, at the end of the first year of the contract term.

This arrangement (f) applies only to (A) contracts under which the Service Provider primarily provides services to third parties (e.g., radiology services to patients) and (B) Management Contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (for example, a contract for general management services for the first year of operations).

5. Qualified User's Rights Not to be Limited.

(a) In general. The Service Provider must not have any role or relationship with the Qualified User that, in effect, substantially limits the Qualified User's ability to exercise its rights, including cancellation rights, under the contract. Such role or relationship is to be determined based on all the facts and circumstances.

(b) Safe Harbor. The requirement of (a) is satisfied if:

(i) Not more than 20 percent of the voting power of the governing body of the Qualified User in the aggregate is vested in the Service Provider and its directors, officers, shareholders and employees;

(ii) Overlapping board members do not include the chief executive officers of the Service Provider or its governing body or the Qualified User or its governing body; and

(iii) The Qualified User and the Service Provider under the contract are not related parties (as defined in Treasury Regulation §1.150-1(b)).

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