RESOLUTION APPROVING FINDINGS AND AUTHORIZING THE THREE-YEAR AGREEMENT WITH VALLEYCREST GOLF COURSE MAINTENANCE OF CITY GOLF COURSES

The City's agreement with ValleyCrest Golf Course maintenance will expire on July 19, 2010; and

The City has been satisfied with the service provided by ValleyCrest since 2005 and ValleyCrest has expressed interest in continuing to provide the maintenance service until July 19, 2013, with an option to renew annually for an additional two (2) years; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. Stockton Municipal Code (SMC) section 3.68.070 allows for exceptions to the competitive bidding process in cases where the City Council has approved findings which support and justify such exception. The findings are as follows:

   a. ValleyCrest has been providing good quality and satisfactory service to the City since 2005. Golf course maintenance services involve a very specialized field and its success requires an experienced professional who has successfully implemented and performed such projects.
   b. Section 3.5, Extended Term, of the City's existing agreement with ValleyCrest allows for a new agreement after entering into negotiations on terms and conditions acceptable to both parties.
   c. The three year agreement will allow continuous maintenance services at the golf courses thereby maintaining good playable courses condition with no interruption of service.
   d. ValleyCrest has multiple branches in Northern California and introduced its concept of “cluster management,” thereby improving its labor and resource efficiencies that resulted in its ability to offer the City a reduced service price.
   e. ValleyCrest was selected from a group of proponents who submitted a proposal through the Request for Proposal process in 2005.
   f. The City is not in a financial position to operate the service adequately at this time.

2. That based on these findings and pursuant to SMC section 3.068.070, the City Council declares that an exception to the competitive bidding process is justified and authorizes the City Manager to execute an agreement, attached as Exhibit A, with
ValleyCrest to provide golf course maintenance services at Swenson and Van Buskirk golf courses until July 19, 2013.

3. The City Manager is authorized to take such other actions as are appropriate to carry out the intent of this Resolution.

PASSED, APPROVED and ADOPTED JUN 29 2010

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

::ODMAGRPWISE\COS.PR.PR_Library:125141.1
AGREEMENT

This AGREEMENT is made and entered into on __________, 2010 by and between the City of Stockton, California, hereinafter referred to as “OWNER”, and ValleyCrest Golf Course Maintenance, 24151 Ventura Blvd, Calabasas, CA, hereinafter designated as "CONTRACTOR".

WITNESSETH, that the parties hereto mutually agree as follows:

ARTICLE I: This Agreement incorporates the Technical Maintenance Specifications attached hereto as Exhibit A. For and in consideration of the payments and agreements hereinafter mentioned to be made by Owner, the Contractor agrees to perform all work and services described in this Agreement at Swenson Park Golf Course and Van Buskirk Golf Course which are owned and operated by OWNER (the “Golf Courses”). Contractor shall furnish at its own cost and expense all labor, supervision, materials, equipment, and transportation required to perform this Agreement and deliver the same free and discharged of any and all claims and demands whatsoever for or on account of any and all labor, supervision, materials, equipment, and transportation used, or furnished to be used, in the performance of this Agreement.

ARTICLE II: For full performance of this Agreement and for doing all work contemplated and embraced in this Agreement; for well and faithfully completing the work and the whole thereof Owner will pay, and the Contractor shall accept in full satisfaction therefor, the consideration set forth in Section 15 of this Agreement.

ARTICLE III: This Agreement constitutes the complete agreement between the parties related to the subject matter hereto, and said parties for themselves, their successors, and assigns, do hereby agree to full performance of the covenants herein contained.

1. DEFINITIONS

Whenever the words defined in this section, or pronouns used in their stead, occur in any of the Contract Documents, they shall have the meaning here given:

Swenson Park Golf Course shall mean that property located at 6803 Alexandria Place, Stockton, California which is owned and operated by Owner.
Van Buskirk Golf Course shall mean that property located at 1740 Houston Avenue, Stockton, California which is owned and operated by Owner.

Owner Representative shall mean the person holding that position as designated by Owner.

Contractor shall mean ValleyCrest Golf Course Maintenance.

Golf Course Superintendent(s) shall mean the qualified superintendent(s) in the employ of the Contractor and in charge of the maintenance personnel assigned to the Golf Courses.

2. LOCATION

The geographic area to be maintained shall generally consist of the parcel of real property commonly known as Swenson Park Golf Course, located at 6803 Alexandria Place, Stockton, California, and Van Buskirk Golf Course, located at 1740 Houston Avenue, Stockton, California. Specific areas for maintenance are defined in the Technical Specifications.

3. TERM OF CONTRACT

3.1 Initial Term. The term of this Agreement shall be for a period of three (3) years, with two (2) consecutive one-year extensions, provided that either party has the right to terminate the Agreement as set forth herein.

3.2 Event of Default. If Contractor or Owner shall fail in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the non-defaulting party to the defaulting party specifying in detail the nature of such failure (except for payment defaults, which are covered in Section 3.8) or, in the case such failure cannot with due diligence be cured within such period of thirty (30) days or such reasonable time as may be required to cure such default (not to exceed sixty (60) days), then the defaulting party will have committed an "Event of Default."

3.3 Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall be entitled to pursue all remedies available at law or in equity.

3.4 Termination. The Term of this Agreement shall terminate on the occurrence of any of the events set forth in paragraphs 3.4.1 through 3.4.5 below:

3.4.1 An Event of Default by Contractor and Owner sends to Contractor a notice of termination for cause;

3.4.2 An Event of Default by Owner and Contractor sends to Owner a notice of termination for cause;

3.4.3 Upon the expiration of the Term;
3.4.4 Upon Owner giving thirty (30) days written notice to Contractor of termination without cause pursuant to Section 3.7

3.4.5 Both parties agree in writing to terminate this Agreement.

3.5 **Extended Term.** At least one hundred and twenty (120) days before the expiration of the Term, the Contractor and Owner will enter into negotiations for a new agreement on terms and conditions acceptable to both parties. In the event these negotiations extend beyond the expiration of the initial Term, the Contractor shall continue performance on a month to month basis on the terms set forth in this Agreement until either a new agreement is entered into or either party gives sixty (60) days written notice of termination to the other. This extension is good for a ninety (90) day period with a standard CPI increase.

3.6 **Equipment.** Contractor shall provide, at its sole expense, all necessary equipment to perform all work required by this Agreement.

3.7 **Termination Without Cause.** Owner may cancel this agreement “without cause,” upon 30 days written notice to Contractor of termination as follows: 1) the Owner makes a determination that it is financially unable to support either one or both of the golf courses; (2) Owner removes or re-allocates funds used for management or maintenance of the golf courses; (3) there is a change in ownership, management or use of one or both of the golf courses and Contractor's services are no longer desired; and (4) one or both of the golf courses are either temporarily or permanently closed. If Owner terminates this Agreement "without cause" Contractor shall be paid for all services rendered plus an amount equal to five percent (5%), multiplied by the amount remaining to be paid by Owner to Contractor for the remainder of the Term pursuant to Section 15 of this Agreement, prorated to the date of termination. However, this amount shall not exceed the monthly maintenance amount pursuant to Section 15 of this Agreement. Owner shall pay said sum within 60 days of the date of termination unless otherwise agreed to by the parties. This shall be the exclusive remedy in the case of termination without cause.

3.8 **Nonpayment.** Contractor reserves the right to terminate the contract for non-payment for any payment deficiencies in excess of thirty (30) days. In the event payment of consideration by Owner falls behind by more than thirty (30) days, Contractor will provide written notice to Owner. If such amounts remain unpaid for ten (10) days following delivery of written notice to Owner, Contractor may terminate this Agreement. This termination will be considered "for cause" of non-payment. In addition to amounts due under this contract for services provided by Contractor, Operator shall pay Contractor an amount equal to five percent (5%) multiplied by the amount remaining to be paid by Operator to Contractor for the remainder of the Term pursuant to Section 15.
of this Agreement prorated to the date of termination. This shall be the exclusive remedy in the case of termination for nonpayment.

4. **EMPLOYEES**

4.1 **Employees.** Contractor must employ sufficient, properly trained personnel to perform all work as required by this Agreement as well as sufficient supervisory personnel to act for Contractor at all times, including weekends and holidays.

4.2 **Contractor's Labor and Wage Rates.** There shall be paid to each craft or type of worker employed by Contractor or subcontractor engaged in the work under this Agreement, not less than the legal wage rate, including legal holiday and overtime rates, as required by law. Contractor will comply with all applicable labor and employment provisions and shall indemnify and hold Owner and the Owner Representative harmless from any and all claims, demands, losses or damages made as a result, whether direct or indirect, of Contractor's employment of personnel pursuant to this Agreement, whether as an employee, or as an independent contractor. During the term of this Agreement, and for a period of one year after the termination of this Agreement, Owner agrees not to solicit any of the employees of the Contractor for employment and vice versa.

5. **REPORTING**

The Contractor's Golf Course Superintendent(s) shall meet with the Owner Representative, on a regular monthly basis and at such other times as may be required by the Owner Representative to review the performance of the Agreement and to discuss any items, issues or conditions that are not in compliance with the items of this Agreement. Any items identified by Owner Representative or Owner as requiring correction will be corrected by Contractor immediately. In addition, Contractor, or its representative, shall meet weekly with the Owner Representative to review course conditions and maintenance schedules so that interference with tournament play is avoided, and interference with regular play is minimized. The Golf Course Superintendent(s) will visit the Pro Shop daily to review all schedules for the day and to communicate the golf course conditions. Owner Representative shall have the right to re-allocate and set priorities regarding work to be performed by Contractor's employees provided such re-allocation does not materially interfere with Contractor's obligations under this Agreement. For example, if the golf course has been damaged, Owner or Owner Representative will have the right to direct Contractor's employees to repair the damage rather than perform their normal work.

6. **RECORDS**

Contractor shall prepare a monthly maintenance report, on which is indicated work Contractor performed that month. Said report shall be delivered within (10) days of the last day of the reporting month. Contractor shall submit the completed report to the Owner Representative and to Owner.
7. EMERGENCY SERVICES

Contractor shall provide Owner with names and telephone numbers of the Golf Course Superintendent(s) and at least one (1) other qualified employee at each of the golf courses who can be called by Owner or its representatives when emergency maintenance conditions occur during hours when Contractor's normal work force is not present. Such employees will have full power and authority to take all actions on behalf of Contractor required to address the emergency, including the expenditure of all required funds. During periods of severe inclement weather conditions, Contractor will provide sufficient personnel on a twenty-four (24) hour call basis for the purpose of sandbagging, keeping drains clear, and/or any other tasks required to minimize damage to the Golf Courses' improvements and facilities. These emergency services are provided to the City of Stockton on a pre-approved basis by Owner and payable to Contractor by Owner.

8. COURSE TEMPORARILY OUT OF PLAY

Whenever play must be temporarily suspended on any of the Golf Courses' facilities due to inclement weather conditions, the decision of when to allow play to resume, and when to allow carts to go out on the course, will be made by mutual agreement between the Contractor and Owner Representative, and if there is any disagreement, the determination of Owner Representative shall control.

9. COURSE OUT OF OPERATION

In the event that any of the Golf Course(s) is not playable for a period of seven (7) consecutive days, for any reason, including acts of nature or vandalism, Owner may declare, for purpose of maintenance, that an emergency condition exists on such Golf Course(s), except for seasonal closures which have already been taken into account in determining the annual fee for maintenance services. Owner and the Contractor will then jointly determine what changes in the normal level of maintenance, if any, may be necessary, including additional hours of labor and/or materials. The normal consideration to be paid to Contractor under the terms of this contract during the period of such emergency shall be changed only by written agreement of the parties.

10. MATERIALS; IRRIGATION

10.1 Materials. Contractor, at its own cost and expense, shall furnish all necessary equipment, supplies, and materials of good quality and in accordance with the Maintenance Technical Specifications, and in the amounts necessary to comply with this Agreement. These equipment, supplies, and materials shall include, but not be limited to:

- All equipment necessary or appropriate for the performance of services under this Agreement, together with all necessary gas, oil, and spare parts for all equipment used by Contractor.
- All necessary top dressing, seed, fertilizers, fungicides, insecticides, and herbicides.
• Tee towels, soap, putting green cups and flags, bunker rakes, tee markers, trash receptacles, and other similar golf course equipment, which shall be maintained and/or replaced as needed, as set forth in the Maintenance Technical Specifications.

• Materials for the maintenance of French drains as a result of course site conditions. Additional costs needed to maintain these items are the responsibility of the Owner.

• Sand for bunkers to maintain a minimum compacted sand depth of four (4) inches or original depth of sand at inception of contract.

• Except as provided in the following paragraph hereafter, all parts necessary for the repair and maintenance of all irrigation systems not to exceed $28,000 per year.

10.2 Irrigation. The Contractor shall be responsible for irrigating the Golf Course(s) in the manner required to maintain the Golf Course(s). Owner shall furnish an adequate quantity and quality of irrigation water with which to irrigate the Golf Course(s). In the absence of an adequate supply of irrigation water, Contractor will not be responsible for any loss of plant life. Contractor shall monitor the quality of the irrigation water to ensure that it is acceptable to use for irrigation at the Golf Course(s). Any deficiencies shall be immediately reported to Owners Representative in writing.

11. HOLD HARMLESS

Contractor shall indemnify, defend and hold harmless Owner, the Owner Representative and their respective members, agents, employees, directors, officers, and representatives, from any and all damages, costs or liabilities, of any kind or nature, which may be made or may arise directly or indirectly from the performance or non-performance of duties by Contractor under this Agreement.

12. USE OF MAINTENANCE FACILITIES

Owner shall allow Contractor to utilize the golf course maintenance area located at each of the Golf Courses to work out of and store equipment and supplies used solely for the maintenance of the Golf Courses without charge. The maintenance facilities shall conform with all regulatory compliances and requirements as set forth by the Occupational Safety and Health Administration (OSHA).

Contractor shall maintain such maintenance area in a clean and orderly condition and shall store all equipment and supplies, and otherwise perform all of its actions, in accordance with all applicable laws, including, but not limited to, all applicable environmental laws.

13. LIABILITY FOR DAMAGES

Contractor shall be fully responsible for any and all damage done to the Golf Courses’ property or equipment, damage to the personal property of private individuals or other
property of the public, and for any injury to any individual, including any guest, employee, agent, licensee, invitee, or member of Owner or Owner Representative that results from the affirmative act and/or negligence of Contractor or Contractor's agents, employees, invitees, or licensees. This shall include, but not be limited to, the replacement, at Contractor's expense, of shrubs, flowers, trees, vines, turf, ground cover, or other landscape items that are damaged or destroyed due to improper pest and disease control practices; and/or due to improper watering, fertilizing, etc. not performed in accordance with the Technical Maintenance Specifications.

Except as otherwise required by local ordinances or this Agreement, lost shrubs and trees shall be replaced with shrubs and trees of the same size, but in no case shall replacement consist of less than healthy (i) five (5) gallon shrubs and (ii) fifteen (15) gallon trees. Replacement shrubs and trees shall be of the same species and horticultural variety as the shrub or tree being replaced, unless Owner and Contractor agree to the contrary in writing.

14. INSURANCE

Contractor shall assume all liability for injuries to persons or damages to property caused by any equipment or materials furnished or work done under the Agreement. Contractor shall furnish and maintain Workers' Compensation Insurance, Public Liability Insurance, and Property Damage Insurance herein provided, whether such performance be by Contractor, its subcontractors, agents or anyone directly or indirectly employed by Contractor. Contractor shall provide to Owner on the execution date of this Agreement insurance certificates evidencing the following insurance:

14.1 Workers' Compensation Insurance. Contractor shall secure, in the manner and in the amounts required by law, Workers' Compensation Insurance for each employee or agent. Such insurance shall be maintained during the Term of this Agreement. Contractor shall require each and every subcontractor to secure similar Workers' Compensation Insurance.

14.2 Public Liability and Property Damage Insurance. Contractor shall secure, pay for, and maintain during the Term of this Agreement, Public Liability and Property Damage Insurance, including automobile, and motorized driven equipment, protecting Contractor and any subcontractor, employee or agent performing any and all work covered by this Agreement from claims for damages for personal injury, including accidental death and claims for property damage, which may arise from its operations or performance under this Agreement, whether such operations be by Contractor or by any subcontractor, or by any person directly or indirectly employed by or working for either of them, and shall name Owner as additional insured. Contractor shall indemnify, defend and hold harmless Owner and the Owner Representative and their respective members, officers, directors, employees, agents, and representatives from such actions, causes of action, damages, costs, claims, debts, demands or liabilities of any and every kind or nature whatsoever, (including the payment of reasonable attorneys' fees) by reasons growing out of or attributable to the work to be performed under this Agreement. Contractor shall not be required to indemnify against those events
caused by the sole negligence or willful misconduct of an indemnified party. The amount of such insurance to be maintained by Contractor shall be as follows:

Public Liability Insurance in an amount of not less than One Million Dollars ($1,000,000.00) combined single limit for injuries, including accidental death or dismemberment; and property damage in an amount of not less than One Million Dollars ($1,000,000.00); both on account of any one occurrence.

14.3 **Damage and Theft.** Contractor may insure the equipment, materials, and work to cover Contractor's interest in the same from time-to-time as required. Neither Owner nor the Owner Representative will be answerable or accountable, under any circumstances, for any loss or damage that may happen to said equipment, materials and work, or any part or parts thereof, used and employed in fully completing the contract, during the Term of this Agreement.

15. **CONSIDERATION**

Owner shall pay Contractor for the services to be performed under this Agreement, the following amounts:

15.1 **Maintenance Consideration.** Owner shall pay Contractor for Contractor's performance of its obligations hereunder, the annual amounts shown in the third column below, payable on a monthly basis in the amounts shown in the second column below (the "Maintenance Fee"):  

<table>
<thead>
<tr>
<th>YEAR</th>
<th>GOLF MAINTENANCE</th>
<th>ANNUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>YEAR 1</td>
<td>$90,716</td>
<td>$1,088,597</td>
</tr>
<tr>
<td>YEAR 2</td>
<td>Delete this row</td>
<td>Delete this row</td>
</tr>
</tbody>
</table>

After Year 2, the yearly contract amount will be adjusted based on the rate of change in the Consumer Price Index (CPI) experienced in the month immediately preceding the anniversary date of the contract over the CPI for the same month in the prior calendar year. The CPI used will be that for All Urban Consumers (CPI-U) published by the Department of Labor, Bureau of Labor Statistics for the United States of America. However, the increase in contract amount shall be, in no case, increased by more than four percent (4%) per any Renewal Term. For Year 3, the increase will be equal to the calculated change in the CPI. In Years 4 and 5, the increase will be equal to the calculated change in the CPI plus one percentage point.

Year 1 shall begin on the date that this agreement is executed subsequent to City Council approval and shall end twelve (12) months thereafter, with each following year in the Term being for a twelve (12) month period. Contractor shall present, at beginning of month, an invoice for the Monthly Maintenance Fee. The preferred method of payment will be a conditioned wire transfer/electronic payment. Owner or Owner
Representative shall review all invoices, and payment shall be made to the Contractor by no later than thirty (30) days after date of invoice.

16. APPLICABLE TAXES

The consideration set forth in Section 15 of this agreement does not reflect or include any local, state or federal taxes of any kind that may be applicable due to the type of services rendered under this agreement. It is the responsibility of the Owner to pay in its entirety all applicable taxes for services rendered in addition to the consideration set forth in section 15 above.

17. UNSATISFACTORY EMPLOYEES

Persons employed by Contractor who are found not to be satisfactory by Owner or Owner Representative shall be evaluated by Contractor upon written notice from Owner or Owner Representative. In the event that any action is brought against the City or the City is named in any action brought against the Contractor for failure to hire or terminate an employee, Contractor will indemnify, defend and hold harmless City for any costs, expenses, damages, or liabilities incurred or alleged as a result of such action.

18. ASSIGNMENT OF CONTRACT

This Agreement, or any part thereof, shall not be assigned, hypothecated, sold, alienated, or transferred by Contractor, by operation of law or otherwise, unless the prior written approval of Owner has been obtained thereto.

19. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with all applicable laws, ordinances and regulations covering any aspect of contractor's performance under this Agreement. Contractor shall provide all safeguards and protective devices and take any other action necessary or appropriate to protect the health and safety of employees or agents on the job, and the safety of the public at large, in connection with the performance of the work required by this Agreement. Contractor will obtain and retain all local, state and federal permits or licenses required to conduct business.

20. ADVERTISING

Unless approved by Owner, no advertising of any kind or description, bill or poster, whether printed or painted, or by the use of any other method or application legible to human sight, shall appear on any building, structure, fence, canopy, post or sign, except valid and authorized legal notices required to be placed thereon, and except as may be specifically authorized in writing by Owner.

21. GOLF COURSE IMPROVEMENTS

The construction of golf course improvements, such as new cart paths, new greens or tees, and irrigation system installations may be done by Contractor if agreed to in
writing with Owner. These projects must be pre-approved by and associated costs are the responsibility of the Owner.

22. **VANDALISM**

Contractor shall repair and/or replace, at Owners cost, property owned by Owner or the Owner Representative, whether real or personal, which is lost, or damaged, or destroyed through vandalism. If such vandalism is caused by the affirmative acts or negligence of Contractor or Contractor’s agents, employees, invitees, or licensees, Contractor shall repair and/or replace such property at Contractor cost.

23. **HAZARDOUS SUBSTANCES**

Contractor represents and warrants that the services it will provide, the methods of application it will use, and the products it will use will not violate any federal, state, or local environmental laws, statutes, ordinances, codes, rules, regulations, orders, decrees, or similar authoritative pronouncements. For purposes of this Agreement "Hazardous Substances" shall have the meaning ascribed in and shall include those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq, and the regulations promulgated thereunder and includes oil and oil waste as those terms are defined in the Clean Water Act, 33 U.S.C. §1251 et seq. and the regulations promulgated thereunder, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended from time to time, and shall include any other elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (The "EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state, local or quasi-governmental statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, now existing or at any time hereafter in effect.

24. **RECOVERY OF ATTORNEYS FEES**

Should action be instituted to enforce any of the terms and provisions of the Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees and costs.

25. **UTILITIES**

All utilities shall be provided by Owner and are free of charge to Contractor. Contractor will be responsible for using care in maintaining proper energy management levels in all areas of its control. Owner shall provide for the use of a rubbish dumpster for Contractor use at no cost to Contractor.

26. **ACCESS TO JOB SITE**

Owner shall furnish access to all parts of the Golf Courses where Contractor is required to perform work under the terms of the Agreement.
27. DISPUTE RESOLUTION
Contractor and Owner agree that any dispute relating to this Agreement shall be settled by mediation in accordance with the mediation rules of the American Arbitration Association, as existing where work is performed. The mediator will be appointed in accordance with the American Arbitration Association rules. Contractor and Owner shall pay their own expenses of mediation and one-half (1/2) of the expenses incurred by the mediator or mediators. If the mediator is unable to resolve any dispute the parties may commence a proceeding in an appropriate Court of Law. If Contractor or Owner seek legal recourse to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys’ fees and related litigation costs of whatever nature reasonably and necessarily incurred by the prevailing party in the prosecution and defense of such legal action. In the event of a voluntary or involuntary dismissal by or against Contractor or Owner in any legal action that has been commenced, the other party shall be deemed to be the prevailing party for purposes of this Paragraph.

28. INDEPENDENT CONTRACTOR
Owner and Contractor agree that Contractor is an independent contractor as to all work performed under this Agreement and not an employee, agent, servant or representative of Owner. Contractor shall not hold itself out, nor claim to be acting as a servant, agent, or employee of Owner. Except as otherwise specifically provided herein. Contractor is not authorized to, and shall not make or undertake, any agreement, understanding, waiver or representation on behalf of Owner.

29. NOTICES
Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other, or (iii) sent by facsimile at the facsimile numbers set forth below. All notices personally delivered shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on a date seven (7) days (excluding Sunday and holidays) immediately following date of deposit in the U.S. mail; provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt.

If to Owner:

City of Stockton
Community Services Department
Stockton, CA 95202
Facsimile: (209) 937-8260
Attention: Pamela Sloan, Director
If to Contractor:

ValleyCrest Golf Course Maintenance
24151 Ventura Blvd.
Calabasas, California 91302
Facsimile: 818/224-3110
Attention: Contract Administrator

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice to either party hereto shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either party hereto.

IN WITNESS WHEREOF, the City of Stockton, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. , adopted by the Council of the City of Stockton on , 2010.

ATTEST: KATHERINE GONG MEISSNER
CITY OF STOCKTON, a municipal corporation
City Clerk of the City of Stockton

By: KEVIN O’ROURKE
Interim City Manager

APPROVED AS TO FORM:

LORI WHITTAKER
DEPUTY CITY ATTORNEY

BY: GREGORY A. PIESCHALA
President

VALLEYCREST GOLF COURSE MAINTENANCE, INC.
EXHIBITS
EXHIBITS

Technical Maintenance
Specifications.......................................................... A
Exhibit A Technical Maintenance Specifications

I. PUTTING GREEN MAINTENANCE

A. Mowing

Mowing or rolling or a combination thereof shall be done daily using triplex type greens mowers. Height of cut shall be 3/16". Frequencies and height of cut may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The practice of alternating mowing patterns will be followed and clippings will be collected except following aeration.

B. Aeration

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. This practice shall be carried out with the minimum of interference to play.

C. Grain Control

Vertical cutting shall be scheduled a minimum of four (4) times per year and done at 90 degree angles for full benefit. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

D. Topdressing

Shall be done a minimum of two (2) times per year following aeration using a minimum of 1/8" of material per application. An approved topdressing material similar to the greens construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Excess sand shall be removed.

Spot topdressing may be applied to repair damage from ball marks or any other damage. Light topdressings may be done in conjunction with verticutting.

E. Fertilization

Types of materials and analysis shall be determined from the results of an annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.5 to 1.2 pounds of actual nitrogen per
thousand square feet may be applied per growing month. Typically, a variety of granular slow-release and liquid types of material may be utilized. Greens shall not be closed for fertilization. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

F. Weed Control

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations and Bermuda grass encroachment. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

G. Insect and Disease Control

Greens shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

H. Overseeding

Certified bent grass shall be uniformly seeded a minimum of two (1) time per year during the aeration/topdressing process. Light vertical mowing may be done prior to seeding, and covered with a light topdressing. Mowing heights shall be set at slightly higher cuts for the initial growth period.

I. Watering

The greens shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Irrigation should produce greens that are evenly wet over the total green. Hand watering may be necessary.

J. Additional Green Requirements

Any damage done to greens by any source shall be repaired as soon as possible.

Ball marks shall be repaired prior to mowing.

Damaged cups shall be replaced as soon as possible.
II. TEE AND COLLAR MAINTENANCE

A. Mowing

Mowing shall be two to three (2-3) complete cycles per week with triplex type greens mowers, less often during climatic periods of reduced growth. Height of cut shall be 5/8" but may be modified from time to time as deemed necessary by the golf course superintendent depending on time of year and the amount of play. The width of the collar should be no greater than three (5) feet.

B. Aeration

Shall be done a minimum of two (2) times per year, using conventional hollow tine methods to relieve soil compaction, and to promote a healthier growing environment. Holes shall be a maximum of three inches apart and a minimum of three inches deep. Plugs shall be chopped and returned to the playing surface. This practice shall be carried out with the minimum of interference to play.

C. Thatch Control

Vertical cutting shall be scheduled a minimum of one (1) time per year. This function may be coordinated to compliment the aeration and topdressing schedules. Combing or brushing may also be done.

D. Topdressing

Shall be done a minimum of 2 (two) times per year following aeration using a minimum of 1/4" of material per application. An approved topdressing material, similar to the tee construction sand or USGA approved, shall be applied and brushed or drug into the turf. Application shall be done with an approved topdressing spreader. Spot topdressing may be applied to repair divot damage.

E. Fertilization

Types of material and analysis shall be determined from results of annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 0.25 to 0.75 pounds of actual nitrogen per thousand square feet may be applied per growing month. Typically combinations of granular slow release and liquid type of materials may be utilized. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.
F. Weed Control

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

G. Insect and Disease Control

Tees and collars shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

H. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

I. Overseeding

Tees shall be over seeded one (1) time per year during the aeration process using Perennial Ryegrass at a standard rate. Mowing heights shall be set at higher cuts for the initial growth period.

All divots on tees shall be filled with a topdressing/seed mixture weekly or as needed.

J. Watering

The tees and collars shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapo-transpiration) shall be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

III. FAIRWAY, DRIVING RANGE AND ROUGH MAINTENANCE

A. Mowing

The fairways shall be mowed two (2) times per week at a height of 3/4".

The driving range shall be mowed one (1) time per week at a height of 1 1/2".
Rough shall be mowed one (1) time per week at a height of 1 ½” to 2-1/2”.

Additional resources may need to be used after inclement weather to keep grass at an acceptable height.

B. *Aeration/Vertical Mowing*

Aeration shall be done two (2) times per year, or more often if needed using 5/8" tines penetrating to a depth of at least 3". Spot aeration may be done to relieve compaction.

Vertical mowing is not required except in extraordinary circumstances for disease control or to reduce thatch from stoloniferous weed grasses.

C. *Fertilization*

Types of material and analysis shall be determined from results of the annual soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, 125-250 pounds of actual nitrogen per acre, per growing season, may be applied annually.

D. *Weed Control*

Weed control will be achieved through both pre-emergence and post-emergence chemical applications. These will be made in a timely manner to minimize damage to golf course playability. Every effort will be used to minimize weed infestations. Spot treatments with a contact herbicide shall be performed as needed. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

E. *Insect and Disease Control*

Fairways, driving range and roughs shall be checked daily for signs of pest activity. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of CONTRACTOR.

F. *Turf Maintenance on Fairways, Driving Range and Roughs*

Bare spots shall be seeded or sodded, whichever is most appropriate, a minimum of weekly to insure there are no bare areas on the course.

G. *Litter Control*
Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

H. Watering

The fairways, driving range and roughs shall be watered as necessary to keep the grass in optimal growing condition. At least 80% of E.T. (Evapotranspiration) shall be used as a watering rate. Hand watering, sprinkler adjustment/addition may be necessary.

IV. MAINTENANCE RELATED TO ON COURSE PLAY (Non Horticultural)

A. Cups

Cups shall be changed every day the greens are mowed, less frequently during periods of slow play. During this operation, inspection of the putting surface shall be made, and any ball marks or other damage will be repaired. Practice green cups shall be changed 2-3 times per week.

B. Teeing Ground

Tee markers shall be moved as often as the cups are set on the greens. Litter containers shall be emptied daily. Tee towels shall be changed weekly or as needed. Ball washers shall be checked daily and filled at least twice a week or as needed.

C. Miscellaneous Requirements

Superintendent shall have the responsibility to mark temporary hazards, out of bound areas, and other course conditions as they occur or are required by tournament play.

CONTRACTOR shall be responsible for the maintenance of all tee markers, cups, flags, ball washers, trap rakes, yardage signs and benches on the course. Maintenance shall include repairing, painting, replacing and otherwise keeping these amenities in a good condition that is conducive to player enjoyment of and respect for the course. Repairs shall be done whenever function or appearance is hampered.

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.). Additional litter pick-ups may be necessary after special events.

Golf course restrooms shall be maintained a minimum of two times per day and more often during heavy use. Restrooms shall be cleaned, supplied with adequate paper and free from unpleasant odors.
Graffiti shall be removed as soon as possible after discovery.

Surfaces shall be kept clean at all times; sweeping, cleaning or washing of surfaces shall be done as often as necessary to keep a pleasant appearance.

Inspect, repair and replace minor damage to fencing weekly.

Cart paths shall be maintained in a smooth condition. Repair promptly and remove standing water when discovered.

V. **SAND BUNKER MAINTENANCE**

A. **Raking**

Raking shall be accomplished in its entirety 3-5 days per week to maintain a semi-soft, dry condition of the desired smoothness. Checking and spot raking shall be done daily.

B. **Edging**

Edging shall be every three (3) months, or more frequently if required. Care shall be taken to maintain the design outline of the bunkers to insure the integrity of the bunker shape.

C. **Weed Control**

Weed control shall be accomplished by manual removal, as required. Spot treatments with contact herbicides shall be done as needed.

D. **Sand Depth**

Bunkers shall be randomly checked monthly for depth of sand, and shall be maintained no less than four (4) inches deep on slopes and six (6) inches deep in the bottoms. Additional sand shall be added where needed. (This requirement is based on adequate levels of sand at contract inception).

F. **Litter Control**

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, pine cones, etc.).

VI. **TREES, SHRUB/OTHER LANDSCAPING MAINTENANCE**

( CLUBHOUSE/GOLF COURSE/PARKING LOT)
A. Tree Pruning

Height limitation for tree pruning included within the scope of this agreement is fifteen (15) feet above the ground. Low hanging branches that present a hazard to golf carts or to the golfer shall be removed where practical.

Trees are to be low pruned one (1) time per year in the winter months with the exception of safety related pruning which will be performed as required. Removal of dead wood, debris and unwanted growth may be removed at this time.

Stakes and ties are to be inspected monthly for correct installation and placement. When trees are stable enough and have developed caliper to stand alone, stakes and ties shall be removed. Trees staked (without ties) for protection from golfer damage may remain staked an additional period of time.

B. Tree Basins

A cleared circle 2-4 feet in diameter shall be chemically maintained at the base of trees to reduce competition for nutrients by lawns and ground covers, and to prevent damage from landscape equipment. Stakes or guy wires shall be treated in the same manner as the base of trees described above.

C. Shrub and Flower Care

Trim shrubs to maintain a natural shape as a continuous operation, but not when the plant is in flower. It is not a recommended horticultural practice to shear shrubs. However, if The City of Stockton requests it, we will shear shrubs to the desired shape.

Shrub and flower beds will be kept weed free by the use of pre-emergent, selective herbicides, mulch, and manual weeding.

Spent flowers, leaves, and other landscape debris shall be removed from plant areas daily, or as required.

D. Pest Control

Frequent inspections of all trees and shrubs shall be done. When insect or disease organisms are detected, they shall be brought to the attention of the CLIENT REPRESENTATIVE to discuss appropriate control measures.

E. Ground Cover Care
Edge or prune groundcovers as needed to keep from spreading over walks, curbs, or up walls. Pruning to maintain a natural shape will be a continuous operation.

Keep weed-free at all seasons of the year by the use of pre-emergent, selective herbicides, and manual weeding.

F. *Turf Care*

The mowing of all turf areas shall be no less than once a week. Fertilizer shall be applied at the rate of 4-6 pounds of actual nitrogen per thousand square feet per year, or as needed to maintain health and color.

The edging of all walks and other paved areas will be performed monthly during the active growing season.

G. *Litter and Weed Control*

Paper, grass clippings, cans, and branches shall be removed from the landscape on a daily basis. All parking areas and/or walkways shall be kept clear of debris generated from the maintenance operation.

Weeds in curbs and paved walk joints immediately adjacent to landscaped areas will be removed weekly.

H. *Water and Fertilizer*

Trees, shrubs, ground cover flowers and all other landscape plants shall be watered and fertilized as necessary to provide optimum health.

**VII. IRRIGATION SYSTEM**

A. *Scheduling*

Watering shall be scheduled by the golf superintendent in quantities and frequencies consistent with seasonal requirements, and shall be done at night so as not to interfere with golf play.

B. *Inspection*

Irrigation coverage shall be reviewed daily.

C. *Repair and Replacement*
CONTRACTOR shall be responsible for irrigation repair and/or replacement up to but not exceeding $28,000.00 per year in total.

D. Damage

Any damages to system caused by CONTRACTOR'S equipment or carelessness while carrying out maintenance operations shall be repaired without charge. Where practical, repairs shall be made within one (1) watering period.

Vandalism, excessive damage caused by others, or faulty controllers shall be reported promptly to CLIENT REPRESENTATIVE.

VIII. POTABLE WATER AND SEWER SYSTEM

CONTRACTOR'S responsibility for the potable water system and sewer system shall only be that of minor repairs and maintenance. Items requiring outside service or expertise will be the OWNER'S responsibility or billed as an extra charge.

IX. LAKE WATER AND AQUATIC WEED MANAGEMENT

A. Lakes and Waterways

Lakes and waterways shall be treated for weed and algae infestation by a combination of approved aquatic herbicides and water colorants. Treatments may be applied by CONTRACTOR, licensed sub-CONTRACTOR, or a combination thereof. Physical removal may be necessary to keep lakes aesthetically pleasing.

X. GROUNDS MAINTENANCE OF ADJACENT PREMISES

A. Swenson Park Golf Course - Utility Easement

CONTRACTOR shall mow 2 times per month at 2-1/2", keep free from weeds, fallen tree limbs, debris/litter, maintain irrigation system and apply adequate water to keep turf in optimal growing condition.

B. Swenson Park Golf Course - Five Mile Slough

CONTRACTOR shall remove debris/litter on a regular basis and maintain the aquatic environment through the removal of water hyacinth.
XI. MISCELLANEOUS

A. Weekend and Holiday Schedule

Greens mowing and course set-up shall be done.

B. Practice Range

Move tee markers daily, fill divots with sand/mix, police area, and remove litter.

C. Materials

All maintenance materials unless otherwise specified will be supplied by CONTRACTOR, and shall conform to specifications. These supplies, materials, and equipment shall include, but not be limited to:

All equipment necessary or appropriate for the performance of services under this Agreement, together with all necessary gas, oil, and spare parts for all equipment used by CONTRACTOR will be contractor’s responsibility.

All necessary top dressing, seed, fertilizers, fungicides, insecticides, and herbicides will be contractor’s responsibility.

Tee towels, soap, putting green cups and flags, bunker rakes, tee markers, trash receptacles, and other similar golf course equipment.

Contractor will provide Sand for bunkers to maintain the minimum required depth.

The CONTRACTOR shall be responsible for monitoring water consumption to insure adequate, but not excessive, water use.

D. Accessories

Direction signs, ropes (permanent and temporary), stakes, OB, and hazard stakes shall be maintained on a daily basis. Directional signs, putting green cups, pins, ball washer brushes, cleat brushes, and tee markers (that cannot be refurbished or repaired) shall be replaced no more than once per year without extra cost. Silk screened flags may be replaced two (2) times per year without extra cost. Additional client requested custom accessories not listed above shall be an extra cost, and shall be paid for by NAME OF CLIENT upon authorization.

E. Burrowing Animals, and Insect and Disease Control
CONTRACTOR shall take appropriate action to minimize the effects of burrowing animals, and insect and disease infestations.

F. *Mulched Areas*

Mulched areas shall be edged and kept free of litter (similar to rough area).

XII. **ITEMS NOT INCLUDED**

A. *Acts of God Damage*

Damage to the golf course as a result of acts of God may include, but are not necessarily limited to: removing blown-over trees, broken limbs, and stumps; removing silt or debris deposited by floods; damage from freezing, hurricanes, or other unusual occurrences will be handled on an individual basis as a pre-approved extra cost. Maintenance staff shall make every effort to repair damage, and restore and clean the golf course within the framework of the Agreement, without extra cost.

Specialized equipment, Arborist, and additional labor requested by The City of Stockton will require a pre-approved extra cost.

B. *Irrigation System*

All irrigation system costs exceeding $28,000.00 per year in total shall be an extra cost, and may be contracted by others with The City of Stockton or by the CONTRACTOR.

C. *Tree, Shrub, and Flower Replacement*

The loss of trees, shrubs, or flowers not caused by the CONTRACTOR may be replaced as an extra charge. It shall be the responsibility of CONTRACTOR to bring such needs to the CLIENT REPRESENTATIVE'S attention.

D. *Arborist Work*

Major tree pruning or other Arborist related work shall be an extra cost item requiring prior approval by the CLIENT REPRESENTATIVE. It shall be the responsibility of CONTRACTOR to provide estimates for needed work to the CLIENT REPRESENTATIVE'S attention.

E. *Capital Improvements*
Work performed over and above the normal maintenance provided in the Agreement, such as excessive earth moving, reconstruction of a golf hole, tee, or green construction or reconstruction, brush clearing, and installation of french drains, including materials for the aforementioned work, shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.

F. *Bunker Sand*

Removal of bunker sand and replacing with new sand shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.

G. *Golf Accessories*

Installation or replacement of putting green cups and flags, bunker rakes, tee markers, tee signs, trash receptacles, ball washers, cleat brushes, benches, and other similar golf course equipment over and above the specified annual replacement shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. Any major accessory that has been stolen, damaged, or vandalized shall be replaced, repaired, and/or re-installed as an extra charge. It is the responsibility of the **CONTRACTOR** to bring to the **CLIENT REPRESENTATIVE's** attention any such needs.

H. *Landscaped Areas*

The installation of additional trees, shrubs, vines, and ground cover shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. Deep feeding of trees requiring supplemental fertilization for growth and development will require prior approval by the **CLIENT REPRESENTATIVE**. Class one fine pruning of trees over fifteen (15) feet from the ground shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**. Materials for mulching and installation of annual color shall be an extra cost item requiring prior approval by the **CLIENT REPRESENTATIVE**.