

**DAIRY CREEK GOLF COURSE  
CONCESSION CONTRACT**

THIS CONCESSION CONTRACT ("Contract") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the County of San Luis Obispo, a political subdivision of the State of California, (hereinafter referred to as "County"), and Joel Clay doing business as Golden State Golf Company (hereinafter referred to as "Contractor").

**WHEREAS**, the County has a need for the operation and maintenance of a golf pro shop and food and beverages services at the Dairy Creek Golf Course which meets or exceeds the needs and expectations of the golf patrons and neighboring community; and

**WHEREAS**, Contractor is experienced in providing food and beverage services and operating a golf pro shop; and

**WHEREAS**, pursuant to Government Code section 25536, the Board of Supervisors may enter into concession contracts involving leasing any county-owned, leased, or managed property devoted to or held for ultimate use for park and recreation purposes under the public proposal procedure; and

**WHEREAS**, the County desires to contract with Contractor and Contractor desires to provide services as a golf pro shop operator and a food and beverage operator and commercial development incidental to the County's ownership and management of the recreational facility known as Dairy Creek Golf Course; and

**WHEREAS**, it is appropriate that the following Contract be entered into for the benefit and convenience of the general public and the use of and enjoyment of Dairy Creek Golf Course; and

**WHEREAS**, Contractor is specially trained, experienced, expert and competent to perform golf management and operations as well as food and beverage services;

**NOW THEREFORE**, in consideration of the premises, and of the terms, covenants, and conditions stated herein, the parties mutually agree as follows:

1. **Description of Premises.** The purpose of this Contract is to grant to Contractor the right to provide services of a pro shop and food and beverage operator for Dairy Creek Golf Course ("Premises"). 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 an easement. The County does not grant any interest in land or fixtures at the Premises to the Contractor. Contractor shall not grant, with respect to said Premises, easements, rights-of-way, licenses, or permits.

A vicinity map is provided on Exhibit "A" and the Premises to be authorized for use by Contractor are designated on Exhibit "B" and Exhibit "C" each 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. Contractor shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as set forth herein without prior written consent of the Director.

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 alterations, repairs or additions to the Premises.

3. **Term of Contract.** The term of this Contract shall be nine (9) years, effective when fully executed. Unless otherwise provided, the Contract shall be considered fully executed when: (i) the Office of County Counsel has indicated in writing of its approval of the Contract as to form and legal effect; (ii) the Contract has been signed on behalf of Contractor; and (iii) the Contract has been approved by the County Board of Supervisors, and signed on behalf of the County by the Chairperson of the Board. Termination or amendment of the Contract may be effectuated by the Director of the County Department of Parks and Recreation or designee (hereinafter, the "Director"), without the need for action, approval or ratification of the County Board of Supervisors, however subject to the provisions of paragraphs 7 and 8 below.

4. **Fees.** Pursuant to this Contract, Contractor shall provide to the County the following golf management operations and food and beverage services, at the following rates:

A. **Green Fees.** Contractor shall act on behalf of, and as agent for, the County in the collection of One Hundred Percent (100%) of greens fees (including discount passes), revenue from sales of all golf registration cards, and golf course development surcharge fees, hereinafter collectively referred to as "County Revenue." The County establishes all County Revenue rates and charges. Contractor shall act in a fiduciary capacity and make no personal or organizational use of funds collected that are designated as County Revenue.

B. **Contractor Revenue.** "Contractor Revenue" for purposes of this Contract shall be defined as the sum of (1) one hundred percent (100%) of golf car rental revenue, (2) one hundred percent (100%) of driving range operations revenue, (3) One Hundred Percent (100%) of Pro Shop revenue including merchandise sales, golf club rentals, electric and manual handcart rentals, golf lessons, transaction/reservation charges, and any other income derived from Contractor's operations of the

pro shop at the Premises, and (4) one hundred percent (100%) of restaurant and bar sales at the Premises. All rates charged by Contractor related to the Contractor Revenue, and any subsequent changes thereto, must be approved in advance by the Director.

The terms "County Revenue" and "Contractor Revenue" whenever used in this Contract, are intended and shall mean all monies, property or any other value received by Contractor through the operation of this Contract, without any deduction(s); it being understood, however, that the terms "County Revenue" and "Contractor Revenue" shall not include any sales or excise taxes imposed by any governmental entity. Contractor shall notify the County, in writing and at least one week in advance of such events, of all non-golf related events occurring at the Premises. Distribution of revenue derived from non-golf related events will be determined by the County and Contractor on a case-by-case basis prior to approval of said events. Said events may be subject to, among other requirements, a County issued Use Permit and associated impact fees.

Contractor shall pay County an amount equal to the sum of the hereinafter described percentage of gross receipts. The term "gross receipts" whenever used in this Contract, is intended and shall mean all monies, property or any other thing of value received by Contractor through the operation of said Concession, or from any other business carried on or upon said Premises or any portion thereof, or from any other use of said Premises or any portion thereof by Contractor, without any deduction or deductions; it being understood, however, that the term "gross receipts" shall not include any sales or excise taxes imposed by any governmental entity. Contractor shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

- i. Any error in cash handling by Contractor; or
- ii. Any losses resulting from bad checks received from the consumers or dishonored payment to Contractor by customer or purchaser.

**C. Collection Revenue.** Each month Contractor shall collect all revenue paid by cash and/or check, credit or debits cards. On a bi-monthly basis, (reporting periods as of the 15<sup>th</sup> and the last day of the month) Contractor shall deliver a verified detailed accounting statement of gross revenue and all compensation due for that period and shall simultaneously pay such compensation as are then due and payable. Contractor shall provide said verified detailed accounting statement and compensation due on or before the 15<sup>th</sup> day of the month for the preceding period ending the last day of the previous month and before the last day of the month for the period ending the 15<sup>th</sup> of that same month. This process is to continue each month including the month following termination of

the Contract. Contractor shall deliver said verified detailed accounting statement to the County at County of San Luis Obispo, Department of Parks and Recreation, 1087 Santa Rosa, San Luis Obispo, CA 93408, Attn: Accounts Receivable. On or before the 15<sup>th</sup> of each month, Contractor is required to audit all fee sheet data to ensure 100% compliance with established fee schedules and promotional offerings, forward the pro shop Point of Sale cash register tapes, daily bank deposit receipts and/or information, and detailed accounting of all profit centers to County for the prior month receipts. County and Contractor shall then reconcile the revenues from the prior month end according to subparagraph A and B.

**D. Contractor's Statement.** On or before May 15<sup>th</sup> of each year, Contractor shall prepare and submit to County a written statement showing the total gross receipts, operating costs, and net profit for the prior twelve (12) month calendar year (January thru December) and the rental paid for said twelve (12) month calendar year. This statement shall be reviewed by a third party Certified Public Accountant or enrolled agent, at Contractor's sole expense, prior to submission to the County.

**E. Incentive Payment.** Contractor agrees to increase paid rounds of golf and associated revenues to meet annual calendar year (January 1 – December 31) goals agreed upon by both County and Contractor after the third quarter of each year. Contractor shall realize a 2% minimum increase in annual revenue derived from green fees and surcharges as compared to the previous calendar year. County will provide Contractor with a 10% incentive payment for achieved revenue that exceeds the aforementioned goals (i.e. green fee and surcharge revenue goal of \$1M and actual green fee and surcharge revenue of \$1.1M, then the \$100,000 increase in revenue as compared to the goal would result in a Contractor incentive payment of \$10,000). Contractor shall be responsible for paying all costs and expenses of the 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.

**F. Credit Card Fees.** Contractor and County shall jointly pay credit card transaction fees for Point of Sale activities related to the pro shop operations, as set forth hereinafter. Contractor shall pay one hundred percent (100%) off the credit card fees associated with pro shop sales. County shall pay Contractor fifteen hundred dollars (\$1,500) each month to account for the amount of credit card transactions related to County Revenue collected through the pro shop Point of Sale. Contractor shall be solely responsible for all credit card fees for the restaurant and food and

beverage activity and all other profit centers other than the pro shop that may be implemented in the future. County shall submit payment for credit card fees on the 15<sup>th</sup> day of each month.

4. **Rent.** Contractor shall pay an annual rental payment to the County of \$75,000, paid in twelve monthly installments of \$6,250 each, and an additional percentage payment of five percent (5%) of Contractor's monthly Contractor Revenue (collectively, the "Annual Rent"). In the event that Annual Total Rounds (as defined hereinafter) fail to exceed 44,000 rounds, the Annual Rent payment will be reduced consistent with the chart in Exhibit F and the 5% portion of the rent will remain unchanged. In the event that Annual Total Rounds exceed 45,000 rounds, the annual rental payment of \$75,000 will remain unchanged and the percentage portion of the rent will be raised to 5.5%. Annual Total Rounds include paid rounds, comp rounds, donated rounds, and all other rounds of golf played. Annual Total Rounds are calculated based upon a calendar year and the rent will be based upon the rounds for that entire calendar year. Contractor may reduce or increase monthly payments based upon a projection of annual paid rounds only with prior written consent of the Director. If Annual Total Rounds exceeds monthly rental projections, then Contractor will be required to make up the difference at end of the calendar year. Contractor shall pay the monthly installments of the Annual Rent to the County no later than the fifteenth day of the second calendar month after the term of this Contract and shall continue each and every month including the month following termination of the Contract. In the event this Contract is terminated for cause, Contractor shall pay 5% of that month's Contractor Revenue and the remainder of the Annual Rent payment shall be made in full to County.

5. **Use of Premises and Scope of Services.** Contractor acknowledges that the Dairy Creek Golf Course is a public recreation facility located within a public park, and agrees to operate said course subject to all the terms and conditions of this Contract, including the following:

A. **No Discrimination.** Contractor agrees to open the golf course 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. **Collaboration.** Contractor agrees to operate the Dairy Creek Golf Course as a part of County golf program consisting of two other golf courses. Contractor agrees to promote all three golf courses in a collaborative spirit and effort by cooperating with the County and other County golf course contractors. These efforts shall include, but are not limited to cost sharing related to marketing and promotion, strategic planning, special event assistance, player development programs, tee sheet maximization, and player loyalty programs.

**C. Staff.** Contractor shall provide trained professional staff for effective and efficient operation of the services provided under this Contract and Contractor's obligations of the Contract. Staff must support, through words and actions, the decisions made jointly and individually by the County. Contractor must employ, at a minimum, one Class A Member in good standing with the Professional Golf Association or the Ladies Professional Golf Association. The pro shop must be staffed with a minimum of two employees at all times. Contractor is encouraged to have staff members maintain current certification in Adult Cardiopulmonary Resuscitation ("CPR"), Automated External Defibrillator (AED), and First Aid.

**D. Pro Shop.** 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. Pro shop inventory levels must maintain a minimum value of \$20,000. Minimum value to be determined by Contractor's costs of goods sold. Merchandise inventory shall turn over three (3) times per calendar year at a minimum. No imitation, adulterated, or misbranded articles shall be sold or kept for sale by Contractor. All goods sold or services rendered or performed under this Contract and offered for sale shall be subject to the approval of the Director, who may direct that any such items be or not be offered for sale. With the written approval of the Director, prices for pro shop merchandise shall be set by Contractor, provided that such prices are within the range of prices in the community for the same or similar operations at similar concession establishments and/or consistent with the cost of providing services to the public.

**E. Golf Car Fleet.** Contractor shall be solely responsible for providing and maintaining, renting, staging, and daily detailing of golf car fleet, consisting of a minimum of 60 electric cars. 95% of the fleet must be fully operational and able to provide a minimum of 18 holes of service per day at all times. Individual cars within the fleet shall not exceed four years (4) years in age at any time during the Contract unless otherwise approved in writing by the Director. Contractor will be responsible for the preventive maintenance and repairs of the golf car fleet in accordance with golf car manufacturers' electric golf car maintenance schedule. Contractor shall not rent golf cars on such days as the Director determines that the use of such cars will damage the golf course turf.

**F. Golf Course Driving Range.** Contractor shall operate the golf course driving range and practice areas. This operation includes the provision, management, maintenance, and replacement of driving range practice balls. Driving range practice balls shall be replaced at a minimum of once per year or more often as directed by the Director. The Contractor shall provide, maintain, and

replace as necessary, driving range equipment which includes range ball baskets (all sizes), range ball picker, driving range mats, range dividers, bag stands, club cleaners, yardage signs, target green flags, and utility vehicle for driving range. County shall provide daily and weekly routine maintenance of the driving range, driving range tee, and practice areas.

**G. Professional Golf Lessons.** Contractor shall provide a minimum of 200 group or individual professional golf lessons annually. Contractor shall organize, implement, and supervise player development programs consisting of junior, adult, and "new golfer" lessons. Contractor agrees to support and provide access to "The First Tee" programming if available at the Dairy Creek Golf Course.

**H. Pest Management Services.** Contractor shall be solely responsible for providing complete pest management services, janitorial services, and furnishing of all janitorial supplies related to the Premises, including, without limitation, the pro shop areas, offices, dining rooms, restaurant, kitchen and storage, outdoor patios, restrooms, cart storage, cart staging areas, outdoor storage areas, loading dock, and garbage areas. Contractor shall daily inspect the parking lot and area surrounding the pro shop to monitor cleanliness and trash removal.

**I. Alarm System.** Contractor shall be solely responsible for the establishment and maintenance of an alarm system for the Premises. Contractor is responsible for all alarm monitoring services.

**J. Utilities.** The Contractor shall provide and pay for all telephone, gas, electric, and other utility services to operate the pro shop Premises and restaurant and bar, all credit card machines, fax lines, and pro shop offices, as well as for the golf car storage area. Contractor shall not waste electricity or water and agrees to cooperate fully with County to assure the most effective and economical use of utility services.

**K. Zero Waste Business Model.** Contractor shall adopt a Zero Waste business model for the Premises. Only food service products that reduce the contribution of waste that results in a landfill may be utilized at the Premises. All disposable cups, plates, and service ware must be compostable and/or recyclable. Contractor agrees that double wax sided and Styrofoam materials are prohibited from use at the Premises. All staff shall be trained in working toward a goal of reducing the overall waste of resources including, but not limited to electricity, paper products, water, etc.

**L. Reservation System.** Contractor shall maintain, repair, and replace County provided computerized reservation system hardware. County will provide and maintain reservation software. Ownership of this equipment and software shall remain with the County throughout the term of this Contract. The County is responsible for any upgrades to the software. Contractor shall be responsible for booking reservations and collecting customer database information. At the termination of the Contract, Contractor agrees to surrender the reservations system, all current and future reservations, associated deposits, and all database information as this data is and remains property of the County. Database information collection shall remain at 90% correctness or higher. Contractor agrees to increase unique database information by 2% annually and to audit database information monthly to eliminate duplicate information. Database information may never be sold or used for any other purposes other than directly promoting the County golf program.

**M. Intellectual Property.** Contractor shall create, maintain, and update all websites, social media, and other electronic media and marketing outlets on behalf of the County related to the Premises. Contractor and/or County may also create new logos, marketing slogans, branding efforts, etc. Upon termination of this Contract all intellectual property will become and remain property of the County at no cost or expense.

**N. 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 "D" (Significant Value/Fixed Assets Inventory). Contractor shall accept the equipment inventoried in Exhibit "D" 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 Significant Value/Fixed Assets Inventory. All inventory listed on Exhibit "D" is exempt from Paragraph 9 Maintenance/Repairs below, and Contractor shall be solely responsible for any and all costs associated with repairs, maintenance, and replacement of the Significant Value/Fixed Assets Inventory. County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense in improving and/or changing the condition of the Significant Value/Fixed Assets Inventory listed on Exhibit "D".

Contractor shall use the Significant Value/Fixed Assets Inventory at the Premises only during the term of this Contract, without payment to the 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 promptly replace any equipment, as detailed in Exhibit "D", which is stolen, lost, damaged, or worn beyond repair or useful life, with equipment of equal or greater quality and/or type. Upon said 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 "D" 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 "D" shall remain vested in County throughout the term of this Contract. The parties shall update the Significant Value/Fixed Assets Inventory list (Exhibit "D"), from time to time and as necessary, to reflect the current status of said inventory.

**O. Marketing.** All outside marketing efforts are for the benefit of County and shall be conducted in County's best interest to promote Dairy Creek Golf Course as well as the other golf courses within the County Golf Program. County has ultimate, sole discretion over all marketing matters of Contractor relating to Dairy Creek Golf Course. Contractor and County agree that marketing, advertising, and promotions are key and critical components to the economic success of the Golf Program. Contractor shall provide an annual marketing plan with a budget financed by Contractor that is equal to or greater than two percent (2%) of the previous calendar years' gross Contractor Revenue. All marketing material shall be submitted and approved by County prior to utilization. The marketing plan to be implemented on January 1 shall be submitted by the fifteenth of October of the previous year. (Jan. 1, 2016 marketing plan submitted no later than Oct. 15, 2015) Contractor shall submit quarterly written marketing reports to County on the 15<sup>th</sup> of January, April, July, and October of each year. Reports shall contain a description of all marketing efforts from the previous quarter, the expenses and results of stated efforts, and plans for future quarter(s) complete with costs, goals, and expected outcome.

**P. Hours of Operation.** Contractor shall provide pro shop and driving range services to the golfing public seven (7) days per week starting no later than 6:00 a.m. and continuing until golfers have left the Premises. Starting times are to be reserved in a manner established by the County and may be modified to suit seasonal influences. The driving range shall close early one day per week to allow for a complete picking of range balls prior to turf maintenance the following day. Food and beverage services must be available to the golfing public beginning at 7 a.m. seven (7)

days a week. The bar shall remain open until at least one (1) hour prior to sunset, while the grill may close three (3) hours prior to sunset. Contractor shall post the hours of operation at the Premises in a location visible to the public, and must be open for business during the hours posted. Services and hours of operation may not be changed without the prior written approval of the Director. Contractor shall be responsible for all activity on the golf course including the enforcement of such rules and regulations as the County may adopt relating to the conduct of patrons.

**Q. Food and Beverages.** Contractor shall offer food and beverage service, including alcoholic beverages, to the golfing and general public at the Premises. Contractor must obtain a full service liquor license valid for San Luis Obispo County within 6-months of award of this Contract. This full service license must be maintained and in effect throughout the entire Contract period. Sale of alcoholic beverages must comply with the rules and regulations of the Alcoholic Beverage Control Board during the entire term of this Contract.

**R. Marshalls/Starters.** Contractor shall be solely responsible for all aspects (including recruitment and supervision) of Marshal and Starter program and of all activity on the golf course relating to individuals at Dairy Creek Golf Course. At a minimum, marshals and starters shall address safety, customer service, course etiquette, and verification of paid fees. County shall approve all new marshals and starters prior to the commencement of their volunteer services.

**S. Television.** Contractor shall install/provide 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 or expiration 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.

**T. Customer Surveys.** Contractor agrees to administer County provided customer satisfaction surveys and provide County with the results. Contractor shall conduct a customer satisfaction survey no fewer than two times per year. Customer service satisfaction levels directly related to the quality of services provided by the Contractor must be maintained at a minimum of 80%. If three consecutive surveys result in a customer service satisfaction below this minimum level, the County may terminate this Contract for cause.

**U. Other Operations.** Contractor shall not have the right to operate and/or promote any other type of business, other than golf related business, from Dairy Creek Golf Course without prior

written consent from the Director. Contractor may not operate any other non-County golf related businesses within the County during the term of this Contract and shall agree to conduct any and all golf related business in such a way so as not to create a conflict of interest with other County owned and/or operated golf course(s).

6. **Termination of Contract for Convenience of Either Party.** Either party may terminate this Contract at any time by giving to the other party 12-months advance written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

7. **Termination of Contract for Cause.** County shall have the right to terminate this Contract in its entirety and all rights ensuring therefrom if any one or more of the following events occurs: (a) Contractor fails to perform Contractor's duties under this Contract to the satisfaction of the County, (b) Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, (c) Contractor fails to keep, perform or observe any promise, covenant or condition set forth in this Contract, (d) Contractor violates any of the terms or provisions of this Contract, (e) Contractor assigns, transfers, and/or passes its interest under this Contract to any other person, firm or corporation without the written consent of the Director, (f) Contractor becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization or readjustment of its debts under the federal bankruptcy laws, or is adjudged bankrupt by an order or decree of court. In the event one or more of the above events occurs, County shall have the right to terminate this Contract for cause by giving thirty days advance written notice to the Contractor. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. If Contractor shall cease its operations under this Contract for causes other than the destruction of the Premises, either with or without legal process, on giving 10-days' written notice of the County's 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 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.

8. **Inspections.** County staff will perform quarterly (or more frequently as needed) inspections of the Premises to ensure Contractor's compliance with the Contract terms, which may or may not involve Point of Sale (POS) auditing procedures. Contractor agrees to perform repairs and maintenance to the

Premises as required and specified by the County as a result of facility inspections. Evaluations of compliance with the terms of this Contract, including facility inspections, may be re-evaluated within 30 calendar days. The Contract may be terminated for cause after three consecutive evaluations below satisfactory.

**9. Maintenance of Premises.** Contractor agrees to comply with and perform the facility maintenance schedule, as provided in "Exhibit E." Contractor shall remedy without delay any defective, dangerous or unsanitary conditions at the Premises. Contractor expressly agrees at all times during the term of this Contract, at Contractor's own cost and expense, to maintain and operate the Dairy Creek Golf Course, and areas adjacent to the golf course, 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. Contractor agrees to maintain any and all Premises, as outlined in Exhibit "B" and Exhibit "C", including specialized services necessary for the maintenance, repair, and servicing of the restaurant equipment such as range hoods, grease interceptors, and fire extinguishers, in good order and repair, at his own cost and expense, during the entire term of this Contract.

Contractor shall be solely responsible for the first Fifteen Hundred Dollars (\$1,500) in "each instance" of maintenance and repair costs at the Premises including electrical, plumbing, heating and air conditioning systems, sound systems, walls, doors, exterior building maintenance, roof, and shall not at any time, commit or suffer any waste, neglect, nuisance, or unlawful act thereon. County shall be responsible for any amount in excess of Fifteen Hundred Dollars (\$1,500) in "each instance" of the maintenance and repair cost items listed above. All other repairs and maintenance are the responsibility of the Contractor, and shall be done by a licensed contractor or sub-contractor, where required by law. Contractor shall submit all maintenance or repair quotes to the Director, for review and written approval prior to any repair or maintenance work being performed at the Premises. 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 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 who are physically able to handle their duties and must be promptly replaced when failing in their duties. Contractor shall, at all times and at Contractor's own expense, do all

things reasonably necessary to protect the Premises. 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.

**10. Improvements.** All modifications, alterations, or improvements to the Premises exceeding Five Thousand Dollars (\$5,000) shall require the Director's prior written approval. The Contractor shall submit an improvement plan to the Director for approval at least sixty (60) days in advance of the initiation of any such projects, and shall obtain any and all necessary permits and hire such licensed contractors as are necessary to perform the improvements, if applicable. Said improvements shall be done in compliance with all applicable laws and regulations, and in a good and workmanlike manner. Contractor shall retain ownership of approved capital improvements during the term of this Contract. At the expiration or earlier termination of this Contract, all alterations, modifications, or improvements to the Premises shall, absent any written agreement between the County and Contractor, or unless County otherwise elects, become the property of County free and clear of any claims or liens, and without any compensation to Contractor.

**11. Assignment of Contract.** Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor may not assign, transfer, delegate or sublet any interest in this Contract without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County's prior written consent 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 golf facility substantially the same as the business operated by the Contractor on 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 contractor's personnel competent to inventory, merchandise, market, and operate the golf facility and business being conducted on the premises. The County shall not act unreasonably toward the Contractors' efforts to find a suitable replacement.

County may at its option sell, add, 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.

**12. Covenant.** 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. All duties and obligations of the parties created hereunder

are performable in San Luis Obispo County and such 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.

13. **Enforceability.** If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

14. **Independent Contractor Status.** Contractor shall, during the entire term of the Contract, be construed to be an independent Contractor and nothing in this Contract is intended or shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Contract; provided that the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor understands and agrees that Contractor's personnel are not and will not be eligible for membership in or any benefits from any County group plan for hospital, surgical or medical insurance or for membership in any County retirement program or for paid vacation, paid sick leave, or other leave, with or without pay or for any other benefit which accrues to a County employee.

15. **Warranty of Contractor.** Contractor warrants that Contractor is certified and licensed, if required, under the laws and regulations to provide the services under this Contract. Contractor further agrees that it shall keep in full force and effect, during the entire term of this Contract, all permits, registrations, and licenses, if required by law or by this Contract, to accomplish the services set forth. If Contractor is a corporation or limited liability company, Contractor represents and warrants that it is and will remain, throughout the term of this Contract, either a duly organized, validity existing California corporation or limited liability company in good standing under the laws of the State of California (including, without limitation, in active and good standing with the Secretary of State and Franchise Tax Board), or a duly organized, validly existing foreign corporation or limited liability company in good standing in the state of incorporation or organization and have an agent for service of process within California.

16. **Closure.** County does not provide any guarantee regarding the availability of water used for irrigation purposes at the Dairy Creek Golf Course. At any time, should the availability of water for irrigation decrease or cease to be available or an occurrence such as war, armed conflict, public emergency, public nuisance, calamity, fire, flood, drought, earthquake, flood, act of God, strike, terrorism, or similar act or other event which necessitates the closing of 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. Any delay or failure in the performance of either party hereunder shall be excused if and to the extent caused by the occurrence of a force majeure.

**17. Quality of Service and Control of Rates and Pricing.** A competent employee of Contractor shall be on the Premises at all times while the Premises are open and in operation. Contractor agrees that Contractor shall and will furnish and maintain a first class standard of service. For the purposes of this Contract, "First Class" shall have the following meaning: *"Possessing a welcoming and friendly demeanor and a high affinity for detail as it pertains to organization, customer service, cleanliness, and the observance of rules, policies, and laws."* 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 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 reasonably 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.

**18. Indemnification.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the County, its officers, agents, employees and volunteers from all claims, demands, damages, costs, expenses (including attorney's fees and costs of litigation), judgments or liabilities of every nature arising out of or in connection with Contractor's performance or attempted performance of any obligation or duty provided for or relating to this Contract, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

**19. 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 Contractor 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:

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

- A. Commercial General Liability** 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.
- B. Automobile Liability** ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- C. Workers' Compensation** 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

**OTHER INSURANCE Provisions**

**The insurance policies are to contain, or be endorsed to contain, the following provisions:**

***Additional Insured Status***

The commercial general liability policies shall name the "County of San Luis Obispo, its officers, employees, and agents" as additional insured. 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 insured will be called upon to contribute to a loss hereunder.

***Primary Coverage***

For any claims related to this Contract, the **Contractor's insurance coverage shall be primary** insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

#### ***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the County.

#### ***Failure to Maintain Insurance***

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

#### ***Waiver of Subrogation***

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

#### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

#### ***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the Contract of work**

3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of Contract work.

**Separation of Insured's**

*All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insured's provision with no insured versus insured exclusions or limitations.*

**Verification of Coverage**

Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

San Luis Obispo County  
Department of Parks and Recreation  
1087 Santa Rosa  
San Luis Obispo, CA 93408  
Attention: Director

**20. Records.** Contractor shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to County upon request. Contractor shall assure the confidentiality of any records that are required by law to be so maintained. Contractor shall prepare and forward such additional or supplementary records as County may reasonably request.

**21. Accounting.** Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the Auditor-Controller Contract Accounting and Administration Handbook, (Handbook) which contains the minimum required procedures and controls that must employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this Contract, unless otherwise agreed upon in writing by County. The Handbook is available at

<http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, and San Luis Obispo, California, 93408.

Contractor shall make accounting records and supporting documentation available on demand to the County for inspection and audit. Disallowed costs shall be repaid to the County. The County may require having the Contractor's accounting records audited, at Contractor's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

**22. Audit Rights.** Pursuant to Government Code section 8546.7, every Contract involving the expenditure of public funds in excess of \$10,000 is subject to examination and audit of the State auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the Contract. Contractor shall permit the State Auditor to have access to any pertinent books, documents, papers and records for the purpose of said audit. County shall advise Contractor if it becomes aware of such audit at least fourteen (14) days prior to the commencement of the audit. All payments made under this Contract shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. This provision is in addition to any other inspection and access rights set forth in this Contract.

**23. Copyright.** Any reports, maps, documents or other materials such as internet domain names, websites, social media names and accounts, social networking platforms sites produced in whole or part under this Contract shall be the property of the County and none shall be subject to an application for copyright by or on behalf of Contractor.

**24. Time is of the Essence.** Time is of the essence in the delivery of the goods and services by Contractor under this Contract. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach and shall not constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County

**25. 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. Contractor agrees to uphold and follow all County Policies and Procedures pertaining to the operation of County Parks and Golf Courses. County policy is subject to revision at County discretion.

26. **Notices.** Any notice required to be given pursuant to the terms and provisions of this Contract shall be in writing and shall be sent, with postage prepaid, in the United States mail or delivered in person to the County at:

County of San Luis Obispo  
Department of Parks and Recreation  
1087 Santa Rosa  
San Luis Obispo, CA 93408  
Attn: Golf Superintendent

and to the Contractor at:

Golden State Golf Company  
Attn: Joel Clay  
10,000 El Bordo Road  
Atascadero, CA 93422

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

28. **Contractor Right to Contract for Third Party Services.** County shall permit Contractor to Contract for specialized services, at Contractor's sole cost, so long as the Director approves any specialized service in advance. Further, 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/her/its insurance policy, of which said policy shall be in conformance with County insurance requirements. 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, and 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 the Premises to perform specialized services.

29. **Performance Bond.** At the time of execution of the Contract, the Contractor shall furnish a faithful performance bond (to ensure performance under this Contract) surety in the sum of \$50,000 (or a

cashier's check, or a bank letter of credit, or certificate of deposit in name of County with interest payable to Contractor, in lieu thereof) to be in force during the term of this Contract.

30. **Facility Maintenance Bond.** At the time of execution of this Contract, Contractor shall furnish a faithful maintenance bond surety in the sum of \$4,500 (or a cashier's check, or bank letter of credit, or certificate of deposit in the name of County with interest payable to Contractor, in lieu thereof) to be in force during term of this Contract. If County is required to utilize this bond, the Contractor shall replenish the bond to full amount within 30 days.

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 shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasipublic 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 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. **Discrimination.** Contractor and all Contractor's employees have a Contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law under Government Code section 11135, and at all times to comply with and ensure that all persons performing this Contract comply with an appropriate standard of conduct. Discrimination against any person because any characteristic

listed or defined in Section 11135 of the Government Code is expressly prohibited. Contractor or any of Contractor's employees who violate said discriminatory 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.

34. **Americans with Disabilities Act.** With the exception of improvements outlined in Section 10, County shall be responsible for alterations necessary to comply with the Americans with Disabilities Act, the standards created under the ADA (2010 ADA Standards for Accessible Design) as currently enacted and in accordance with applicable laws.

35. **Entire Agreement and Modification.** This Contract supersedes all previous Contracts and constitutes the entire understanding of the parties hereto relating to the Premises. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in this Contract and no others.

36. **Smoking.** Entire indoor portion of all the buildings 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.

37. **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 of 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 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.

**38. 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 Contract 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.

**39. Surrender of Premises.** Upon the expiration or termination of this Contract, Contractor shall quit and surrender the 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.

**40. Storm Water Pollution Prevention Plan.** Contractor shall adhere to the requirements of the permit issued to the County by the Regional Water Quality Control Board (RWQCB) that governs stormwater and non-stormwater discharges. Activities performed on the Premises shall conform to the permit, and Contractor shall adhere to Best Management Practices (BMPs) or to future BMPs required by the RWQCB. Contractor shall allow County to inspect the Premises to verify compliance with BMPs and will cooperate with County to fulfill the reporting requirements of the RWQCB.

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

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal  
County Counsel

By: *Thomas Martin*  
Deputy County Counsel

Date: 8/19/15

COUNTY OF SAN LUIS OBISPO

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

Approved by the Board of Supervisors this on  
\_\_\_\_\_, 20\_\_

ATTEST:

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

CONTRACTOR:

*Geel Clay*

Title: owner Golden state golf company

Date: 8-20-2015