



## City of Needles, California Request for City Council Action

☒ CITY COUNCIL ☐ NPUA ☐ RDA

☒ Regular ☐ Special

**Meeting Date:** August 8, 2023

**Title:** City Council Resolution No. 2023-46  
A Resolution of the City Council of the City of Needles Approving an Amendment to Resolution No. 2021-57 Extending the Professional Services Agreement with Touchstone Golf, LLC for a Term of 3 Years in the amount not to exceed the current management fee of \$52,000 Per Year Plus Incentives

**Background:** On September 8, 2020, the City Council awarded the RFP Proposal for Golf Course Management Services to Touchstone Golf, LLC. Touchstone assumed management oversight of the Rivers Edge Golf Course Pro Shop for a yearly management fee of \$52,000 (Attached Exhibit A).

Touchstone Golf, LLC has a reputation as one of the country's preeminent firms specializing in golf course management and advisory services. Touchstone Golf also has experience managing golf courses in the local market providing services to both the Mojave Resort Golf Club and Huukan Golf Club.

On September 14, 2021, the City Council amended the Professional Services Agreement with Touchstone Golf, LLC to include management and operations services of the golf course maintenance (Attached Exhibit B).

Touchstone's expertise with golf course maintenance and projects is extensive. Clients include the City of Burbank, City of Oakland, The Presidio Trust (U.S. Government). Combined with the City's experience the golf course will continue to improve leading to increased rounds of golf and loyalty.

Hiring Touchstone Golf, LCC has created a better experience for our golfers and improved the City's financial position. Since brining Touchstone onboard, they have:

- Increased revenue over 20% during the 2022-23 Season. (North of \$110,000).
- Increased Annual Rounds of Golf by 4,000 during 2022-23 Season.
- Decreased General Fund subsidy by 20%
- Improved the Golf Course conditions from tee to green. Improved turf coverage and greens playing conditions.

**Fiscal Impact:** An annual base fee of \$52,000 in addition to a 20% incentive fee for the improvement in Net Operating Income Annually to be funded by the Golf Course Budget and General Fund.

Finance Department

A16

**Recommendation:** Approve Resolution No 2023-46 Approving an Amendment to Resolution No. 2021-57 Extending the Professional Services Agreement with Touchstone Golf, LLC for a Term of 3 Years in the amount not to exceed the current management fee of \$52,000 Per Year Plus Incentives

**Submitted By:** Patrick Martinez, Assistant City Manager, Development Services

**City Management Review:**

*Patrick Martinez*

**Date:** 8/21/2023

Approved: ☐

Not Approved: ☐

Tabled: ☐

Other: ☐

Agenda Item: 16

**RESOLUTION NO. 2023-46**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEEDLES  
APPROVING AN AMENDMENT TO RESOLUTION NO. 2021-57 EXTENDING THE  
PROFESSIONAL SERVICES AGREEMENT WITH TOUCHSTONE GOLF, LLC FOR  
A TERM OF 3 YEARS IN THE AMOUNT NOT TO EXCEED THE CURRENT  
MANAGEMENT FEE OF \$52,000 PER YEAR PLUS INCENTIVES**

**WHEREAS**, On September 8, 2020, the City Council awarded the Request for Proposal for Golf Course Management Services to Touchstone Golf, LLC. Touchstone assumed management oversight of the Rivers Edge Golf Course Pro Shop; and

**WHEREAS**, On September 14, 2021, the City Council amended the Professional Services Agreement with Touchstone Golf, LLC to include management and operations services of the golf course maintenance.

**WHEREAS**, Touchstone Golf, LLC has a reputation as one of the country's preeminent firms specializing in golf course management and advisory services; and

**WHEREAS**, Touchstone Golf also has experience managing golf courses in the local market providing services to both the Mojave Resort Golf Club and Huukan Golf Club; and

**WHEREAS**, Hiring Touchstone Golf, LLC has created a better experience for our golfers and improved the City's financial position.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEEDLES AS FOLLOWS:**

Section 1. Amend Resolution 2021-57 by extending the professional services agreement with Touchstone Golf, LLC for a term of 3 years in the amount not to exceed the current management fee of \$52,000 per year plus incentives.

Section 2. The Mayor and City Manager are hereby authorized and directed to execute an amendment to the contract with the Consultant for the Rivers Edge Golf Course Maintenance Services.

Section 3. This resolution as now adopted shall be in full force and binding effect upon the City of Needles, CA.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Needles, California, held on the 8<sup>th</sup> day of August, 2023, by the following roll call vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Mayor

Approved as to form:

(Seal) Attest: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

**SECOND AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT  
CONSULTANT SERVICES**

This Second Amendment to Professional Services Agreement Consultant Services is made and entered into as of August 8, 2023, by and between the CITY OF NEEDLES, a California Charter City, (hereinafter referred to as the "City") and Touchstone Golf, LLC, a Delaware limited liability company (hereinafter referred to as "Consultant").

**RECITALS**

A. City and Consultant executed that certain Professional Services Agreement dated September 23, 2020 whereby Consultant provides certain golf course management and operation services with a Golf Pro and assistants, as provided therein ("Services"), as amended by the First Amendment to Professional Services Agreement dated September 14, 2021 (collectively the "Agreement").

B. City and Consultant wish to amend the Agreement which is currently set to expire on September 30, 2023 for an additional period of three years.

**AMENDMENT**

**1. Section 3.1.2 is hereby amended to read as follows:**

Subject to Section 3.6, the Agreement shall remain in effect until the expiration of the term on September 30, 2026.

All other terms and conditions of the Agreement shall remain in full force and effect subject to this Amendment. In the event of a conflict between the terms of this Amendment and the Agreement, this Amendment shall prevail.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the date written above.

**City of Needles**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Touchstone Golf, LLC**

\_\_\_\_\_

**By: Stephen T Harker**

**Its: Chief Executive Officer**

**Date:** \_\_\_\_\_

**CITY OF NEEDLES  
PROFESSIONAL SERVICES AGREEMENT  
CONSULTANT SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **September 23, 2020**, by and between the **CITY OF NEEDLES**, a **California Charter City**, (hereinafter referred to as the “City”) and Touchstone Golf, LLC, a Delaware limited liability company (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional consulting services to the City as represented in the Request for Proposal.

**2.2 Project.**

To serve as the professional firm to assist the City with management oversight of the operation of the City of Needles Rivers Edge Golf Course Pro Shop (the “Golf Course Facility”), including but not limited to those Services set forth in Exhibit A.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 Professional Services. Consultant agrees to perform services and serve as Consultant (“Services”), including but not limited to those Services set forth in Exhibit B. All Services shall be subject to, and performed by Consultant in accordance with this Agreement, any exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. Subject to Section 3.6, this Agreement shall become effective when executed and shall remain in effect until the expiration of the term on September 30, 2023.

### **3.2 Responsibilities of Consultant.**

- 3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or by its employees under Consultant's supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for other clients during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall determine its own work hours and schedule; provide its own equipment; maintain its own offices; provide its own vehicles; insurance; cell phones and office phones; and consultant shall be solely responsible for managing and supervising its personnel and employees. Consultant shall further be responsible for all reports and obligations, including, but not limited to: social security taxes, income tax withholding, payroll taxes, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding the foregoing, City acknowledges that all costs associated with the operation of the Golf Course Facility shall be the responsibility of City as provided in this Agreement. The Consultant will be paid directly by the City. The Consultant will comply with Chapter 8 of the City Code and the purchasing policy referred to in Exhibit C.
- 3.2.2 Collection of Revenues. Consultant shall collect all revenues of the Pro Shop daily and the Consultant will submit all such revenues to the City using the City approved form on a daily basis (i.e. green fees, annual passes, merchandise sales, property rentals and leases). A POS system using Golf Business Solutions and a Credit Card Terminal will be provided by the City.
- 3.2.3 Project Commencement. Consultant and City acknowledge and agree that any requested Project shall commence upon approval by both parties.
- 3.2.4 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform

the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct any material errors or omissions which are caused by the Consultant's failure to comply with the applicable standard of care. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of a Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-assigned to perform any Services to City.

3.2.5 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of a Project or Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Project or the Services. If the Consultant performs any work contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees and agents harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations. Notwithstanding the foregoing, as between City and Consultant only City assumes all risk and liability associated with Americans with Disabilities Act of 1990 associated with the Golf Course Facility which are not created by Consultant.

3.2.6 Qualification and License. All employees and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed in California to practice in their respective professions.

3.2.7 Insurance.

3.2.7.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City

that the subcontractor has secured all insurance required under this section.

3.2.7.2 Minimum Requirements. Consultant shall procure and maintain for the duration of the Agreement the following types and limits of insurance. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement..

- (A) Minimum Scope of Insurance. Coverage shall be at least as broad as the following: (1) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (2) Consultant shall comply with California requirements for worker's compensation and employer's liability insurance and shall not be insured under City's policy; (3) *Employment Practices Liability* covering claims of wrongful termination, discrimination, harassment, retaliation, and other wrongful acts arising from the employment process; and (4) *Crime Insurance / Fidelity Bond* covering losses due to theft, embezzlement, fraud, and other crimes. Consultant will not be covered under the City's workers compensation coverage as Consultant is not a City employee and Consultant has agreed to this. Consultant shall obtain workers' compensation insurance if, at any time, it hires an employee.
- (B) Minimum Limits of Insurance. (1) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (2) *Workers' Compensation*: Statutory limits and Employer's Liability \$1,000,000 per accident or disease; (3) *Employment Practices Liability*: \$1,000,000 per claim; and (4) *Crime Insurance / Fidelity Bond*: \$1,000,000 per occurrence.
- (C) Professional Errors and Omissions. Consultant shall maintain professional errors and omissions insurance in the amount of \$1 million per occurrence.

3.2.7.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

- (A) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall



be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be in excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(C) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice, except 10 days for non-payment of premium, by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers per terms and conditions of the policy"

3.2.7.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers per terms and conditions of the policy

3.2.7.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the

Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses. -

3.2.7.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

3.2.7.7 Verification of Coverage. Consultant shall furnish the City Manager with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City Manager before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.7.8 Indemnification. Within the limits of Consultant's insurance coverage required under this Agreement, Consultant agrees to defend and indemnify City, its officials, officers, employees, consultants, contractors, directors, agents, and volunteers from any claim that arises out of, is caused by or allegedly caused by the negligence, gross negligence or acts of Consultant or his employees, contractors, subcontractors or agents.

Within the limits of City's insurance coverage required under this Agreement, City agrees to defend and indemnify Consultant, its officials, officers, employees, consultants, contractors, directors, agents, and volunteers from any claim that arises out of, is caused by or allegedly caused by the negligence, gross negligence or acts of City or Consultant or their employees, contractors, subcontractors or agents. The City shall have no indemnification obligations under this paragraph except to the extent of insurance coverage actually provided by City's insurance and further excluding, without limitation, employment practices coverage.

3.2.7.9 City Insurance. For the duration of the agreement, City shall maintain general liability coverage in the minimum amount of \$1,000,000 per occurrence. Consultant shall be named additional insured on this coverage.

3.2.8 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local,

state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees, City personnel and third parties appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Responsibilities of City.**

- 3.3.1 The City agrees to comply with all reasonable requests of Consultant and provide reasonable access to documents including objectives and constraints, space, capacity, and performance requirements, flexibility, and expandability, and any budgetary limitations, reasonably necessary to the performance of Consultant's duties under this Agreement. In order to facilitate Consultant's conformance with the Schedule, the City shall respond to Consultant's submittals in a timely manner.
- 3.3.2 The City designates the City Manager as City representative ("City Representative") with respect to the work to be performed under this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, and interpret and define the City's policy and decisions with respect to materials, equipment, elements, and systems pertinent to the Services covered by this Agreement.

### **3.4 Fees and Payments.**

- 3.4.1 Consultant shall receive compensation consisting of a base fee of Five Thousand Dollars (\$5,000) per month from October-May and Three Thousand Dollars (\$3,000) per month during Summer months June-September. In addition, Consultant shall receive an incentive fee of Twenty Percent (20%) of the improvement in Net Operating Income annually under this Agreement as provided in Exhibit A. City shall also be responsible to pay to Consultant the actual amount of the salary and benefits attributable to its employees while rendering services on behalf of City as further provided in Exhibit "A". City shall be responsible for reimbursing Consultants pre-authorized expenses as provided in Section 3.4.3. City shall not be responsible for any other charges, fees or costs to Consultant under this Agreement unless the amount and purpose of the fee or charge has been approved by the City Manager in advance in writing.

- 3.4.2 Payment of Compensation. Consultant shall submit to the City a monthly itemized statement for its Compensation consistent with the authorized fees and charges under Section 3.4.1. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon in accordance with this Agreement. City acknowledges that the monthly management fee is payable monthly in advance and invoices will be submitted 45 days before such management fee is due to enable timely payment, except for the initial and subsequent month that will be invoiced upon signing of this Agreement. Fees for the initial and final months shall be pro-rated based on a thirty day month for partial months. In the event that any such advanced invoice contains amounts that are not ultimately due under this Agreement, Consultant shall notify City immediately upon determining the actual amount forty five (45) days after submitting such invoice and reimburse such amount by a separate check to City within five (5) business days thereafter. Upon receipt of such payment by City for Consultant's Employees, Consultant shall pay Consultant's Employees as required by California Law. Except as otherwise provided herein, CONSULTANT shall have no responsibility or obligation to pay for any such expenses or advance them on the CITY's behalf.
- 3.4.3 Reimbursement for Expenses. Consultant shall be reimbursed for reasonable travel and out of pocket expenses approved in advance in accordance with Section 618 of the City of Needles Employee Handbook attached hereto as Exhibit D by submitting expense reports and receipts. The Consultant shall submit invoices to the City and follow the process identified in section 3.2.1. Mileage rates are limited to those published by the Internal Revenue Service. Vendors invoices will be paid by the City per the City's purchasing policy. Subject to the forgoing approval process, Consultant shall be entitled to travel expense reimbursement for Golf Course Facility visitation by Consultant's non-golf course personnel in an amount not exceed One Thousand Dollars (\$1,000.00) per visit of one to several consecutive days. However, City shall not be obligated to pay or reimburse the compensation or benefits of such non-golf course personnel.
- 3.4.4 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant

shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.5 Accounting Records.**

- 3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred in performing this Agreement. All such records entries shall be clearly identifiable. At any time requested by City, Consultant shall allow any representative of the City during or after normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Upon 48 hours' notice, Consultant shall provide copies of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.6 General Provisions.**

#### **3.6.1 Termination of Agreement.**

- 3.6.1.1 Grounds for Termination. The City or Consultant may, by written notice to the other party, terminate this Agreement at any time and with or without cause by giving written notice to the other party of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been actually and adequately rendered to the City, and Consultant shall be entitled to no further compensation.

- 3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Consultant shall provide all finished or unfinished Documents and Data, programming source code, plans reports and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within five (5) days of the request.

- 3.6.1.3 Intentional left blank.

- 3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Consultant:           **Touchstone Golf, LLC**  
11612 Bee Cave Road, Suite 150  
Austin, TX 78738  
Attention: Steve Harker  
sharker@touchstonegolf.com  
(510) 919-3017

To City:                   **City of Needles**  
817 Third Street  
Needles, CA 92363  
Attention: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 City Ownership. All documents and data ("Documents & Data"), including data on electric, digital or magnetic media, prepared by Consultant under this Agreement shall be the property of the City, except that Consultant shall have the right to retain copies of all Documents & Data for its records. The City shall not be limited in any way in its use of the Documents & Data at any time. Should Consultant, either during or following termination of this Agreement, desire to use any Documents & Data prepared in connection with this Agreement, Consultant shall first obtain the written approval of the City Manager.

3.6.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is

generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

- 3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
- 3.6.5 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.
- 3.6.6 Governing Law. This Agreement is entered into and shall be performed in Needles, California and shall be governed by the laws of the State of California. Venue in any litigation between the parties hereto shall be in San Bernardino County.
- 3.6.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 3.6.8 City's Right to Employ Other Consultants. The City reserves the right to employ other consultants at any time for any purpose.
- 3.6.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior signed written consent of the City Manager. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 3.6.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

- 3.6.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.6.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.6.13 No Third Party Beneficiaries. The Needles Public Utility Authority and other City entities shall be intended beneficiaries of this Agreement. Otherwise, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.6.14 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.6.15 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 3.6.16 Conflict of Interest. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.
- 3.6.17 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority Business



Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.6.18 Warranties. Consultant shall provide Services competently and in accordance with generally accepted professional practices and standards.

3.6.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.6.20 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### 3.7 Subcontracting.

3.7.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the City Manager. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date and year set forth above.

**City of Needles**

By: [Signature]

Its: CITY MANAGER

Date: 9/28/20

**Touchstone Golf, LLC**

By: [Signature]  
Stephen T. Harker

Its: Chief Executive Officer

Date: 9-25-2020

**EXHIBIT A**

**Proposed Management Terms**

**[Attached behind this page]**

## **Proposed Management Terms**

### **Overview**

The goal and intent of this arrangement is to ensure the facility will be operated for the purpose of promoting guest, member and resident satisfaction, improving the financial performance and preserving and enhancing the asset. An outline of our services is presented below.

We are proposing an arrangement whereby Consultant assumes management oversight of City of Needles Rivers Edge Golf Course Pro Shop and receives a monthly management fee and incentive.

### **Service Outline Summary**

1. Day to day management oversight of operations of the 18-hole golf course and practice facility to ensure a high-quality experience for residents, members and guests
2. Oversight of the accounting process including planning/budgeting, daily and monthly sales reports, processing all expenses to include auditing of invoices prior to the submission to the City for payment, review of monthly budget statements, and relations, and payroll for the Consultant's Employees.
3. Overseeing the planning and implementation of all marketing programs including the development and execution of the loyalty (membership) product sales plan, tournament creation and sales, daily fee pricing/revenue management, and facility advertising.
4. Listing of Rivers Edge Golf Course on Consultant's golf outing/tournament lead generation sites.
5. Handle the employment, payroll and benefit processes of all golf course personnel that are hired and retained by the Consultant. The Consultant will hire and retain the Golf Pro and golf shop assistants ("Consultant's Employees") who will operate the Pro Shop and carry out other duties of Consultant hereunder. Golf course maintenance and other personnel will be employed by the City.

Notwithstanding the foregoing, City acknowledges that all costs associated with the operation of the Golf Course Facility that have been approved by the City Manager in writing in advance shall be paid or reimbursed by the City. By way of example, the cost of irrigation, fertilization, mowing, weeding, maintenance and repair and related grounds maintenance shall be paid directly by City to its employees and vendors providing the same with appropriate advice and oversight by Consultant as otherwise provided herein.

6. Develop and/or recruit competent Consultant staff and deploy such staff and other resources to ensure that proper care of the guests, the facility, and golf course is consistently undertaken.
7. Develop or recruit competent Consultant management that are experienced and trained in the necessary facets of golf course management, with sufficient experience in the golf course industry to oversee operations of the golf course.

8. Review and advise the City of the course and facility maintenance to improve the quality and value of the experience in an environmentally sensitive manner.

9. Carrying out its duties in a proper and business-like manner and in compliance with all applicable local, state and federal laws and regulations and ordinances.

10. Implement the Touchstone Golf Foundation to improve service on the course and community outreach.

11. Collaborate with the Golf Superintendent to maintain the golf course and facilities for consistent and continuous improvement of the quality and value of the experience.

**Proposed Terms**

For the operation of Rivers Edge Golf Pro Shop, the following terms shall apply.

**Client/Operator:** City of Needles/Consultant

**Premises:** Rivers Edge Golf Course, Needles, California

**Term of Agreement:** 3-year term with Consultant subject to Section 3.6 of the Agreement.

**Base Fee:** CONSULTANT shall be paid a monthly Management Fee of five thousand (\$5,000) a month from October-May and \$3,000 during Summer months June-September, payable monthly in advance.

**Incentive Fee:** Twenty percent (20%) of the improvement in Net Operating Income annually payable within ninety days after the completion of each fiscal year of City. Improvement in Net Operating Income shall be based on a comparison of each fiscal year's Net Operating Income with the Net Operating Income for the City's prior fiscal year for the Golf Course Facility without taking into consideration any subsidy paid by the City to maintain the operation of the Golf Course

**ADA:** City remains responsible for all ADA issues, expenses and liabilities at the Golf Course, unless caused by the gross negligence or intentional conduct of Consultant.

**EXHIBIT B**

**Scope of Services**

**[Attached behind this page]**

## **SCOPE OF SERVICES**

CONSULTANT will operate the Golf Course Facility in a good, workmanlike and professional manner by:

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;
2. Arranging for the employment of competent Consultant management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;
3. Arranging for the employment of competent experienced Consultant's Employees and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility; Consultant's onsite staff shall be limited to the Consultant's Employees. Maintenance and other personnel shall be City employees. Consultant shall advise the City and its maintenance and other employees on the proper operation of the Golf Course.
4. Managing all hiring, training and termination of all Consultant's Employees. Consultant shall not have the authority to hire, fire or discipline City employees. However, Consultant shall advise the City and City employees working on or with respect to the Golf Course and may recommend retention, and discipline of City employees to the City Manager. . The Golf Professional and any replacement thereof shall be subject to the approval of CITY at all times. the City. City shall not pay Consultant's Employees directly, and they shall not be deemed employees of City. Consultant's employees shall have no right to any compensation or benefits available to City employees including, but not limited to, Cal Pers.
5. Oversight of the accounting process including planning/budgeting, daily and monthly sales reports, processing all expenses to include auditing of invoices prior to the submission to the City for payment, review of monthly budget statements, and relations, and payroll for the Consultant's Employees; all such expenditures shall require final approval of City according to its internal financial policies
6. Preparing and maintaining accurately, in all material respects, the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;
7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan to be approved by the City, including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;
8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility to be identified in the approved annual budget and in accordance with the City purchasing policies;

9. Maintaining the Golf Pro Shop and all of its facilities in a condition consistent with quality levels defined in the Fiscal year budget, business plan, and facility improvement plan;
10. Coordinating with CITY to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;
11. Advise on all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility;
12. Implementation of Consultant national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility to be identified in the approved annual budget; and
13. Implementation of the Touchstone Golf Foundation to enhance guest service and community outreach.
14. Unless otherwise directed by City Manager in writing all contracts and agreements which relate specifically to the Golf Course Facility shall be entered into by and in the name of CITY and executed by a duly authorized CITY representative. CONSULTANT shall provide CITY copies of all such contracts and agreements which are binding upon or obligate CITY within ten (10) business days of their execution.
15. CONSULTANT shall timely submit for payment by the City, all operating expenses of the Golf Course Facility due to third parties. No director or officer of CONSULTANT shall have any interest in any concession at the Golf Course Facility nor in any contract for the Golf Course Facility without written approval by the CITY.
16. CONSULTANT does not give any general or specific guarantee as to the profitability of the Golf Course Facility, the attendance thereat or the revenues therefrom.
17. Upon expiration of the term of this Agreement, or upon the prior termination of this Agreement, and in any year prior to such expiration or termination, CONSULTANT agrees and covenants to cooperate fully with CITY or CITY's designated successor manager (subject to compliance with the restrictions elsewhere in this Agreement) in the smooth and businesslike transfer of the operations of Golf Course Facility to CITY or CITY's designees, except such proprietary rights as to which CONSULTANT has the sole or exclusive rights, and CONSULTANT agrees and covenants to execute all documents required or convenient to accomplish any such transfer in a timely, effective and efficient manner. On the expiration or on the termination of this Agreement for any reason, all Golf Course Facility property and interests therein, including cash, accounts, books, records, contracts; policies; licenses, permits and improvements in the Golf Course Facility , except proprietary rights as to which CONSULTANT has the sole and exclusive rights and property as to which the parties have agreed shall be the property of CONSULTANT, will be promptly turned over to CITY and be the property of CITY. Unless otherwise agreed in writing by the parties hereto, CONSULTANT shall remove its personnel and personal property from the Golf Course Facility upon such expiration or

termination. Upon such expiration or termination, CONSULTANT shall surrender to CITY all cash and other assets of the Golf Course Facility including \$200.00 cash register balance.

18. CONSULTANT shall not make, or suffer to be made, any alterations of the Golf Course Facility or any part thereof without the prior written consent of City Manager. CONSULTANT shall keep the Golf Course Facility premises and CITY's property in which such premises are situated free from any liens arising out of any work performed or material furnished to the property.



**CITY OF NEEDLES  
PROFESSIONAL SERVICES AGREEMENT  
CONSULTANT SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **September 23, 2020**, by and between the **CITY OF NEEDLES**, a **California Charter City**, (hereinafter referred to as the “City”) and Touchstone Golf, LLC, a Delaware limited liability company (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional consulting services to the City as represented in the Request for Proposal.

**2.2 Project.**

To serve as the professional firm to assist the City with management oversight of the operation of the City of Needles Rivers Edge Golf Course Pro Shop (the “Golf Course Facility”), including but not limited to those Services set forth in Exhibit A.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 Professional Services. Consultant agrees to perform services and serve as Consultant (“Services”), including but not limited to those Services set forth in Exhibit B. All Services shall be subject to, and performed by Consultant in accordance with this Agreement, any exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. Subject to Section 3.6, this Agreement shall become effective when executed and shall remain in effect until the expiration of the term on September 30, 2023.

### **3.2 Responsibilities of Consultant.**

- 3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or by its employees under Consultant's supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for other clients during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall determine its own work hours and schedule; provide its own equipment; maintain its own offices; provide its own vehicles; insurance; cell phones and office phones; and consultant shall be solely responsible for managing and supervising its personnel and employees. Consultant shall further be responsible for all reports and obligations, including, but not limited to: social security taxes, income tax withholding, payroll taxes, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding the foregoing, City acknowledges that all costs associated with the operation of the Golf Course Facility shall be the responsibility of City as provided in this Agreement. The Consultant will be paid directly by the City. The Consultant will comply with Chapter 8 of the City Code and the purchasing policy referred to in Exhibit C.
- 3.2.2 Collection of Revenues. Consultant shall collect all revenues of the Pro Shop daily and the Consultant will submit all such revenues to the City using the City approved form on a daily basis (i.e. green fees, annual passes, merchandise sales, property rentals and leases). A POS system using Golf Business Solutions and a Credit Card Terminal will be provided by the City.
- 3.2.3 Project Commencement. Consultant and City acknowledge and agree that any requested Project shall commence upon approval by both parties.
- 3.2.4 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform

the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct any material errors or omissions which are caused by the Consultant's failure to comply with the applicable standard of care. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of a Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-assigned to perform any Services to City.

3.2.5 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of a Project or Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Project or the Services. If the Consultant performs any work contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees and agents harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations. Notwithstanding the foregoing, as between City and Consultant only City assumes all risk and liability associated with Americans with Disabilities Act of 1990 associated with the Golf Course Facility which are not created by Consultant.

3.2.6 Qualification and License. All employees and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed in California to practice in their respective professions.

3.2.7 Insurance.

3.2.7.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City

that the subcontractor has secured all insurance required under this section.

3.2.7.2 Minimum Requirements. Consultant shall procure and maintain for the duration of the Agreement the following types and limits of insurance. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement..

- (A) Minimum Scope of Insurance. Coverage shall be at least as broad as the following: (1) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (2) Consultant shall comply with California requirements for worker's compensation and employer's liability insurance and shall not be insured under City's policy; (3) *Employment Practices Liability* covering claims of wrongful termination, discrimination, harassment, retaliation, and other wrongful acts arising from the employment process; and (4) *Crime Insurance / Fidelity Bond* covering losses due to theft, embezzlement, fraud, and other crimes. Consultant will not be covered under the City's workers compensation coverage as Consultant is not a City employee and Consultant has agreed to this. Consultant shall obtain workers' compensation insurance if, at any time, it hires an employee.
- (B) Minimum Limits of Insurance. (1) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (2) *Workers' Compensation*: Statutory limits and Employer's Liability \$1,000,000 per accident or disease; (3) *Employment Practices Liability*: \$1,000,000 per claim; and (4) *Crime Insurance / Fidelity Bond*: \$1,000,000 per occurrence.
- (C) Professional Errors and Omissions. Consultant shall maintain professional errors and omissions insurance in the amount of \$1 million per occurrence.

3.2.7.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

- (A) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall

be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be in excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(C) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice, except 10 days for non-payment of premium, by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers per terms and conditions of the policy"

3.2.7.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers per terms and conditions of the policy

3.2.7.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the

Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.7.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

3.2.7.7 Verification of Coverage. Consultant shall furnish the City Manager with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City Manager before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.7.8 Indemnification. Within the limits of Consultant's insurance coverage required under this Agreement, Consultant agrees to defend and indemnify City, its officials, officers, employees, consultants, contractors, directors, agents, and volunteers from any claim that arises out of, is caused by or allegedly caused by the negligence, gross negligence or acts of Consultant or his employees, contractors, subcontractors or agents.

Within the limits of City's insurance coverage required under this Agreement, City agrees to defend and indemnify Consultant, its officials, officers, employees, consultants, contractors, directors, agents, and volunteers from any claim that arises out of, is caused by or allegedly caused by the negligence, gross negligence or acts of City or Consultant or their employees, contractors, subcontractors or agents. The City shall have no indemnification obligations under this paragraph except to the extent of insurance coverage actually provided by City's insurance and further excluding, without limitation, employment practices coverage.

3.2.7.9 City Insurance. For the duration of the agreement, City shall maintain general liability coverage in the minimum amount of \$1,000,000 per occurrence. Consultant shall be named additional insured on this coverage.

3.2.8 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local,

state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees, City personnel and third parties appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Responsibilities of City.**

- 3.3.1 The City agrees to comply with all reasonable requests of Consultant and provide reasonable access to documents including objectives and constraints, space, capacity, and performance requirements, flexibility, and expandability, and any budgetary limitations, reasonably necessary to the performance of Consultant's duties under this Agreement. In order to facilitate Consultant's conformance with the Schedule, the City shall respond to Consultant's submittals in a timely manner.
- 3.3.2 The City designates the City Manager as City representative ("City Representative") with respect to the work to be performed under this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, and interpret and define the City's policy and decisions with respect to materials, equipment, elements, and systems pertinent to the Services covered by this Agreement.

### **3.4 Fees and Payments.**

- 3.4.1 Consultant shall receive compensation consisting of a base fee of Five Thousand Dollars (\$5,000) per month from October-May and Three Thousand Dollars (\$3,000) per month during Summer months June-September. In addition, Consultant shall receive an incentive fee of Twenty Percent (20%) of the improvement in Net Operating Income annually under this Agreement as provided in Exhibit A. City shall also be responsible to pay to Consultant the actual amount of the salary and benefits attributable to its employees while rendering services on behalf of City as further provided in Exhibit "A". City shall be responsible for reimbursing Consultants pre-authorized expenses as provided in Section 3.4.3. City shall not be responsible for any other charges, fees or costs to Consultant under this Agreement unless the amount and purpose of the fee or charge has been approved by the City Manager in advance in writing.

- 3.4.2 Payment of Compensation. Consultant shall submit to the City a monthly itemized statement for its Compensation consistent with the authorized fees and charges under Section 3.4.1. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon in accordance with this Agreement. City acknowledges that the monthly management fee is payable monthly in advance and invoices will be submitted 45 days before such management fee is due to enable timely payment, except for the initial and subsequent month that will be invoiced upon signing of this Agreement. Fees for the initial and final months shall be pro-rated based on a thirty day month for partial months. In the event that any such advanced invoice contains amounts that are not ultimately due under this Agreement, Consultant shall notify City immediately upon determining the actual amount forty five (45) days after submitting such invoice and reimburse such amount by a separate check to City within five (5) business days thereafter. Upon receipt of such payment by City for Consultant's Employees, Consultant shall pay Consultant's Employees as required by California Law. Except as otherwise provided herein, CONSULTANT shall have no responsibility or obligation to pay for any such expenses or advance them on the CITY's behalf.
- 3.4.3 Reimbursement for Expenses. Consultant shall be reimbursed for reasonable travel and out of pocket expenses approved in advance in accordance with Section 618 of the City of Needles Employee Handbook attached hereto as Exhibit D by submitting expense reports and receipts. The Consultant shall submit invoices to the City and follow the process identified in section 3.2.1. Mileage rates are limited to those published by the Internal Revenue Service. Vendors invoices will be paid by the City per the City's purchasing policy. Subject to the forgoing approval process, Consultant shall be entitled to travel expense reimbursement for Golf Course Facility visitation by Consultant's non-golf course personnel in an amount not exceed One Thousand Dollars (\$1,000.00) per visit of one to several consecutive days. However, City shall not be obligated to pay or reimburse the compensation or benefits of such non-golf course personnel.
- 3.4.4 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant



shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.5 Accounting Records.**

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred in performing this Agreement. All such records entries shall be clearly identifiable. At any time requested by City, Consultant shall allow any representative of the City during or after normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Upon 48 hours' notice, Consultant shall provide copies of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.6 General Provisions.**

#### **3.6.1 Termination of Agreement.**

3.6.1.1 Grounds for Termination. The City or Consultant may, by written notice to the other party, terminate this Agreement at any time and with or without cause by giving written notice to the other party of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been actually and adequately rendered to the City, and Consultant shall be entitled to no further compensation.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Consultant shall provide all finished or unfinished Documents and Data, programming source code, plans reports and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within five (5) days of the request.

3.6.1.3 Intentional left blank.

- 3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Consultant: **Touchstone Golf, LLC**  
11612 Bee Cave Road, Suite 150  
Austin, TX 78738  
Attention: Steve Harker  
sharker@touchstonegolf.com  
(510) 919-3017

To City: **City of Needles**  
817 Third Street  
Needles, CA 92363  
Attention: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 City Ownership. All documents and data ("Documents & Data"), including data on electric, digital or magnetic media, prepared by Consultant under this Agreement shall be the property of the City, except that Consultant shall have the right to retain copies of all Documents & Data for its records. The City shall not be limited in any way in its use of the Documents & Data at any time. Should Consultant, either during or following termination of this Agreement, desire to use any Documents & Data prepared in connection with this Agreement, Consultant shall first obtain the written approval of the City Manager.

3.6.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is

generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

- 3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
- 3.6.5 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.
- 3.6.6 Governing Law. This Agreement is entered into and shall be performed in Needles, California and shall be governed by the laws of the State of California. Venue in any litigation between the parties hereto shall be in San Bernardino County.
- 3.6.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 3.6.8 City's Right to Employ Other Consultants. The City reserves the right to employ other consultants at any time for any purpose.
- 3.6.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior signed written consent of the City Manager. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 3.6.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

- 3.6.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.6.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.6.13 No Third Party Beneficiaries. The Needles Public Utility Authority and other City entities shall be intended beneficiaries of this Agreement. Otherwise, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.6.14 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.6.15 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 3.6.16 Conflict of Interest. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.
- 3.6.17 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority Business

Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.6.18 Warranties. Consultant shall provide Services competently and in accordance with generally accepted professional practices and standards.

3.6.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.6.20 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### 3.7 Subcontracting.

3.7.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the City Manager. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date and year set forth above.

**City of Needles**

By: [Signature]

Its: CITY MANAGER

Date: 9/28/20

**Touchstone Golf, LLC**

By: [Signature]  
Stephen T. Harker

Its: Chief Executive Officer

Date: 9-25-2020

**EXHIBIT A**

**Proposed Management Terms**

**[Attached behind this page]**

## **Proposed Management Terms**

### **Overview**

The goal and intent of this arrangement is to ensure the facility will be operated for the purpose of promoting guest, member and resident satisfaction, improving the financial performance and preserving and enhancing the asset. An outline of our services is presented below.

We are proposing an arrangement whereby Consultant assumes management oversight of City of Needles Rivers Edge Golf Course Pro Shop and receives a monthly management fee and incentive.

### **Service Outline Summary**

1. Day to day management oversight of operations of the 18-hole golf course and practice facility to ensure a high-quality experience for residents, members and guests
2. Oversight of the accounting process including planning/budgeting, daily and monthly sales reports, processing all expenses to include auditing of invoices prior to the submission to the City for payment, review of monthly budget statements, and relations, and payroll for the Consultant's Employees.
3. Overseeing the planning and implementation of all marketing programs including the development and execution of the loyalty (membership) product sales plan, tournament creation and sales, daily fee pricing/revenue management, and facility advertising.
4. Listing of Rivers Edge Golf Course on Consultant's golf outing/tournament lead generation sites.
5. Handle the employment, payroll and benefit processes of all golf course personnel that are hired and retained by the Consultant. The Consultant will hire and retain the Golf Pro and golf shop assistants ("Consultant's Employees") who will operate the Pro Shop and carry out other duties of Consultant hereunder. Golf course maintenance and other personnel will be employed by the City.

Notwithstanding the foregoing, City acknowledges that all costs associated with the operation of the Golf Course Facility that have been approved by the City Manager in writing in advance shall be paid or reimbursed by the City. By way of example, the cost of irrigation, fertilization, mowing, weeding, maintenance and repair and related grounds maintenance shall be paid directly by City to its employees and vendors providing the same with appropriate advice and oversight by Consultant as otherwise provided herein.

6. Develop and/or recruit competent Consultant staff and deploy such staff and other resources to ensure that proper care of the guests, the facility, and golf course is consistently undertaken.
7. Develop or recruit competent Consultant management that are experienced and trained in the necessary facets of golf course management, with sufficient experience in the golf course industry to oversee operations of the golf course.

8. Review and advise the City of the course and facility maintenance to improve the quality and value of the experience in an environmentally sensitive manner.

9. Carrying out its duties in a proper and business-like manner and in compliance with all applicable local, state and federal laws and regulations and ordinances.

10. Implement the Touchstone Golf Foundation to improve service on the course and community outreach.

11. Collaborate with the Golf Superintendent to maintain the golf course and facilities for consistent and continuous improvement of the quality and value of the experience.

**Proposed Terms**

For the operation of Rivers Edge Golf Pro Shop, the following terms shall apply.

**Client/Operator:** City of Needles/Consultant

**Premises:** Rivers Edge Golf Course, Needles, California

**Term of Agreement:** 3-year term with Consultant subject to Section 3.6 of the Agreement.

**Base Fee:** CONSULTANT shall be paid a monthly Management Fee of five thousand (\$5,000) a month from October-May and \$3,000 during Summer months June-September, payable monthly in advance.

**Incentive Fee:** Twenty percent (20%) of the improvement in Net Operating Income annually payable within ninety days after the completion of each fiscal year of City. Improvement in Net Operating Income shall be based on a comparison of each fiscal year's Net Operating Income with the Net Operating Income for the City's prior fiscal year for the Golf Course Facility without taking into consideration any subsidy paid by the City to maintain the operation of the Golf Course

**ADA:** City remains responsible for all ADA issues, expenses and liabilities at the Golf Course, unless caused by the gross negligence or intentional conduct of Consultant.



**EXHIBIT B**

**Scope of Services**

**[Attached behind this page]**

## SCOPE OF SERVICES

CONSULTANT will operate the Golf Course Facility in a good, workmanlike and professional manner by:

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;
2. Arranging for the employment of competent Consultant management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;
3. Arranging for the employment of competent experienced Consultant's Employees and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility; Consultant's onsite staff shall be limited to the Consultant's Employees. Maintenance and other personnel shall be City employees. Consultant shall advise the City and its maintenance and other employees on the proper operation of the Golf Course.
4. Managing all hiring, training and termination of all Consultant's Employees. Consultant shall not have the authority to hire, fire or discipline City employees. However, Consultant shall advise the City and City employees working on or with respect to the Golf Course and may recommend retention, and discipline of City employees to the City Manager. . The Golf Professional and any replacement thereof shall be subject to the approval of CITY at all times. the City. City shall not pay Consultant's Employees directly, and they shall not be deemed employees of City. Consultant's employees shall have no right to any compensation or benefits available to City employees including, but not limited to, Cal Pers.
5. Oversight of the accounting process including planning/budgeting, daily and monthly sales reports, processing all expenses to include auditing of invoices prior to the submission to the City for payment, review of monthly budget statements, and relations, and payroll for the Consultant's Employees; all such expenditures shall require final approval of City according to its internal financial policies
6. Preparing and maintaining accurately, in all material respects, the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;
7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan to be approved by the City, including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;
8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility to be identified in the approved annual budget and in accordance with the City purchasing policies;

9. Maintaining the Golf Pro Shop and all of its facilities in a condition consistent with quality levels defined in the Fiscal year budget, business plan, and facility improvement plan;
10. Coordinating with CITY to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;
11. Advise on all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility;
12. Implementation of Consultant national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility to be identified in the approved annual budget; and
13. Implementation of the Touchstone Golf Foundation to enhance guest service and community outreach.
14. Unless otherwise directed by City Manager in writing all contracts and agreements which relate specifically to the Golf Course Facility shall be entered into by and in the name of CITY and executed by a duly authorized CITY representative. CONSULTANT shall provide CITY copies of all such contracts and agreements which are binding upon or obligate CITY within ten (10) business days of their execution.
15. CONSULTANT shall timely submit for payment by the City, all operating expenses of the Golf Course Facility due to third parties. No director or officer of CONSULTANT shall have any interest in any concession at the Golf Course Facility nor in any contract for the Golf Course Facility without written approval by the CITY.
16. CONSULTANT does not give any general or specific guarantee as to the profitability of the Golf Course Facility, the attendance thereat or the revenues therefrom.
17. Upon expiration of the term of this Agreement, or upon the prior termination of this Agreement, and in any year prior to such expiration or termination, CONSULTANT agrees and covenants to cooperate fully with CITY or CITY's designated successor manager (subject to compliance with the restrictions elsewhere in this Agreement) in the smooth and businesslike transfer of the operations of Golf Course Facility to CITY or CITY's designees, except such proprietary rights as to which CONSULTANT has the sole or exclusive rights, and CONSULTANT agrees and covenants to execute all documents required or convenient to accomplish any such transfer in a timely, effective and efficient manner. On the expiration or on the termination of this Agreement for any reason, all Golf Course Facility property and interests therein, including cash, accounts, books, records, contracts; policies; licenses, permits and improvements in the Golf Course Facility, except proprietary rights as to which CONSULTANT has the sole and exclusive rights and property as to which the parties have agreed shall be the property of CONSULTANT, will be promptly turned over to CITY and be the property of CITY. Unless otherwise agreed in writing by the parties hereto, CONSULTANT shall remove its personnel and personal property from the Golf Course Facility upon such expiration or

termination. Upon such expiration or termination, CONSULTANT shall surrender to CITY all cash and other assets of the Golf Course Facility including \$200.00 cash register balance.

18. CONSULTANT shall not make, or suffer to be made, any alterations of the Golf Course Facility or any part thereof without the prior written consent of City Manager. CONSULTANT shall keep the Golf Course Facility premises and CITY's property in which such premises are situated free from any liens arising out of any work performed or material furnished to the property.

**RESOLUTION NO. 2021-57**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEEDLES  
AMENDMENTING RESOLUTION NO. 2020-56 ADDING GOLF COURSE  
MANAGEMENT AND OPERATIONS SERVICES OF THE GOLF COURSE  
MAINTENANCE TO THE PROFESSIONAL SERVICES AGREEMENT WITH  
TOUCHSTONE GOLF, LLC IN THE AMOUNT NOT TO EXCEED THE CURRENT  
MANAGEMENT FEE OF \$52,000/YR**

**WHEREAS**, On September 8, 2020 the City of Needles awarded the RFP Proposal for Golf Course Management Services to Touchstone Golf, LLC; and

**WHEREAS**, Touchstone Golf, LLC has a reputation as one of the country's preeminent firms specializing in golf course management and advisory services; and

**WHEREAS**, Touchstone Golf also has experience managing golf courses in the local market providing services to both the Mojave Resort Golf Club and Huukan Golf Club; and

**WHEREAS**, Hiring Touchstone Golf, LCC for Golf Course Maintenance will set the foundation for the future of the Rivers Edge Golf Course and create a better experience for our golfers and improve the City's financial position.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEEDLES AS FOLLOWS:**

Section 1. Amend Resolution 2020-56 Adding Golf Course Management and Operations of the Golf Course Maintenance to the Professional Services agreement with Touchstone Golf, LLC in the amount not to exceed the current management fee of \$52,000/yr.

Section 2. The Mayor and City Manger are hereby authorized and directed to execute an amendment to the contract with the Consultant for the Rivers Edge Golf Course Maintenance Services.

Section 3. This resolution as now adopted shall be in full force and binding effect upon the City of Needles, CA and accept Change Order #1 lowering the base fee in the Summer (June-September) to \$3,000 a month for a reduction change order of \$8,000.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Needles, California, held on the 14th day of September, 2021, by the following roll call vote:

**AYES:** Council Members Campbell, Evans, Merritt, Paget, Belt and Longacre  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** None

  
\_\_\_\_\_  
Mayor

(Seal)

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT  
CONSULTANT SERVICES**

This First Amendment is made and entered into September 14, 2021, by and between the CITY OF NEEDLES, a California Charter City, (hereinafter referred to as the "City") and Touchstone Golf, LLC, a Delaware limited liability company (hereinafter referred to as "Consultant").

**RECITALS**

A. City and Consultant executed that certain Professional Services Agreement ("Agreement") dated September 23, 2020 whereby Consultant provides certain golf course management and operation services with a Golf Pro and assistants, as provided therein ("Services").

B. City and Consultant wish to amend the Agreement to expand the Services provided by Consultant to also provide grounds keepers and maintenance of the golf course grounds and facilities as provided herein.

**AMENDMENT**

**1. Section 2.1 is hereby amended to add the following to the Services:**

(a) **Golf Course Greens Maintenance.** In addition to the Services previously provided under the Agreement, Consultant shall perform and assume all responsibility to maintain the Needles Municipal Golf Course ("Golf Course") in the best possible condition at all times given the budget approved by the City which shall be included in the definition of Services under the Agreement in accordance with Appendix 4 and the Golf Course Maintenance Proposal attached hereto as Exhibit "A" and made a part hereof by this reference. Without limiting the generality of the forgoing such Services shall include irrigation, mowing, fertilizing, application of pesticides, fungicides, herbicides, scalping, reseeding, overseeding, tree and bush pruning, maintaining trees, grass and plants in a healthy and lush condition, repairing and maintaining paths, fairways, putting greens, water features, sand traps, driving range, pro-shop, golf carts, lawn mowers, greens equipment and other equipment.

(b) **Employment of Personnel.** Consultant shall directly employ all employees needed to perform the Services under this Amendment and shall be solely responsible for their selection, hiring, retention, discipline, termination, safety, training, salary, compensation, tax and social security withholding, workers compensation, disability, unemployment, healthcare and other benefits. Such employees shall be properly qualified and trained and shall have all licenses and permits required by law to perform the Services.

(c) **Third Party Vendors.** Consultant is also responsible to procure and submit to City for payment all invoices from third party vendors needed to properly perform the Services, including, but not limited to, water, electric, fertilizer, pesticides, herbicides, fungicides, fuel, supplies, grass seed, mechanical maintenance, pro-shop inventory and other expenses of operating and maintaining

the Golf Course. Said third party invoices shall include the golf cart leases and mower and equipment maintenance as requested by Consultant.

(d) **Budgetary Limitations.** Consultant has presented a detailed operations and maintenance plan and budget for fiscal year July 1, 2021 through June 30, 2022 which is attached hereto as Exhibit "B" and incorporated herein by this reference. Compensation under this Amendment and operating and maintenance cost for the Golf Course shall not exceed the budgeted amounts on a cumulative or line item basis in the Budget without the prior approval of the City Council. Without limitation, all of the costs to provide the golf course operation and maintenance services under this Agreement as amended are included in the Budget.

(e) **Subsequent Years' Budgets.** Each year during the City budgeting process, City will prepare a budget for the golf course with input from Consultant and such budget will serve in place of the Budget attached hereto as Exhibit "B" for succeeding fiscal years.

Without limited the other applicable provisions of the Agreement, Consultant shall be responsible to maintain the insurance and indemnify City as provided for in Section 3.2.7 at it sole cost and expense.

**2. Section 3.4.1 is hereby amended in its entirety to read in full as follows:**

(a) **Reimbursement of Employees' Benefit Costs.** City shall also be responsible to reimburse Consultant (not pay directly) the actual amount of benefits ("Benefits"), being limited to healthcare benefits, and workers compensation insurance of the employees of Consultant, related to services performed while present at the golf course rendering services on behalf of City under this Agreement. Said employees shall be limited to the staff employed at the golf course to operate and maintain the facility who are employed by Consultant ("Employees"). Consultant shall provide City with a detailed line item invoice for salary and Benefits for the Employees incurred on or before the fifteenth day of the month following the month when the expenses were incurred and paid. City shall pay the invoice for Benefits within thirty days after receipt from Consultant. Under no circumstances will City be deemed to be the employer of Consultant's employees by reason of reimbursing their salaries to Consultant or otherwise. City will not be required to take any action that could be interpreted to create an employment relationship with Consultant's employees. Consultant with the prior written approval of the City Manager, or his designee, (which approval shall not be unreasonably withheld) shall continue to cause the City's payroll service (currently Paylocity) to draft the golf course operating account for the salaries of Consultant's golf course Employees inclusive only of state and federal employment taxes (and excluding any perks or benefits) related to services performed while present at the golf course rendering services on behalf of City under this Agreement prior to each applicable pay due date to such Employees. If the City Manager refuses to release salaries that are rightfully due under this subsection (a), Consultant may deliver notice to the City Manager in writing demanding approval of such salaries within 24 hours, and if the City Manager continues to refuse to approve such amounts the Consultant may terminate this Agreement,

(b) **Reimbursement of Expenses.** City shall only be responsible for reimbursing Consultants pre-authorized expenses as provided in Section 3.4.3 of the original Agreement. City shall not be responsible for any other charges, fees or costs to Consultant under this Agreement unless the amount and purpose of the fee or charge has been approved by the City Manager in advance in writing.

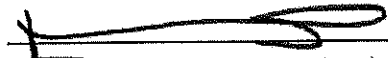


**(c) Submission of Third Party Invoices.** Invoices for the Services and to third party vendors under this Amendment shall be submitted and paid in accordance with the procedures in Section 3.4.2.

All other terms and conditions of the Agreement shall remain in full force and effect subject to this Amendment. In the event of a conflict between the terms of this Amendment and the Agreement, this Amendment shall prevail.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the date written above.

City of Needles

  
By: RICHARD A. DANIELS  
Its: CITY MANAGER  
Date: 9/28/21

Touchstone Golf, LLC

  
\_\_\_\_\_

By: Stephen T Harker

Its: Chief Executive Officer

Date: 9/9/2021

**EXHIBIT "A"**  
**(ATTACH APPENDIX 4 AND THE GOLF COURSE MAINTENANCE PROPOSAL)**

## Exhibit "A"



# GOLF COURSE MAINTENANCE

## Staffing

1. Superintendent
2. Mechanic
3. Irrigator
4. 4 Greenskeepers (two which would be parttime or seasonal)\*

*Note: Likely the 3 current parttime staff become full time. The full-time staff continues with the City in another capacity.*

Staff members: Other than during inclement weather, a full maintenance crew shall be on duty at the course daily supervised by an on-duty superintendent. Regular hours will be established and maintained.

## Irrigation System Overview

**Current Irrigation System / Process** – The current system is manual and over 60 years old. A new system would enable the golf course to provide consistent quality turf (grass) to compete in the marketplace. The well produces approximately 2,200 gallons per minute at a PSI of 100, the process of watering involves setting 70 sprinklers in the quick-couplers, turning on the well, run-time of 45 minutes and then they start moving heads from the back forward until 9 holes are completely watered. It takes about 6-7 hours to do 9 holes. 9 holes are watered each night.

**Irrigation Replacement Plan** – Once we have the plan from Toro and/or other groups we would like to run them by our Irrigation Designer. The ideal approach would be an RFP for an irrigation design (\$25k-\$30k).

## ***Rivers Edge Golf Course***

### **MINIMUM MAINTENANCE SPECIFICATIONS**

The maintenance practices included in this section are intended to be an overall outline for the agronomic, horticultural, and recurring service practices of the Touchstone's golf course maintenance operations. While the guidelines are detailed, they are intended to be only minimum standards of operation. The Touchstone's primary responsibility is for ensuring the integrity of the golf course. Variances from the guidelines at the discretion of Touchstone will be necessary at times to allow for adjustments resulting in climatic conditions, pest infestations, golf course traffic, tournaments, and other unforeseen problems.

#### **1. Greens, practice putting greens & nurseries**

A. Mowing – At least six days per week at a height between 1/8" – 1/4" during the growing season and as needed during the off season.

B. Change cup locations on all greens and practice putting greens daily during the active season and at least three times weekly in the off-season or if frost or frozen ground is prevalent they will be changed when the conditions allow.

C. Repair ball marks or any other damaged turf areas on all greens and practices greens daily.

D. Aerify all greens, practice putting greens and nurseries at least one time per year during the growing season. Aerify problem areas as often as necessary to produce superior turf quality.

E. Topdress all greens, practice putting greens and nurseries:

A. After any aerification performed with 1/2 " or larger tines.

B. As needed to maintain a smooth putting surface.

C. Topdressing will be sand or mix specific to the needs of the greens.

F. Light vertical mowing of all greens, practice putting greens and nurseries shall be performed as appropriate to smooth and true the putting surfaces.

G. Bare spots on greens will be re-seeded or sodded.

H. Maintaining the overall golf course appearance and play level to conform to the standards of like public and/or daily-fee golf courses.

## **2. Tees – All areas used for tee surface**

- A. Mowing – All tees shall be mowed at a height between 3/8" – 5/8" one to two times per week during growing season and as necessary during off season.
- B. Topdressing – All worn areas on tees shall be topdressed at least weekly to fill divots and level tee surface.
- C. Setup – Tee markers and all tee equipment shall be moved daily in season for proper play and control of turf wear or as needed in the warmer months.
- D. Vertical Mowing – All tees shall be verticut as necessary to control mat or thatch build-up.
- E. Aerification – All tees shall be aerified one times during the remainder of the year.

## **3. Fairways – All areas of play except green, tees, roughs and natural growth areas**

- A. Mowing - All fairways shall be mowed at least one to two times per week at a height between 1/2" – 5/8" during the growing season and as needed for the balance of the year.
- B. Aerification – All fairways shall be aerified a minimum of one time per year during the growing season.
- C. Vertical mowing – All fairways shall be verticut as necessary to control mat or thatch build-up as needed.

## **4. Roughs – All turfed areas of play except greens, tees, fairways**

- A. Mowing & Care - All roughs shall be mowed weekly during the growing season and as necessary during the balance of the year, at heights between 1" and 2".
- B. All desert areas or natural growth areas shall also be taken care of as necessary, to provide a visually acceptable area. Such areas are to be maintained free of excessive trash, weeds and pests. Such natural growth areas may be improved and may from time to time be subjected to irrigation, cultivation, pruning, or other such practices as may be necessary or desirable to establish growth.

## **Annual Overseeding**

- A. Overseeding of the tees, greens and fairways in early fall. Mid-September through Mid-October is optimal. From start to finish this process will take 3-4 weeks.
- B. Verticutting 2 -3 directions on tees and greens. The use of growth regulators (primo, cutless or Anew) a week prior to overseed will reduce the competition of bermuda and ryegrass.
- C. Spraying of fairways with diquat will take the place of verticutting and scalping of the turf.
- D. Overseeding Rates:
  - Rye – fairways, tees 550 – 650 #/acre is optimal.
  - Greens – 20 # rye/1000
  - Greens – 15 # poa triv/1000
  - Greens – Optional 2# bent/1000
  - The use of 2 different seeds for the greens would be preferred
- E. Watering after over seed is the most critical duties as the need to move heads after 5-10 minutes run time and get 6 -10 cycles per day. Until fully grown in. 10-14 day is typical before being able to mow first cut.

*Note: Overseeding all areas with ryegrass is the most cost-effective process. Using rye/poa-triv on greens only would improve green quality but would increase costs upward of \$5,000-\$10,000 depending on rates of seed. This will be considered in the budget process.*

## **5. Driving Range – Entire Driving Range**

- A. Maintaining the driving range to the standards of like public and/or daily-fee golf courses.

## **6. Trees – All trees within the property lines of the golf course**

- A. A tree plan will be developed with the City.

## **7. Irrigation**

- A. The golf course shall be irrigated as to support proper growth of golf turf and associated landscaping using the system provided.

## **8. Fences**

- A. Repair all broken or damaged fencing as necessary.

- B. Immediately repair or replace as necessary all fences, gates and locking devices needed for the protection of the golf course or equipment.

## **9. Clubhouse and structures**

- A. The golf course superintendent is responsible for all facilities and structures maintenance, including the clubhouse, cart barn, maintenance building and all other building structures.
- B. All Buildings and structures shall be maintained in good repair at all times. Surrounding areas shall be maintained free of weeds, brush, disorganized junk or broken-down equipment, trash piles, etc. Interior areas shall be clean and neatly organized, painting, rodent and insect control, and landscaping shall be performed as necessary. "Housekeeping" duties shall be assigned to all maintenance crew members and shall be performed daily.
- C. Cart paths – maintain all cart paths in a smooth and clean condition, free of standing water or mud, and repair promptly as needed.
- D. Cart barn will be kept in good repair
- E. Course Restrooms – All course restrooms shall be maintained daily to provide clean and sanitary facilities for the users and employees of the course. Soap, towels, toilet paper, etc. shall be provided in adequate quantity at all times.
- F. All signs will be kept in good repair and refinished or painted as needed.

## **10. Sand traps**

- A. All sand traps shall be edged as necessary to maintain an appropriate lip, raked 3 to 5 times a week in season and filled with fresh bunker sand as needed to maintain a minimum 1" depth on slopes and 2" in the bottom.

## **11. Trash and refuse**

- A. Shall be collected daily in season and removed from the property as necessary to ensure minimal problems from refuse odors, insects, etc. Approved trash receptacles shall be conveniently stationed on tees and other appropriate areas and emptied daily.

## **12. Gophers and ground squirrel pest control**

A. Shall be routinely performed throughout the property on an on-going basis, in such a manner that pest populations are steadily reduced and eventually eliminated with the minimum use of pesticides.

## **13. Aquatic**

A. All lakes, ponds and streams shall be maintained in a safe and sanitary manner and in good appearance with minimal use of any algicides or other chemicals.

## **14. Soil and Water Tests**

A. Analysis will be performed yearly by an approved professional laboratory. Most fertilizer companies will do this at no charge.

## **15. Fertilizer and Pesticides**

A. All use of fertilizers, fungicides, and insecticides will be minimized. This will include the development of an Integrated Pest Management Program (IPM).

## **16. Equipment Maintenance**

A. The equipment will be provided by the City. Service equipment on schedule as detailed by the manufacturer. Keep records of all maintenance and repairs for each unit. Provide the City with an annual update on the condition of the equipment and a recommendation on any replacement units.

## **17. Construction and remodeling**

A. Any change in the physical characteristics of any area of the golf course, such as addition or removal of sand traps, addition or removal of any hazards (water, trees, or native vegetation), movement of soil exceeding 40 cubic yards in any single area, or the modification of any portion of the golf course or the buildings, shall only be undertaken with the direct approval of the City.



## Appendix 4

### Golf Course Maintenance

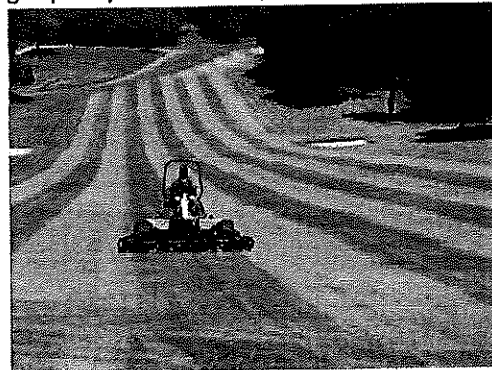
#### Golf Course Maintenance

Touchstone would work with the City to define the golf course maintenance plan based on Touchstone's experience in the Mohave Valley and present a detailed budget approved for golf course maintenance.

To maintain a high-quality golf course and guest experience at the Rivers Edge golf facility, Touchstone will commit to a plan for golf course maintenance that ensures the golf course is playable and enjoyable. Touchstone has a systematic process for getting this done. We will begin by assessing and, if necessary, re-establishing a vision for facility conditions. Next, we will consult and work with the City of Needles and to formalize the maintenance standards to identify the outcomes required to achieve the vision. Once these outcomes are defined, Touchstone will schedule and complete the work to realize those outcomes and maintain the golf course to deliver those outcomes. In addition to regular maintenance activities, Touchstone will manage and complete a list of priority projects, as identified in consultation with the golf course's General Manager and Superintendent, as well as with representatives of the City. Our course maintenance discipline yields a consistent and sustainable high-quality customer experience.

#### Maintenance Quality Standards

To meet the expectations for course conditions will require the full commitment and dedication of the Superintendent and maintenance staff. We anticipate retaining the current golf course maintenance staff, thereby assuring a measure of continuity in the day-to-day operation. To assure that management and golf course staff are aligned and communicating about the objectives for maintenance, Touchstone will require the following at the Rivers Edge golf facility:

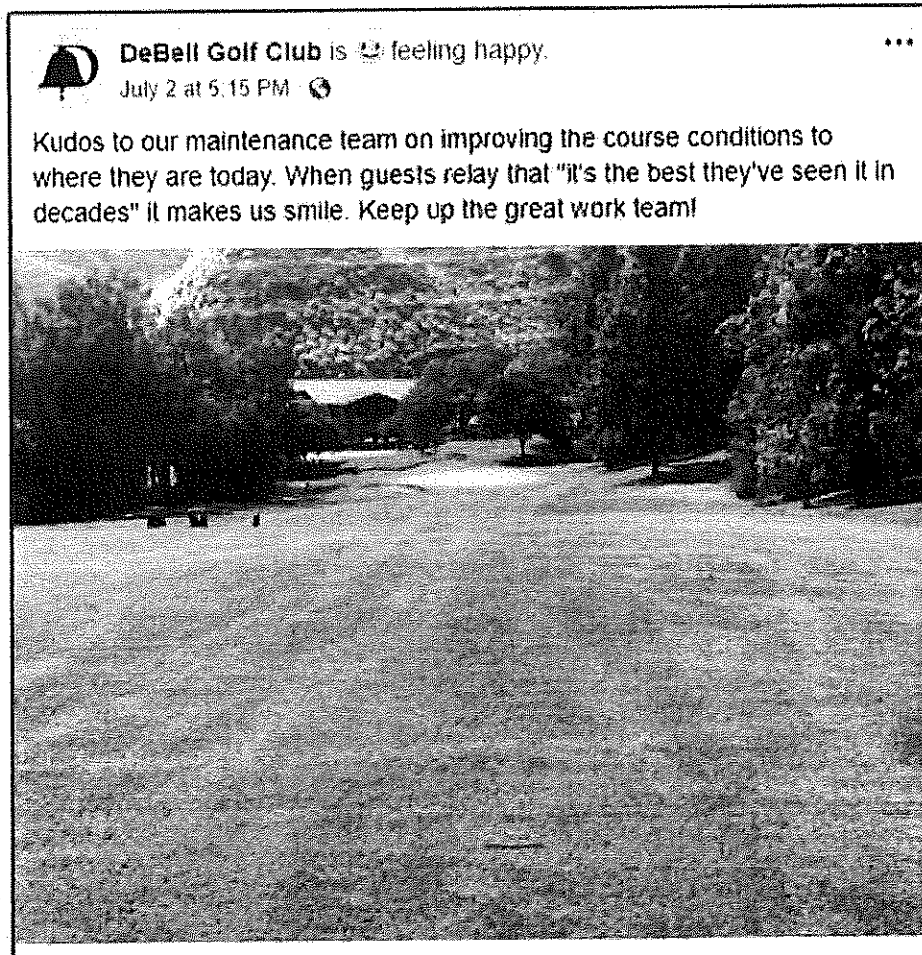


*Lake Chabot - City of Oakland*

- The Superintendent will post a quarterly calendar displaying all activities that relate to turf management, cultural practices and improvements, including aeration, fertilization, herbicide applications, turf replacement and capital improvement projects. This plan will be approved by Touchstone executive management.
- The Superintendent will develop a monthly improvement plan. Touchstone executive management and the General Manager will monitor the maintenance staff's performance in meeting the objectives of the plan. Management will hold the superintendent accountable for executing the plan, taking any corrective measures needed and producing results.

Touchstone has a proven track record coming into municipal golf course situations and immediately addressing golf course conditions within budget constraints. Our focus and prioritization of issues, addressed by capable leadership, has led to some remarkable conditioning turnaround situations. We encourage the City of Needles to reach out to our references to understand our commitment to golf

course maintenance. Below is a recent Facebook post by a very satisfied local golfer in Burbank that plays at DeBell Golf Course, an addition to the Touchstone management portfolio as of the beginning of 2019.



**EXHIBIT "B"**  
**(ATTACH BUDGET)**

**Touchstone Golf - Maintenance Budget**  
**Rivers Edge Golf Course**  
City of Needles, California

**Comparison**

	FY 2022 Approved Maint. Budget	9/5/21 SH Touchstone Budget Oct-Jun FY 2022	City Actual + Forecast Jul-Sep	City ongoing expenses in FY 2022	NEW FY 2022 Maint. Budget	Variance from approved budget
<b>Expenses:</b>						
507-5761-453.10-10 *SALARIES	275,736	210,081	26,800	37,755	64,555	(211,181)
507-5761-453.10-20 *OVERTIME	20,000	5,400	624	974	1,598	(18,402)
507-5761-453.23-10 *FICA SOC SEC/M-CARE INS	22,624	21,947	2,020	2,905	4,925	(17,699)
507-5761-453.24-01 *UNEMPLOYMENT	-	-	309	927	1,236	1,236
507-5761-453.24-10 *GROUP INSURANCE	61,559	24,760	9,563	12,284	21,846	(39,713)
507-5761-453.24-30 *WORKERS ' COMPENSATIOI	13,560	9,356	2,433	1,217	3,650	(9,910)
507-5761-453.25-00 *PERS/RETIREMENT CONTRI	21,994	-	2,838	1,743	4,580	(17,414)
507-5761-453.25-01 *PERS-UNFUNDED LIABILITY	16,353	-	3,044	13,295	16,339	(14)
507-5761-453.31-20 MEDICAL EXAMS	750	-	-	-	-	(750)
507-5761-453.31-40 EDUCATIONAL TRAINING	200	600	-	-	-	(200)
Payroll Processing (vacation on detail tab)	-	2,700	-	-	-	-
Subtotal	432,776	274,845	47,631	71,100	118,730	(314,046)
507-5761-453.31-89 MANAGEMENT AGREEMENT	-	0	-	-	-	-
507-5761-453.31-90 OTHER PROFESSIONAL SVS.	-	-	-	-	274,845	274,845
507-5761-453.41-10 ELECTRIC UTILITIES	1,000	765	-	-	765	(235)
507-5761-453.41-20 WATER UTILITIES	150,900	112,500	12,505	-	125,005	(25,895)
507-5761-453.41-50 GAS UTILITIES	800	603	23	-	626	(174)
507-5761-453.43-03 VEHICLE MAINT/REPAIR	300	-	-	-	-	(300)
507-5761-453.43-04 EQUIPMENT MAINT. & REPAI	30,000	27,900	1,830	-	29,730	(270)
507-5761-453.43-08 BLDG. MAINT & REPAIRS	300	250	20	-	270	(30)
507-5761-453.43-17 GOLF MAINT & REPAIR	6,000	6,000	243	-	6,243	243
507-5761-453.43-34 TREE TRIMMING	9,800	15,000	-	-	15,000	5,200
507-5761-453.43-40 SECURITY MONITORING	396	315	102	-	417	21
507-5761-453.51-11 *LIABILITY INSURANCE	9,500	-	1,671	-	1,671	(7,829)
507-5761-453.51-12 *BLANKET BOND-COM'L. CRII	101	-	101	-	101	-
507-5761-453.51-15 *PROPERTY INSURANCE	930	-	154	-	154	(776)
507-5761-453.52-10 TELEPHONE	3,200	2,250	272	-	2,522	(678)
507-5761-453.53-00 ADVERTISING	-	-	409	-	409	409
507-5761-453.55-00 TRAVEL PER DIEM	118	180	-	-	180	62
507-5761-453.59-55 HAZ WASTE REMOVAL - OIL	2,310	-	-	-	-	(2,310)
507-5761-453.60-10 CHEMICAL SUPPLIES	3,000	8,000	-	-	8,000	5,000
507-5761-453.60-28 BOOTS	615	-	-	-	-	(615)
507-5761-453.61-01 OFFICE SUPPLIES	26	-	-	-	-	(26)
507-5761-453.61-02 COMPUTER/PRINTER SUPPL	-	-	-	-	-	-
507-5761-453.61-04 UNIFORMS	2,350	1,500	128	-	1,628	(722)
507-5761-453.61-07 SEED	54,000	3,000	-	79,062	82,062	28,062
507-5761-453.61-08 FERTILIZER	4,458	20,500	-	-	20,500	16,042
507-5761-453.61-11 SAND & TOP DRESSING SUP	-	12,000	-	-	12,000	12,000
507-5761-453.61-12 IRRIGATION & DRAINS SUPP	10,000	6,750	3,272	-	10,022	22
507-5761-453.61-21 SAFETY EQUIPMENT	350	-	-	-	-	(350)
507-5761-453.62-00 VEHICLE FUEL	7,000	8,400	595	-	8,995	1,995
507-5761-453.63-00 OPERATING SUPPLIES	1,500	4,710	191	-	4,901	3,401
507-5761-453.72-17 CAPITAL EQUIP/IMPROVEME	-	0	0	0	-	-
Subtotal	298,954	230,623	21,516	79,062	331,203	32,249
<b>Total Expenses</b>	<b>731,730</b>	<b>505,468</b>	<b>69,146</b>	<b>150,162</b>	<b>724,777</b>	<b>(6,953)</b>