

**AGREEMENT FOR GOLF COURSE GROUNDSKEEPER SERVICES  
BETWEEN  
THE CITY OF LEMOORE  
AND  
GENARO MARTINEZ**

This AGREEMENT FOR GOLF COURSE GROUNDSKEEPER SERVICES ("Agreement") is made and entered into this 1st day of July, 2014, by and between the City of Lemoore ("City") and Genaro Martinez ("Groundskeeper").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. SCOPE OF SERVICES.**

Groundskeeper agrees to perform the services set forth in Exhibit "A", "Scope of Services", attached hereto and made a part of this Agreement.

Groundskeeper shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit "A", unless such additional services are authorized in advance and in writing by the City Council. Groundskeeper shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council.

**SECTION 2. TERM.**

This Agreement shall terminate on November 30, 2014, unless sooner terminated as provided herein.

**SECTION 3. COMPENSATION AND METHOD OF PAYMENT.**

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Groundskeeper a monthly fee of Four Thousand One Hundred Sixty Six and 66/100 Dollars (\$4,166.66), payable in the manner described in Exhibit "A".

(b) The total sum stated in sub-paragraph (a) above shall be the total the City shall pay for the services to be rendered by Groundskeeper pursuant to this Agreement. City shall not pay any additional sum for the work to be performed pursuant to this Agreement, or for extra, further or additional services related to this Agreement, unless such service and the price therefore is agreed to in writing executed by the City Council or other designated official of the City authorized to obligate City thereto prior to the time such service is rendered.

(c) Payment to Groundskeeper for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Groundskeeper.

#### **SECTION 4. STATUS OF GROUNDSKEEPER.**

(a) Groundskeeper is and shall at all times during the terms of this Agreement remain a wholly independent contractor and not an officer, employee or agent of City. Groundskeeper shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) Groundskeeper shall not obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Groundskeeper expressly waives any claim Groundskeeper may have to any such rights.

#### **SECTION 5. STANDARD OF PERFORMANCE.**

Groundskeeper represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Groundskeeper shall at all times faithfully, competently and to the best of his ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Groundskeeper shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Groundskeeper under this Agreement.

#### **SECTION 6. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES.**

Groundskeeper shall keep himself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Groundskeeper shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable at law or in equity as a result of any failure of Groundskeeper to comply with this section.

#### **SECTION 7. NONDISCRIMINATION.**

Groundskeeper shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, disability, marital status or sexual orientation in connection with or related to the performance of this Agreement.

#### **SECTION 8. UNAUTHORIZED ALIENS.**

Groundskeeper hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U. S. C. A, sections 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Groundskeeper so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such

use of unauthorized aliens, Groundskeeper hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

## **SECTION 9. INDEMNIFICATION.**

(a) Groundskeeper agrees to indemnify and hold harmless the City and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with Groundskeeper's negligent, or deliberately wrongful act, errors, or omissions in connection with the performance of this Agreement. Likewise, City agrees to indemnify and hold harmless Groundskeeper and its officers, employees, and subcontractors from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with the City's negligent, or deliberately wrongful acts, errors, or omissions in connection with the performance of this Agreement.

(b) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Groundskeeper has agreed to indemnify Indemnitees as provided above, Groundskeeper, upon notice from City, shall defend Indemnitees at Groundskeeper's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Groundskeeper under Section 16 shall ensure Groundskeeper's obligations under this section, but the limits of such insurance shall not limit the liability of Groundskeeper hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

## **SECTION 10. INSURANCE.**

Groundskeeper agrees to obtain and maintain in full force and effect during the term of this Agreement insurance, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work provided by Groundskeeper, its agents, representatives or employees in performance of this Agreement. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by City Council. Groundskeeper agrees to provide City with copies of required policies upon request.

Groundskeeper shall provide the following scope and limits of insurance:

(a) Minimum Scope of Insurance: Coverage shall be at least as broad as:

- (1) Insurance Services Office Form Commercial General Liability coverage (Occurrence Form CG 0001).

- (2) Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1, "any auto" and endorsement CA 0025, or equivalent forms subject to written approval of City.
- (3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Groundskeeper and all risks to such persons under this Agreement.

(b) Minimum Limits of Insurance: Groundskeeper shall maintain limits of insurance no less than:

- (1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(c) Other provisions: Insurance policies required by this Agreement shall contain the following provisions:

- (1) All Policies: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested has been given to City .
- (2) General Liability and Automobile Liability Coverage:
  - (i) City and their respective elected and appointed officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities Groundskeeper performs; products and completed operations of Groundskeeper; premises owned, occupied or used by Groundskeeper; or automobiles owned, leased, hired or borrowed by Groundskeeper. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials or employees.
  - (ii) Groundskeeper's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers,

officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Groundskeeper's insurance.

(iii) Groundskeeper's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

(3) Employer's Liability Coverage: Unless the City Council otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Groundskeeper.

(d) Other Requirements: Groundskeeper agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been met. The City Attorney may require that Groundskeeper furnish City with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

(1) Groundskeeper shall furnish certificates and endorsements from each subcontractor identical to those Groundskeeper provides.

(2) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Groundskeeper shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

(3) The procuring of such required policy or policies of insurance shall not be construed to limit Groundskeeper's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

## **SECTION 11. ASSIGNMENT.**

The expertise and experience of Groundskeeper are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities

who will fulfill the duties and obligations imposed upon Groundskeeper under the Agreement. In recognition of that interest, Groundskeeper shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Groundskeeper's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement, entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Groundskeeper, in the performance of his duties pursuant to this Agreement, may utilize subcontractors, with the prior approval of the City Council.

#### **SECTION 12. TERMINATION OF AGREEMENT.**

(a) City may terminate this Agreement, with or without cause, at any time by giving ninety (90) days written notice of termination to Groundskeeper. In the event such notice is given, Groundskeeper shall cease immediately all work in progress.

(b) Groundskeeper may terminate this Agreement at any time upon ninety (90) days written notice of termination to City.

(c) If either Groundskeeper or City fails to perform any material obligation under this Agreement, then, in addition to any other remedies, either Groundskeeper or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Groundskeeper or City, all property belonging exclusively to City which is in Groundskeeper's possession shall be returned to City.

#### **SECTION 13. DEFAULT.**

In the event that Groundskeeper is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Groundskeeper for any work performed after the date of default and may terminate this Agreement immediately by written notice to Groundskeeper.

#### **SECTION 14. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:

City of Lemoore  
Attn: City Manager  
119 Fox Street  
Lemoore, CA 93245

To Groundskeeper: Genaro Martinez  
425 Oranewood Drive  
Lemoore, CA 93245

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 15. AUTHORITY TO EXECUTE.**

The person or persons executing this Agreement on behalf of the Groundskeeper represents and warrants that they have the authority to so execute this Agreement and to bind Groundskeeper to the performance of its obligations hereunder.

**SECTION 16. BINDING EFFECT.**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 17. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Groundskeeper and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 18. WAIVER.**

Waiver by any party to this Agreement or any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Groundskeeper shall not constitute a waiver of any provisions of this Agreement.

**SECTION 19. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Kings. In the event of litigation in a U. S. City Court, venue shall lie exclusively in the Eastern District of California, in Fresno.

**SECTION 20. ATTORNEY'S FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of

this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to any award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 21. ENTIRE AGREEMENT.**

This Agreement, including the attached Exhibit, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Groundskeeper and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 22. SEVERABILITY.**

If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**SECTION 28. PREPARATION OF AGREEMENT.**

This Agreement is the product of negotiation and preparation by and among the parties and their respective attorneys. The parties therefore expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or any party's attorney and will be construed accordingly.

**CITY OF LEMOORE**

**GENARO MARTINEZ**

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

By: Genaro Martinez

Approved as to Form:

\_\_\_\_\_  
Laurie Avedisian-Favini,  
City Attorney

EXHIBIT "A"

***SCOPE OF SERVICES***

- A. Groundskeeper shall do all of the following:
1. Serve as Groundskeeper at the Lemoore Municipal Golf Course.
  2. Report to City Manager or Department Head designated by City Manager as supervisor; provided however, said City supervisor may direct Groundskeeper to accept day to day instructions from Golf Course Superintendent.
  3. Keep greens and fairways in good condition.
  4. Trim trees; remove cuttings.
  5. Maintain landscape beds around clubhouse and club grounds.
  6. Rake and blow leaves.
  7. Prepare and lay sod.
  8. Rake bunkers.
  9. Other duties as assigned by City Manager or Department Head designated by City Manager.
- B. Payments to Groundskeeper
1. Groundskeeper shall receive a monthly payment in the amount of Four Thousand One Hundred Sixty Six and 66/100 Dollars (\$4,166.66) per month, payable in arrears on the last working day of the month.
  2. Reimbursement up to Two Thousand Dollars (\$2,000) for end of year costs attributed to General Liability Insurance premiums, payable within thirty (30) days of receipt of invoice demonstrating costs attributable to City.