

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY ADMINISTRATOR
2007 MAR 03 PM 3:01

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Audree V. Jones Taylor
DATE: April 3, 2007

RE: A Supplemental Report Regarding a Resolution to Reject All Submissions Received for the Operation and Management of Lake Chabot Golf Course and Close the Current Request For Qualifications (RFQ) Process; To Issue a New Request For Proposals (RFP) in Nine Months; To Waive the RFP Requirements for a Temporary Management Agreement, And to Authorize the City Administrator to Negotiate and Execute a Temporary Management Agreement with Touchstone Golf, LLC for Operation and Management of Lake Chabot Golf Course for an Interim Period in an Amount Not to Exceed \$130,000

SUMMARY

At the March 27th Life Enrichment Committee, Committee members requested that staff prepare this supplemental report providing additional information on the fiscal impact of the proposed resolution.

The proposed resolution will a) reject the three Request for Qualifications (RFQ) submissions that were received for the Lake Chabot Golf Course (LCGC) concession; b) close the current RFQ process; c) authorize staff to issue a new Request for Proposals (RFP) in nine months; and d) authorize the City Administrator to negotiate and execute a temporary agreement for the operation of the golf course with Touchstone Golf, LLC, a qualified management company.

When the former concessionaire agreement expired in October 2006, the Office of Parks and Recreation (OPR) assumed responsibility for management of the Lake Chabot Golf Course until a new concessionaire could be found through an RFQ process. During this interim period, the golf course was closed, and Mr. Steve Harker was hired by OPR as a Temporary Contract Service Employee to repair and improve the course. Also during this time period, an RFQ for the long-term lease of the golf course was issued. Unfortunately, none of the three RFQ responses that were received were adequately responsive or complete (see page 3 of the original Lake Chabot report for more information).

At this time, in order to ensure that the golf course can re-open to the public and become revenue generating, OPR is requesting authority to negotiate and execute an interim agreement for a nine-month period with two three-month extensions (for a maximum of 15-months), with Touchstone Golf in an amount not to exceed \$130,000. OPR is also requesting further direction from Council on the long-term strategy for the City's management of Lake Chabot Golf Course.

Item: _____
City Council
April 3, 2007

FISCAL IMPACT

Under the terms of the proposed professional services agreement, the monthly management fee to Touchstone Golf would be \$8,000 per month. The proposed contract term is 9 months, with two 3-month extensions. If the contract were to be extended for the full 15-month period, the maximum possible amount that could be paid to Touchstone Golf during the contract period would be \$120,000. In addition to the fixed management fee, Touchstone Golf will receive an additional incentive fee, if earned, of 10% of revenues that exceed expenditures. The incentive fee is estimated to be \$10,000 which assumes that revenues exceed expenditures by \$100,000.

Touchstone Golf will provide OPR with an operating budget for Lake Chabot within 30 days of approval of the contract, and will also provide OPR with monthly accounting of revenues and expenditures (see Proposed Term Sheet, Exhibit B) during the term of its contract. In addition, Touchstone is establishing a computerized “Point of Sale” system at all Lake Chabot revenue centers: the pro shop, restaurant, etc. to provide for highly accurate record-keeping.

Golf course expenditures (staff costs, food and beverage service, merchandise, management fees, etc.) would be paid out of revenue generated by the golf course. OPR fully expects that the course will be self-sustaining during this time and therefore staff does not anticipate a substantial impact on the Golf Course Improvement Fund. Based on the “worst case” scenario for the golf course, the course would lose \$33,000 in its first year. In the “best case” scenario, the course would generate \$100,000 in revenue in the first year (see Exhibit 1 attached).


All revenues and expenditures related to LCGC operations would impact the Golf Course Improvement Fund (3200), Lake Chabot Golf Course Org (502362). There will be no impact to the General Purpose Fund (1010).

Item: _____
City Council
April 3, 2007

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that Council adopt a Resolution to reject all submissions received for the operation and management of Lake Chabot Golf Course and close the current Request For Qualifications (RFQ) process; to issue a new Request For Proposals (RFP) in nine months; to waive the RFP requirements for a Temporary Management Agreement, and to authorize the City Administrator to negotiate and execute a Temporary Management Agreement with Touchstone Golf, LLC for operation and management of Lake Chabot Golf Course for an interim period in an amount not to exceed \$130,000.

Respectfully submitted,


Audree V. Jones Taylor
Director, Office of Parks & Recreation

Prepared by:
Deborah Spaulding, Administrative & Fiscal Manager

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

Attachments:

Proposed Professional Services Agreement with Touchstone Golf
Proposed Term Sheet

Item: _____
City Council
April 3, 2007

Exhibit 1 – Lake Chabot Supplemental

Lake Chabot G.C. Financial Forecast			
		Touchstone Golf	
<i>Estimate only</i>	<i>2006 Calendar</i>	<i>1st 12 Mo. Minimum</i>	<i>1st 12 Mo. Maximum</i>
Revenue	\$1,384,866	\$1,546,650	\$1,758,450
<i>% Growth over 2006</i>		12%	27%
Cost of Goods Sold	Limited Detail	\$154,800	\$182,685
Payroll Expense	Limited Detail	\$725,000	\$800,000
All Other Expenses	Limited Detail	\$700,000	\$675,000
Net Operating Income*	(\$80,000)	(\$33,150)	\$100,765
<i>Margin %</i>	-6%	-2%	6%
Rounds of Golf	43,329	45,000	47,500

PROPOSED

PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT BETWEEN THE CITY OF OAKLAND AND TOUCHSTONE GOLF, LLC – INTERIM OPERATION AND MANGAMENT OF THE LAKE CHABOT GOLF COURSE

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. **Parties and Effective Date**

This Agreement is made and entered into as of April 3, 2007 between the City of Oakland, a municipal corporation, (“City”), One Frank H. Ogawa Plaza, Oakland, California 94612, and Touchstone Golf, LLC , a Delaware limited liability company, based in Berkeley, California (“Contractor”) for the interim operation and management of the Lake Chabot Golf Course (“LCGC”).

2. **Scope of Services**

Contractor agrees to perform the services specified in **Schedule A** attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. **Schedule A** includes the manner of payment. The Project Manager for the City shall be Deborah Spaulding.

3. **Time of Performance**

Contractor’s services shall begin on April 3, 2007, and shall be completed by January 3, 2008. This Agreement may be extended by two separate three-month extensions (total of a possible six-month extension). These two extensions shall happen automatically, unless City gives Contractor ten days’ written notice of intent not to extend. That notice to Contractor must occur before December 24, 2007.

4. **Compensation and Method of Payment**

Contractor will be paid for performance of the entire scope of work set forth in **Schedule A** in an amount not to exceed \$130,000, which includes an incentive fee as set forth on Schedule A. Payment at the rates stated in Schedule A, shall be due upon completion and acceptance of the services, at which time Contractor shall submit an invoice. Invoices shall state a description of the services completed and the amount due.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the contractor has earned during the period for which payment is being made, on the basis of the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in Schedule A.

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M** ("Independent Contractor Questionnaire"), attached hereto.

c. Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

f. Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

7. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement, when needed.

9. Audit

Contractor shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

Contractor shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Contractor under this Agreement.

In addition to the above, Contractor agrees to comply with all audit, inspection, record-keeping and fiscal reporting requirements set forth in **Schedule S, *Audit Inspection and Fiscal Reporting Requirements***, which is attached hereto and incorporated by reference.

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department,

obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Contractor shall provide to the City Auditor all property-related audit and other reports required in **Schedule S** and under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. *Surplus supplies and equipment – Disposal or Destruction.*

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q**. **Schedule Q** is attached and incorporated herein by reference.

15. Indemnification

a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
- (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
- (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
- (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
- (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 above; and
- (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trade mark, or service mark or other proprietary or intellectual property rights of any third party.

b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule C hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to the payment of the grant to Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

17. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor.

18. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of

interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a “city officer” or “public official” for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement; (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

19. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor’s subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following:

employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1** ("Declaration of Compliance with the Americans with Disabilities Act,") attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

20. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant (s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.
- b. *Good Faith Effort*-In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. *Incentives* – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. *Banking* – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A

certificate validating banked credits must be issued by the City prior to the submittal or bid date.

- e. *The Exit Report and Affidavit (ERA)* – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator’s Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. *Joint Venture and Mentor Protégé Agreements*. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request .
- g. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D** (“Ownership, Ethnicity, Gender and Employment Questionnaire”), **Schedule E** (“Project Consultant Team”), attached and incorporated herein and made a part of this Agreement
- h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.

21. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$9.90 with health benefits or \$11.39 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.49 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Contractors shall inform said employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees. There are several web sites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) The 2005 Earned Income Tax Outreach Kit: www.cbpp.or/eic2005 .
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

22. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors(consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1** – Equal Benefits-Declaration of Nondiscrimination.

23. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

24. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P** (“Nuclear Free Zone Disclosure Form”), that Contractor is in compliance with the City of Oakland’s restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete **Schedule P**, attached hereto.

25. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

26. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

27. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

28. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present

to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

Should the project or any portion thereof be abandoned, the City shall pay the Contractor for all services performed thereto in accordance with the terms of this Agreement.

29. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

30. Governing Law

This Agreement shall be governed by the laws of the State of California.

31. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

(City of Oakland)

Director of Parks and Recreation
City of Oakland
250 Frank Ogawa Plaza - Suite 3330
Oakland, CA 94612-2033

(Contractor)

Touchstone Golf, LLC
Oakland, Ca.

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

32. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

33. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

34. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

35. Time of the Essence

Time is of the essence in the performance of this Agreement.

36. Commencement, Completion and Close out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, the Contractor shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without

limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Contractor to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Contractor.

37. Approval

If the terms of this Agreement are acceptable to Contractor and the City, sign and date below.

38. Inconsistency

If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

TOUCHSTONE GOLF, LLC
(Contractor)

CITY OF OAKLAND
(City)

Date: _____

Date: _____

By: _____
Steven Harker
President

By: _____
Deborah A. Edgerly
City Administrator

OFFICE OF PARKS AND RECREATION

APPROVED AS TO FORM AND LEGALITY:

Date: _____

Date: _____

By: _____
Audree V. Jones-Taylor, Director

By: _____
Office of the City Attorney

PROPOSED TERM SHEET
Lake Chabot Golf Course

The following terms are proposed for negotiating the Professional Services Agreement between Touchstone Golf, LLC (“Contractor”) and the City. This is provided to Council Members for their information and comment at the Council Meeting, April 3, 2007.

The proposed terms for the agreement are:

A. General Description and Responsibilities

1. City is the fee simple owner and the City of Oakland Office of Parks and Recreation, “OPR”, is the custodial agency of the real property that includes a 27-hole golf course, clubhouse, food and beverage operations, and all improvements and business operations, commonly known as Lake Chabot Golf Course, (“LCGC”).
2. City seeks to enter into an Agreement for the purpose of operating, restoring, developing and improving LCGC for the use and benefit of the public. City desires to develop LCGC in conjunction and cooperation with Contractor in the best interests of the public.
3. City seeks to retain a professional manager of the operation of LCGC, including, but not limited to, administration of all receipts and disbursements, supervision of all employees and maintenance of the golf course, club house, related facilities and equipment.
4. Contractor, who was referred by the previous golf course manager, is the only known golf course management company on the West coast that provides short-term interim solutions for golf course renovations and repairing with a proven track record of increasing rounds and generating revenue.
5. Contractor will recruit employment of competent management who are trained in the necessary facets of golf course facility management, and who have sufficient experience in the golf course facility industry to oversee management of the golf course facility. It will also employ a competent staff and deploy that staff and other resources to insure proper care of the buildings, grounds and golf course facility.
6. Contractor will manage all hiring, training and termination of all golf course facility management and personnel, including administering all labor relations. All existing personnel of the golf course facility will be transferred to Contractor, including but not limited to an employee leasing entity.
7. Contractor will make every effort to hire qualified Oakland residents first. It will arrange for the purchase of supplies and equipment as is reasonably necessary in order to operate the Golf Facility.

8. Contractor will oversee the planning and implementation of all advertising and marketing. It will maintain the golf course facility and all of its facilities in a condition consistent with the market area standard and it will oversee all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Facility.

9. City will approve of the hiring of the General Manager, and which approval shall not be unreasonably withheld.

10. City acknowledges that occasionally Contractor may deem it necessary to enter agreements to improve the LCGC.

11. Contractor is authorized, on behalf of City, to modify, remodel and provide upgrades to the LCGC if the expenditures are less than \$5,000. Any expenditures greater than \$5,000, whether remodeling, or equipment or supplies can only be made with written approval from City. Any contracts executed by Contractor must be entered into in name of City. No contract or agreement may be executed without City approval, unless in accordance with the budget and terminable on 30-days notice. Contractor will provide City, within ten (10) business days of execution, copies of all such contracts and agreements that are binding on or obligate City.

B. Compensation and Fiscal Responsibilities

Management Compensation

1. These funds for management compensation are intended to be covered by the revenue of the operation.

2. Contractor's monthly management fee will be \$8,000 per month, equaling a maximum total (including the two extensions) of \$120,000.

3. In addition to the fixed management fee, Contractor will receive an additional incentive fee, if earned, of 10% of the net cash flow in excess of the budget established by City. The incentive fee, when earned, will be paid on a quarterly basis and will be payable within 30 days of the calculation thereof. The incentive fee is estimated to be \$10,000, which assumes that revenues exceed expenses by \$100,000.

4. The first payment of the management fee will be payable within 15 days of the execution of this Agreement and thereafter paid monthly.

Fiscal Responsibilities

1. City recognizes the importance of a sound fiscal policy to maintain and promote the LCGC and thus will establish reserve accounts for the following purposes:

- a. To fulfill the payment of expenses by authorizing Contractor and designated Golf Course employees and City employees, as necessary, to make deposits and authorize disbursements from such accounts. On submission of a request for designees by Contractor, City will approve, in writing, the individuals who will be authorized to make such disbursements
 - b. To pay all operating expenses, except its own under this Agreement, from the existing bank account utilized to pay operating expenses for the Golf Course Facility.
 - c. To promptly pay all operating expenses of the Golf Course Facility unless the amounts are in dispute.
2. Contractor nor its directors or officers will have any interest in any concession at the Golf Course Facility.
3. Contractor will pay all costs associated with securing appropriate licenses and permits for the operation of the Golf Facility.

C. Reporting Requirements and Responsibilities

1. Within 30 days of the date of this Agreement, the parties will have prepared and received City's approval of a final annual operating budget for the remaining months of the fiscal year and no later than May 30 for the subsequent fiscal year. Until such time that the budget is complete and approved, Contractor will use its best commercially reasonable efforts to operate the Golf Course Facility under the existing budget framework provided to Contractor by City, or in a manner consistent with the current market position of the Golf Course Facility.
2. Contractor will supply City with its books, accounts and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility. Such records must be accurate in all material respects with periodic reporting to City as may be feasible, utilizing current accounting systems maintained by the Golf Course Facility or its affiliates.
3. Contractor will provide monthly financial statements, including a balance sheet, statement of operations and other financial data reasonably requested by City no later than thirty (30) calendar days following the end of each month, as may be feasible utilizing agreed upon accounting systems maintained by the Golf Course Facility or provided by City.
4. City acknowledges that Contractor does not give any general or specific guarantee as to the profitability of the Golf Course Facility, its attendance or its revenues.

OFFICE OF THE CITY CLERK

2007 MAR 29 PM 3:01

Approved as to Form and Legality

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION TO REJECT ALL SUBMISSIONS RECEIVED FOR THE OPERATION AND MANAGEMENT OF LAKE CHABOT GOLF COURSE AND CLOSE THE CURRENT REQUEST FOR QUALIFICATIONS (RFQ) PROCESS; TO ISSUE A NEW REQUEST FOR PROPOSALS (RFP) IN NINE MONTHS; TO WAIVE THE RFP REQUIREMENTS FOR A TEMPORARY MANAGEMENT AGREEMENT AND TO AUTHORIZE THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A TEMPORARY MANAGEMENT AGREEMENT WITH TOUCHSTONE GOLF, LLC FOR OPERATION AND MANAGEMENT OF LAKE CHABOT GOLF COURSE FOR THE INTERIM PERIOD IN AN AMOUNT NOT TO EXCEED \$130,000

WHEREAS, the City of Oakland has attempted to secure a long term operator of the Lake Chabot Golf Course through an approved RFQ process; and

WHEREAS, the RFQ process yielded three non-conforming and incomplete proposals, none of which provides the City of Oakland with a viable operator for Lake Chabot Golf Course; and

WHEREAS, it is in the best interest of the City to reopen Lake Chabot Golf Course as scheduled on April 7, 2007 in order to maintain the golfing community's interest in the course; and

WHEREAS, the re-opening of the golf course provides and restores an important recreational amenity for the residents of the City of Oakland; and

WHEREAS, the re-opening of the golf course provides an opportunity to generate revenue to offset operating costs of the golf course as well as increase the chances for the long-term success of the property by avoiding the displacement of golfers to competing facilities over a longer period of time; and

WHEREAS, an interim golf course manager is needed in order to reopen and operate Lake Chabot Golf Course until a new operator can be found; and

WHEREAS, Touchstone Golf, LLC, a golf management company, is qualified to provide the needed interim management service; now, therefore, be it

RESOLVED, that the City Council hereby rejects all submissions received for the operation and management of Lake Chabot Golf Course and closes the current RFP process; and be it

FURTHER RESOLVED, that an RFP process to secure a long-term operator for Lake Chabot Golf Course for terms acceptable to the City of Oakland shall commence nine months from the date of the approval of this Resolution; and be it

FURTHER RESOLVED, That pursuant to Oakland Municipal Code section 2.04.051.B and findings set forth in the City Administrator's report accompanying this item, the City Council finds and determines that is in the best interests of the City to waive the competitive request for proposal/qualifications process for the interim Touchstone Golf, LLC contract and so waives the requirement; and

FURTHER RESOLVED, that the City Administrator is hereby authorized to negotiate and execute a management agreement with Touchstone Golf for the interim period until a new operator is found; and be it

FURTHER RESOLVED, that the total amount of the agreement is for an amount not to exceed \$130,000; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution as to form and legality and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California