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**AMENDED AND RESTATED AGREEMENT**

Between

TOUCHSTONE GOLF, LLC, and CITY OF OAKLAND

THIS AMENDED AND RESTATED AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the CITY OF OAKLAND, a municipal corporation (hereinafter referred to as the "CITY"), and Touchstone Golf, LLC, a Delaware limited liability company, based in Oakland, California (hereinafter referred to as "Touchstone") TOUCHSTONE, for the operation and management of the CITY-owned Lake Chabot Course (the "LCGC");

**WITNESSETH**

WHEREAS, the CITY and the TOUCHSTONE entered into an agreement dated May 1, 2007 for the operation and management of the LCGC (the "Original Agreement"); and

WHEREAS, the Original Agreement was amended by: Amendment No. 1 dated July 24, 2007, which amended the management and collection of Gross Revenue provisions of the Original Agreement, and Amendment No. 2 dated August 10, 2008, which extended the term of the Original Agreement, and

WHEREAS, the extended term of the Original Agreement expired on July 31, 2011; and

WHEREAS, the CITY and the TOUCHSTONE hereto desire to amend, extend and restate the Original Agreement to incorporate the applicable provisions of Amendments No. 1 – and make additional amendments as mutually agreed upon; and

WHEREAS, the CITY is the fee owner of that certain real property located at 11450 Golf Links Road, Oakland, California and which is described in Exhibit "A", attached hereto and incorporated herein by references LCGC; and

WHEREAS, the LCGC is a unique and important asset for the education, enjoyment and recreation of the CITY's residents and visitors; and

WHEREAS, the CITY desires to promote and aid in the LCGC's maintenance and improvement as an educational and recreational facility

consisting of, but not limited to, golf course and related amenities for the citizens of the CITY, among others; and

WHEREAS, the TOUCHSTONE desires to operate and manage LCGC and major capital Improvement projects, maintain, and Improve said real property consistent with the CITY's desires; and

WHEREAS, the TOUCHSTONE administers and manages an annual revenue budget in excess of Two Million dollars (\$2,000,000.00) and which continues to grow; and

WHEREAS, the TOUCHSTONE with funds from LGGC revenues and fund 3200 contributes in excess of One Million Eight Hundred Thousand \_\_\_\_\_ dollars (\$1,800,000.00) per year to the maintenance, operation, and capital improvement of the LCGC;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

IN CONSIDERATION OF THE ABOVE RECITALS AND PERFORMANCE OF THE RESPECTIVE COVENANTS HEREINAFTER DESCRIBED, the CITY and TOUCHSTONE hereby agree that TOUCHSTONE shall improve, maintain and operate the LCGC, upon the following terms and conditions:

1. FEE INTEREST: The CITY shall retain the fee title to the above-referenced real property.
2. TERM/OPTIONS TO EXTEND AGREEMENT: The term of this Agreement shall be for FIVE (5) years commencing upon the date of execution hereof by the CITY, and expiring on June 30, 2016 *unless* extended by the City in accord with the terms of this Agreement. City shall have FIVE (5) One-Year options to extend the term of this Agreement upon sixty (60) days written notice to TOUCHSTONE to be given prior to the expiration of the initial term of this Agreement, or prior to the expiration of any extended term.
3. SCOPE OF SERVICES/COMPENSATION:

TOUCHSTONE agrees to perform the services and obligations set forth in Schedule A attached hereto and incorporated herein. TOUCHSTONE shall designate the President and or CEO of Touchstone Golf 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 the Director of Parks and Recreation and or her/his designee.

4. AGREEMENTS: TOUCHSTONE and the CITY agree that this Agreement supersedes all previous agreements with respect to TOUCHSTONE's operations in the LCGC and further confirms TOUCHSTONE's right to continue the operation of the LCGC including the golf course, food concessions, beverages, and programs, and further confirms TOUCHSTONE's responsibility for all financial obligations of such agreements.

5. MAINTENANCE AND CAPITAL IMPROVEMENT REQUIREMENTS: TOUCHSTONE shall comply with the Maintenance Requirements set forth in Exhibit 1 to Schedule A, which is attached hereto and incorporated herein. TOUCHSTONE is authorized to implement, and complete the capital improvements set forth in Exhibit 2 in accordance with the dates set forth therein.

TOUCHSTONE shall, during implementation of the improvements, adhere to sound business and legal practices concerning the following areas: design, construction, financing, supervision, building codes, regulations, maintenance, and all other applicable laws.

TOUCHSTONE shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished or operations conducted on said premises.

Any improvements shall be subject to all applicable Federal, State, and local permitting and development requirements including, but not limited to, the California Environmental Quality Act, Oakland Planning Code, Oakland General Plan (including the Open Space Conservation and Recreation Element [OSCAR]), and Oakland Municipal Code, (including the Creek Protection Ordinance and Grading Ordinance). TOUCHSTONE shall obtain all necessary permits and regulatory approvals at its sole cost and expense prior to the commencement of any work.

TOUCHSTONE agrees to protect, defend (including any third party lawsuits), indemnify and hold harmless the CITY, its Council members, officers, agents and employees from any claims, demands, actions or damages arising out of the implementation of any Improvements, including liens, claims and demands for work performed, materials furnished or operations conducted on said premises.

6. FINANCING: TOUCHSTONE raises funds for the maintenance, operation and improvement of the LCGC, over and above the revenues it receives from the LCGC programs and activities. In order to implement said improvements, the TOUCHSTONE will be required to raise funds through available means of financing. TOUCHSTONE

shall, with the approval of the City Council, and subject to the terms and conditions of this Agreements, have the right and authority to:

- a. Collect and use in accordance with this Agreement all revenues collected at the LCGC;
- b. Sub-license concession areas to responsible parties for a period of time less than that remaining of the term of the Agreement;
- c. Charge fees in accordance with Paragraph 11(c) below;
- d. Raise funds in any other lawful manner; and
- e. Make, execute or guarantee Indebtedness secured by TOUCHSTONE's Improvements, but under no circumstances shall such indebtedness be construed as a debt of the CITY, nor shall it constitute in any way a lien or encumbrance on the fee of said leased premises or any interest of the CITY in said premises.

7. FISCAL MANAGEMENT: Under management of TOUCHSTONE, the LCGC shall be operated in a financially responsible manner. Under TOUCHSTONE's management, the LCGC will be operated in a manner which demonstrates financial solvency, including the ability to meet long-term fixed expenses and accomplish the long-term expansion and growth contemplated by this Agreement, while continuing to operate the LCGO for the education, enjoyment and recreation of visitors.

8. ACCOUNTING/FUND ACCUMULATION: TOUCHSTONE agrees to comply with the CITY's accounting and audit requirements, including any updates and modifications, set forth by the Finance Director, City Auditor and City Administrator during the term of the Agreement. The audit provision shall conform to the requirements outlined in Exhibit "3," including the Table of Contract Clauses Related to Financial Responsibilities, and any updates and modifications.

9. PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE CITY

TOUCHSTONE understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, TOUCHSTONE 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. TOUCHSTONE agrees that all information disclosed by the City to TOUCHSTONE shall be held in confidence and used only in performance of the Agreement.

TOUCHSTONE shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

#### 10. RECORDS AND CITY'S RIGHT TO INSPECT.

- (a) Access to Records: TOUCHSTONE shall provide requested records to the CITY within five (5) working days of receipt of the CITY's request and shall allow the CITY access to books and records at all reasonable times. TOUCHSTONE shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with Federal, State and local government on a quarterly basis.
- (b) Records Retention: TOUCHSTONE shall retain financial and operational records until the later of five (5) years after the end of the Touchstone's fiscal year or two (2) years after closure of all disputed matters. Such records during the period of the Agreement and the retention period are to be retained at a site of local administration or a storage site nearby with availability to the CITY parties in interest.
- (c) The CITY shall have the right to inspect the premises and operations of the LCGC, from time to time, in a reasonable manner, to ensure that it is being maintained and operated at the level required by and in accord with the terms and conditions of this Agreement.

11. FUNDS: During the term of the Agreement, TOUCHSTONE may accumulate funds received from its operation of the LCGC to be used for the following purpose: (1) regular operation and maintenance as TOUCHSTONE expands, and (2) improvements, construction of new and renovation of existing facilities, and the purchase of equipment.

It is the intention of the CITY and TOUCHSTONE that the capital improvements in the LCGC be completed in a timely, continuous and expeditious manner and in accord with Exhibit 2 to this Agreement.

In order to expedite capital improvements, TOUCHSTONE shall submit annually to the CITY's Office of Parks and Recreation ("OPR"), within one hundred fifty (150) days after the end of its fiscal year, a capital improvement budget, spending plan, actual expenses and schedule describing its projected development for the current budget year and for the next two (2) following years.

The total amount of money to be spent annually and the scheduling of development shall be the responsibility of The City in agreement with TOUCHSTONE. In the event a disagreement arises concerning the schedule, TOUCHSTONE and OPR shall meet and attempt to resolve such issues at the earliest practical time. Both parties agree to act reasonably and in good faith. In the event that these differences cannot be resolved, final resolution shall rest with the City Council.

12. CHARGES AND FEES:

- a. Good and Services: TOUCHSTONE and/or its licensees may set and determine prices for services, goods and products sold to the public; provided, however, that said prices shall not be more than those charged for similar services, goods and products at comparable facilities.
- b. Submittal of New or Revised Fees: TOUCHSTONE shall recommend to OPR any proposed new or revised fees no later than February 1<sup>st</sup> of each year, to be considered by City Council. If approved by the City Council, such changes will be effective July 1<sup>st</sup> as an amendment to the Master Fee Schedule

13. TOUCHSTONE SERVICES:

- (a) On-Golno Services: TOUCHSTONE shall provide on-going services consistent with the Alameda County Health and any other Federal, State or local standards or requirements.
- (b) Programs and Entertainment: TOUCHSTONE will provide programs and recreation at LCGC for the benefit of the public.

The TOUCHSTONE shall work with the CITY, OPR, Oakland Unified School District, and local community organizations in order to implement the program and gain participation from the diverse communities of Oakland.

TOUCHSTONE commits to and shall perform on-going and annual program evaluation of the activities at the LCGC, including involvement of stakeholders.

TOUCHSTONE shall present to the CITY, on or before November 1 of each year, commencing in 2012, its written annual evaluation findings, including statistics, regarding the extent to which TOUCHSTONE is achieving its goal to increase

and enhance Oakland resident access to the LCGC and golf experiences.

Any Community Program revisions shall be presented to the OPR for its approval so that the Program achieves its goals of increasing Oakland resident access to the LCGC.

OPR is the City Administrator designee to oversee the Agreement.

TOUCHSTONE shall submit the referenced annual written reports to the CITY, providing one copy to OPR (ATTN: Director of Parks and Recreation, 250 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland, CA 94612) and one copy to the Office of the City Administrator (ATTN: City Administrator, 1 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland, CA 94612).

- (c) Concessionaires: The TOUCHSTONE may enter into agreements with Concessionaires for the sale of food, beverages and/or Golf Instruction. TOUCHSTONE may enter into agreements with suppliers for goods, food, beverages, merchandise, materials, supplies and services related to the operation of the LCGC. Selection and award of contractors and suppliers shall follow the CITY's established policies regarding awards of sub-contracts and/or selection of vendors. Improvements by a concessionaire shall be subject to prior approval by the City Administrator. TOUCHSTONE shall provide OPR copies of all sub-concession agreements and audited financial statements annually.

14. **REPORT OF REVENUE AND EXPENDITURES**: TOUCHSTONE shall provide, during the course of the Agreement, a monthly financial report of revenue and expenditures from the proceeds of CITY funds, loan funds from CITY-administered programs and grants from programs administered by the CITY. Supporting documents may be required to be attached.

15. **PROPERTY ACCOUNTING**: TOUCHSTONE has a responsibility for the protection, maintenance and preservation of all property held as a custodian for the CITY. At the inception of this Agreement, the parties shall inventory all tangible property of the CITY transferred to the custody of TOUCHSTONE. All tangible property acquired during the course of this Agreement shall be the property of the CITY when acquired by CITY grant, operating revenues, refunds, fund raising revenues, governmental grants and other grants. Annually, TOUCHSTONE shall provide an acquisition and disposal report for

tangible property. Property dispositions shall be approved by the City Administrator or her designee (OPR) prior to such disposition. At the conclusion of this Agreement, all CITY tangible property shall be returned to the CITY with shipping and delivery expenses to be at TOUCHSTONE's sole expense.

16. RETURN OF FUNDS AT END OF TERM: Upon termination of this Agreement, TOUCHSTONE shall close all accounts; all account balances shall be determined and certified by an independent Certified Public Accountant; and such balances shall be forwarded to the CITY within one hundred twenty (120) days after such termination.

17. TOUCHSTONE OBLIGATIONS: The parties agree that it is the intent of this Paragraph 17, and the subparts thereof, that TOUCHSTONE shall be responsible for all maintenance, management, improvements and restoration of LCGC, and shall comply with all applicable Federal (including ADA), State, County, and CITY rules and regulations and building and health codes.

a. Maintenance and Utilities

TOUCHSTONE shall maintain grounds, building, equipment, structures, buildings, roadways, paths, parking lots, landscaping, picnic and other facilities of the LCGC in good order and repair. TOUCHSTONE agrees that it shall maintain and operate the LCGC in accordance with the highest standards of municipal golf courses in the San Francisco Bay Area. TOUCHSTONE further agrees that it will be responsible for proper budget and financial reporting for those maintenance, management and restoration responsibilities stated hereinabove; for all licenses, fees, possessory interest taxes, if applicable. TOUCHSTONE shall pay and be responsible for all charges for the furnishing of gas, water, electricity, telephone service and other public utilities to the premises during the term of this Agreement and the CITY shall pay for the removal of garbage and rubbish from said premises. Funding for these expenses shall come from the LCGC revenue.

b. Sanitary Sewer Collection System Operations and Maintenance

TOUCHSTONE acknowledges that the CITY is subject to a Federal Stipulated Order and to a State of California Cease and Desist Order with respect to the management and operation of the City's sanitary sewer collection system. TOUCHSTONE agrees to operate its sewer system in a manner that will not cause or contribute to sanitary sewer overflows in the CITY's sewer collection system. TOUCHSTONE will perform scheduled maintenance to LCGC sewer system as well as its



moats to reduce the possibility of sanitary sewer overflow events. TOUCHSTONE will respond to all reported sanitary sewer overflows within one hour and will report all sanitary sewer overflows to the City of Oakland Call Center or after-hours dispatch immediately. TOUCHSTONE In operating its sewer system shall follow the San Francisco Regional Water Quality Control Board and the Environmental Protection Agency guidelines and requirements of state and Federal laws and regulations including, without limitation, the U.S. Clean Water Act and the California Porter-Cologne Water Quality Control Act. The obligations and responsibilities arising from this Section 17.b. shall be subject to the indemnification provision set forth in Section 24 of this Agreement.

**18. INSURANCE:**

Unless a written waiver is obtained from the CITY's Risk Manager, TOUCHSTONE shall provide the insurance listed in Schedule Q attached hereto and incorporated herein by reference. If required Property and Liability Insurance for LCGG shall be funded from LCGG revenue.

**19. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES/EQUAL BENEFITS:** In carrying out the maintenance and improvements of the subject property, in determining the appropriate fees to be charged, TOUCHSTONE shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community, provided that TOUCHSTONE's goal of financial self-sufficiency is not thereby endangered.

TOUCHSTONE and TOUCHSTONE's subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of TOUCHSTONE 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.

TOUCHSTONE 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.

This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.32 requiring contractors on CITY contracts of

\$25,000.00 or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. TOUCHSTONE and vendors that do not have employees or do not provide employees with spousal benefits are not required to change their benefits policies. All contractors shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as Schedule C-2 to this Agreement.

If applicable, TOUCHSTONE will send to each labor union or representative of workers with whom TOUCHSTONE has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of the TOUCHSTONE's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

TOUCHSTONE further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship.

20... TWENTY PERCENT (20%) LOCAL, SMALL BUSINESS ENTERPRISE PROGRAM (LSBE); LOCAL EMPLOYMENT PROGRAM; FIFTEEN PERCENT (15%) APPRENTICESHIP PROGRAM

There is a 20% minimum participation requirement for all construction contracts over \$100,000 and all professional services contracts over \$50,000. All construction contracts below \$100,000 and all professional services contracts below \$50,000 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

For contracts exceeding \$50,000.00, contractors utilizing subcontractors shall comply with the twenty percent (20%) LBE/SLBE participation requirement for the CITY's Professional Services Contract Program. TOUCHSTONE shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and ten percent (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 in order to earn credit toward meeting the twenty percent requirement. Additionally, opportunities for training and employment shall be given to residents of the City of Oakland.

This Agreement is subject to the (a) CITY's 50% Local Employment Program and (b) the 15% Apprenticeship Program.

- (a) The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-CITY-funded work. For any construction contract, subsidy, or development agreement with the CITY this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the CITY.
- (b) The 15% Apprenticeship Program (Oakland Apprenticeship Workforce Development Partnership System – OAWDPS) requires contractors meet a 15% Oakland resident apprenticeship hire goal that is based on total hours worked and on a craft-by-craft basis. The hours worked may be performed on CITY projects, or 7.5% of the hours worked may be performed by resident apprentices on non-CITY or Oakland Redevelopment Agency projects.

A copy of the (1) Local Small Local Business Enterprise Program (2) 50% Local Employment Program and (3) 15% Apprenticeship Program is attached hereto and shall be incorporated herein as Exhibit "E 1-2".

All affirmative action efforts of TOUCHSTONE 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 the TOUCHSTONE to hire and/or contract with the individual or entity in question.

In the recruitment of subcontractors, the CITY 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.

In the use of such recruitment, hiring and retention of employees or subcontractors, the CITY 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 REQUIREMENTS

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached hereto and incorporated herein as Schedule N and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that TOUCHSTONE provides 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 \$11.35 with health benefits or \$13.05 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.
- 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 \$1.70 per hour. TOUCHSTONE 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) –TOUCHSTONE shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EiC and shall provide forms to apply for advance EiC payments to eligible employees.
- e. TOUCHSTONE 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. The TOUCHSTONE 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 –TOUCHSTONE shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. TOUCHSTONE 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. TOUCHSTONE shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

- h. TOUCHSTONE shall require contractors and subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. TOUCHSTONE shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

## 22. 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 City Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the CITY 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 City Council approval, TOUCHSTONE must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

23. NUCLEAR FREE ZONE DISCLOSURE: TOUCHSTONE represents pursuant to Schedule P ("Nuclear Free Zone Disclosure Form") that it is in compliance with the CITY's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this Agreement, the TOUCHSTONE shall complete Schedule P, attached hereto.

## 24. INDEMNIFICATION

a. Notwithstanding any other provision of this Agreement, TOUCHSTONE shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Council members, 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 TOUCHSTONE's obligations, representations or warranties under this Agreement;

- (ii) Act or failure to act in the course of performance by TOUCHSTONE under this Agreement;
  - (iii) Negligent or willful acts or omissions in the course of performance by TOUCHSTONE 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 TOUCHSTONE;
  - (v) Unauthorized use or disclosure by TOUCHSTONE of ANY City Confidential information as provided in Section 9 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 "TOUCHSTONE" includes TOUCHSTONE, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give TOUCHSTONE prompt written notice of any such claim of loss or damage and shall cooperate with TOUCHSTONE, 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 TOUCHSTONE falls 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 TOUCHSTONE in the amount of anticipated defense costs, plus additional reasonable amounts as security for TOUCHSTONE's obligations under this Section 24. In no event shall TOUCHSTONE agree to the settlement of any claim described herein without the prior written consent of City.
- e. TOUCHSTONE 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 TOUCHSTONE 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, TOUCHSTONE'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 TOUCHSTONE's obligations under this Section 24 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 24 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 TOUCHSTONE 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.
25. BROWN ACT AND SUNSHINE ORDINANCE: TOUCHSTONE acknowledges that Oakland Municipal Code Section 2.20.040A applies to the meetings of its governing board and that it will comply with the terms of that Section. All meetings of TOUCHSTONE Board of Directors shall be conducted pursuant to the provisions of Oakland Municipal Code Section 2.20.040B (City of Oakland Sunshine Ordinance).
26. ARIZONA AND ARIZONA-BASED BUSINESSES: Unless waived by the City Administrator, the TOUCHSTONE asserts that neither it nor any of its subsidiaries, affiliates or agents that provide services under this Agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this Agreement with the City or until Arizona rescinds SB 1070, whichever is sooner, in accordance with the City Council policy urging City departments, to the extent practicable and when there is no significant additional cost to the City or conflict with law, to refrain from entering into any new contracts or contract amendments to purchase goods or services from a company that is headquartered in Arizona (Resolution No. 82727 C.M.S., passed in May, 2010).

TOUCHSTONE acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its business entity or any of its subsidiaries, affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation may be a basis for termination of this Agreement unless waived by the City Administrator.

27. POLITICAL PROHIBITION: Subject to applicable law, funds received pursuant to this Agreement shall not be used for political purposes,



sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before Federal, State, or local government. TOUCHSTONE shall not use the property for political purposes, including, but not limited to, political fundraising and campaigning.

28. CONFLICT OF INTEREST: The following protections against conflict of interest will be upheld:

- a. TOUCHSTONE certifies that no member or delegate of the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising herefrom.
- b. TOUCHSTONE 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, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter.
- c. TOUCHSTONE certifies that no one who has any financial interest in this Agreement or receives compensation for the services from the TOUCHSTONE is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department to which these services are to be provided pursuant to this Agreement.

29. BONDS AND CONTRACTOR'S INSURANCE: TOUCHSTONE shall require any contractor who performs work on the premises to maintain in force such insurance as may be necessary to assure that the CITY is indemnified and held harmless. In addition, the CITY and the TOUCHSTONE shall require as a condition of any contracts for the construction, performance bonds and payment bonds in the amounts equal to one hundred percent (100%) of the amount of each contract over \$25,000.00. This amount shall be subject to review at five (5) year intervals by the CITY and TOUCHSTONE. TOUCHSTONE shall be responsible for the labor utilized or materials furnished in the future repair or replacement of facilities at the premises and keep the LCGC and CITY's possessory interest therein free and clear of any liens or encumbrances of any kind whatsoever created by TOUCHSTONE's acts or omissions.

30. TERMINATION ON NOTICE

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days written notice to TOUCHSTONE, pursuant to the terms set forth in Schedule A.

31. **NON-ASSIGNMENT OF INTEREST:** TOUCHSTONE shall not assign or otherwise transfer any rights, duties, or obligations or Interest in this Agreement, either in whole or in part, without the prior written approval of the City Council. The CITY shall not assign this Agreement to a private corporation, firm or individual without the prior written approval of the TOUCHSTONE, except as herein provided.
32. **INUREMENT:** This Agreement shall be and is hereby binding on the successors of the parties hereto.
33. **PARKS AND RECREATION ADVISORY COMMISSION:** Any and all matters with respect to this Agreement that require policy approval by the City Council, not including administrative decisions by the City Administrator that need no such approval, shall be first submitted to the PARKS AND RECREATION ADVISORY COMMISSION which shall, in turn, submit same to the City Council in conformance with applicable procedures.
34. **PERSONAL CONTRACT:** The qualifications and identity of TOUCHSTONE, INC. are of particular interest to the CITY. Because of those qualifications and identity, the CITY has entered into this Agreement. No voluntary or involuntary successor in interest of the TOUCHSTONE shall acquire any rights or powers under this Agreement unless so approved by the City Council, and until such successor is in compliance with the applicable rules, procedures and regulations of the Federal Government, the State of California, the County of Alameda and the provisions of this Agreement.
35. **PERMANENT IMPROVEMENTS:** At the conclusion or termination of the Agreement, or any renewals to the Agreement, all permanent fixtures shall become the property of the CITY, except as set forth under Paragraph 12(c), CONCESSIONAIRES.
36. **EASEMENT:** TOUCHSTONE agrees the CITY shall retain all rights and duties with respect to the granting and issuance of any and all easements on the property known as "Lake Chabot Golf Course" to third parties, provided such easements do not interfere with the operation of the LCGC. The CITY shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to TOUCHSTONE, the CITY shall notify the TOUCHSTONE of

the granting of any such easements prior to the effective date of said easement.

37. **ILLEGALITY OF CONTRACT:** This Agreement is intended to satisfy the conditions of Internal Revenue Service Procedure 93-17. In the event that any of the obligations under this Agreement shall become null and void by Federal, State or local law, or in the event the future performance of the conditions or terms of this Agreement becomes a hardship for the parties to perform because of Federal, State or local law which is enacted, or court decision rendered, the parties may amend the Agreement to conform with Federal, State or local law, or the CITY may, at its option, terminate this Agreement. The CITY shall not be liable to TOUCHSTONE for any loss or damage or any nature suffered or claimed to be suffered by TOUCHSTONE by reason of any modifications to the Agreement or its termination.
38. **WASTE OR NUISANCE:** TOUCHSTONE shall not commit or permit the commission by others of any waste on said premises; the TOUCHSTONE shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on said premises; and TOUCHSTONE shall not use or permit the use of said premises for any unlawful purpose.
39. **WAIVER OF BREACH:** The waiver by the CITY of any breach by TOUCHSTONE of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by TOUCHSTONE either of the same or a different provision of this Agreement.
40. **HOLDOVER:** Should the TOUCHSTONE hold over and continue maintaining and operating the LCGC after the end of the term of this Agreement, with the expressed or implied consent of the CITY, such holding over shall be construed as a continuation of the Agreement from month-to-month and upon the same terms and conditions as herein provided for the previous Agreement. Any holdover shall terminate upon the execution of a new Agreement.
41. **CITY'S REPRESENTATIVE:** TOUCHSTONE shall be considered the CITY's representative for the sole purpose of Improvements, maintenance, and/or construction undertaken at the LCGC including, without limitation, construction, alteration, repair, demolition or excavation of existing structures, buildings, roadways, paths, parking lots and other facilities and landscaping for which a California contractor's license, general or special, is required.

42. ACCESS TO PUBLIC RECORDS: TOUCHSTONE shall cooperate with the CITY to provide public access for the purposes of public inspection of information, documents, correspondence, inspection records, logs, minutes, photographs, contracts and other documents in any way related to the expenditure of funds granted or otherwise provided to the LCGC by CITY.
43. DISPOSITION OF ASSETS OPERATIONS UPON TERMINATION: Upon termination of this Agreement, all assets and operations will be turned over to the CITY or its designated representative, and the CITY will assume all financial and operational responsibilities for the LCGC, except TOUCHSTONE's debts and liabilities for which TOUCHSTONE shall be solely responsible.
44. NOTICES: Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the CITY by TOUCHSTONE or TOUCHSTONE by the CITY shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

CITY

City of Oakland  
Office of the City Administrator  
One Frank Ogawa Plaza  
Oakland, CA 94612  
Attn: City Administrator

TOUCHSTONE

Touchstone Golf, LLC  
11450 Golf Links Road  
Oakland, CA 94605  
Attn: Steve Harker, CEO

45. SEVERABILITY: In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.
46. GOVERNING LAW: This Agreement shall be deemed to be made and construed in accordance with the laws of the State of California, without reference to the State's conflict of laws statutes and venue shall lie in the City of Oakland, Alameda County, California.
47. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between TOUCHSTONE and the CITY with respect to the operation and management of the LCGC. This Agreement supersedes all prior or contemporaneous agreements, representations or understandings with respect to the subject matter set forth herein. In entering into this Agreement, TOUCHSTONE has not relied on any representation made by the CITY or its elected officials or any other representative or agent of the

CITY, except as expressly set forth in this Agreement. Except with regard to Schedule Q, which the CITY may unilaterally change with required notice pursuant to Section (i) therein, this Agreement may not be modified, altered or changed except in writing, signed by all parties. If any part of this Agreement shall be determined to be invalid, unlawful or unenforceable, that part shall not be deemed to be part of this Agreement.

The rights and obligations set forth in this Agreement are separate and distinct from the rights and obligations established through the land use approval process.

48. COMPLIANCE WITH ALL LAWS: TOUCHSTONE shall comply with all Federal, State and local laws, rules, ordinances, codes and regulations in the carrying out of this Agreement. TOUCHSTONE warrants that TOUCHSTONE and TOUCHSTONE's employees, contractors, subcontractors, consultants, and sub-consultants, and agents are properly licensed, registered, and/or certified as may be required under any applicable Federal, State and local laws, statutes, ordinances, rules and regulations relating to TOUCHSTONE's performance of the services described in this Agreement.

IN WITNESS WHEREOF, the City Administrator of the CITY OF OAKLAND has caused the name of the City of Oakland to be affixed hereto and TOUCHSTONE GOLF, LLC, has caused its name to be affixed, all in quadruplicate, the day and year first above written. The City Administrator is duly authorized by Resolution No. \_\_\_\_\_ C.M.S. passed by the City Council on December \_\_\_\_\_, 2011, to execute this Agreement.

CITY OF OAKLAND,  
a municipal corporation

TOUCHSTONE GOLF, LLC  
a Delaware Corporation

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

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

Title: \_\_\_\_\_

Steve Harker  
Title: CEO

OFFICE OF PARKS AND  
RECREATION

Approved:

Audree V. Jones-Taylor, Director      Date      Office of the City Attorney      Date

**SCHEDULE A**  
**LAKE CHABOT GOLF COURSE**

**Scope of Work  
And  
Method of Compensation**

City, as the fee simple owner and the City Office of Parks and Recreation (OPR) as the custodial agent of 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"), grants to TOUCHSTONE the right, authority and power to manage, promote, maintain, restore, develop, improve and operate the LCGC and all its facilities (Golf Course Facility) pursuant to the terms, conditions and limitations as expressed herein. Pursuant to this grant of authority, TOUCHSTONE expressly covenants and agrees during the term herein to perform or cause to be performed all of the following services:

**1. Management**

- 1.1      **Manage, promote, maintain, restore, develop, improve, administer all Receipts and disbursement, supervise all employees and operate the Golf Course Facility, the expenses of which shall be paid from the Operating Account;**
  
- 1.2      **Collect all Gross Revenues. Gross Revenues means all cash or cash equivalents derived directly or indirectly from or in connection with the management and operation of the Golf Course Facility, including without limitation, to payments from alcoholic beverages at any retail location located on the LCGC, greens fees, driving range, golf lessons, pro shop, all food and beverage licensees and vending machines. Gross Revenues shall be deposited into the Operating Account no later than the next business day.**

1.2.1 However, any and all revenues received from the sale of alcoholic beverages at any retail location located at the Golf Course Facility shall not be included in the gross revenues used to compute the net operating income. The revenues received from the sale of all alcoholic beverages shall be retained by TOUCHSTONE as the sole property of TOUCHSTONE and shall not be deposited into the Operating Account. (See also Sections 2.2 and 3.1 hereof). City shall have no interest, whatsoever, in the revenues from the sale of alcoholic beverages.

1.2.2 TOUCHSTONE shall retain all net income from the sale of alcoholic beverages, not to exceed \$500 per month in any month where sale of alcoholic beverages are permitted (partial months shall be treated on a pro-rata basis) as its sole property and as additional compensation ("Beverage Compensation") for the management and operation of the Golf Course Facility. In any given month if alcohol net income is less than \$500, TOUCHSTONE will be owed the difference, to be made up from another month's alcohol net income. The Parties will review the monthly alcohol sales at the end of the term of the Original Agreement, before any extensions of the contract, for any payments owing to TOUCHSTONE. The Parties will complete the same review after all extensions of the Original Agreement.

1.2.3 All alcoholic sales net income in excess of the above stated Beverage Compensation amount, if any, shall be placed in TOUCHSTONE's Charity Fund ("Charity Fund"). Any amounts deposited and contained in the Charity Fund, shall, at the end of the contract term, be distributed to Friends of Oakland Parks and Recreation, a California not-for-profit, 501(c)(3) corporation, to be used for junior golf programs and the junior course at the Golf Course Facility.

1.3 TOUCHSTONE will employ and discharge all 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 its management. TOUCHSTONE will also employ a competent staff and deploy that staff and other resources to insure proper care, management and operation of the Golf Course Facility; including but not limited to all vendors, concessionaires, tenants and subtenants and construction contractors in accordance with the provisions set forth in this Agreement.

1.4 TOUCHSTONE will manage all hiring, training and termination of all Golf Course Facility management and personnel,

including administering all labor relations. All existing Temporary Contract Service Employee and Exempt Limited Duration Employees of the Golf Course Facility will be transferred to TOUCHSTONE, including but not limited to an employee leasing entity no later than May 1, 2007. The costs of such agents, employees, etc. plus any employer payroll taxes and other related payroll costs relating to the performance of this Agreement are the responsibility of TOUCHSTONE and paid for out of the operating revenue. TOUCHSTONE shall keep and maintain all necessary payroll and employment records for any and all employees, withhold appropriate payroll taxes, and file all tax returns as required by law.

1.5 TOUCHSTONE will make every effort to hire qualified Oakland residents first.

1.6 TOUCHSTONE will oversee the planning and implementation of all

advertising and marketing of golf activities and special events and increase the use of the Golf Course Facility by Oakland residents and visitors. It will oversee all other matters reasonably necessary for the efficient performance of the operation of the Golf Course Facility.

1.7 TOUCHSTONE shall have no other use of Golf Course Facility except for the restricted use of operating and maintaining a golf course and related activities, however, the use of the Facility shall at all times be subject to the approval of the Director of the Office of Parks and Recreation and such approval shall not be reasonably withheld. Use of the Golf Course Facility shall be subject to all limitations of the Charter of the City of Oakland. Notwithstanding anything to the contrary, City reserves the right to use the Golf Course Facility to the exclusion of TOUCHSTONE on those occasions when City requires such use in the event of an emergency or disaster; or as set otherwise forth herein. For the purpose of this Agreement, the term "emergency" is defined as a sudden and unforeseen event that calls for immediate measures to minimize its adverse consequences and occurs after a disaster when an immediate response is required and local capacity is insufficient to address and manage traumatic events such as, but not limited to deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration and reduced public safety and security.

1.8 TOUCHSTONE shall offer the LCGC clubhouse for private party rentals; and shall set, subject to prior City approval, charge and



collect golf fees for use and services related to activities at Golf Course Facility.

1.9 City shall have access to the Golf Course Facility as a enterprise facility for weddings, rentals, community meetings and other profitable opportunities. City will coordinate all events with the contractor 10 days in advance before booking any events to eliminate double bookings. City may utilize its own caterer.

1.10 TOUCHSTONE agrees that City will approve of the hiring of a General Manager, which approval shall not be unreasonably withheld.

1.11 TOUCHSTONE has authority to negotiate and enter into agreements to improve the Golf Course Facility.

1.12 TOUCHSTONE has authority to apply for, obtain and maintain all

governmental approvals, licenses, and permits necessary for a successful operation of the Golf Course and TOUCHSTONE's performance under this Agreement. Expenses incurred for said approvals, licenses, consultants and permits shall be paid from the Operating Account, after review and approval by OPR, and unless specified otherwise in this Agreement.

1.13 TOUCHSTONE has the authority to enter into contracts on behalf of City to modify, remodel and provide upgrades to the Golf Course Facility 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 TOUCHSTONE 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. TOUCHSTONE will provide City, within ten (10) business days of execution, copies of all such contracts and agreements that are binding on or obligate City.

1.14 TOUCHSTONE shall establish written policies, rules and procedures as may be necessary or prudent for the operation of the Golf Course Facility and the use of the Golf Course Facility by members and guests. City must review and approve of such policies, rules and procedures prior to their taking effect;

1.15 TOUCHSTONE shall enter into agreements with food & beverage, and pro shop operators, ensure that the operators

apply for, obtain and maintain all necessary governmental approvals, licenses and permits, including City of Oakland Business License, and shall monitor food & beverage and pro shop operations and analyze financial reports submitted by the operators.

1.16 TOUCHSTONE shall provide an inventory of furniture, fixtures and equipment located on the premises, with the estimated value of each item within five (5) working days of the effective beginning date of this Agreement and maintain this inventory on a monthly basis.

1.17 TOUCHSTONE shall comply with the maintenance requirements described in the attached Exhibit 1, incorporated herein by reference.

1.18 City shall retain all rights and duties with respect to the granting and issuance of any and all easements at Golf Course Facility to third parties, provided such easements do not interfere with TOUCHSTONE's operations of Golf Course Facility. City shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to TOUCHSTONE, City shall notify TOUCHSTONE of the granting of any such easements prior to the effective date of said easement.

1.19 The CEO/President of Touchstone shall be responsible for communications with City for the duration of this agreement.

1.20 Any and all matters with respect to this Agreement that require policy approval by the City Council, not including administrative decisions by the City Administrator that need no such approval, shall be first submitted to Park And Recreation Advisory Commission which shall, in turn, submit same to the City Council in conformance with applicable procedures.

1.21 TOUCHSTONE shall collect green fees, provide starter and tournament scheduling and administration services, schedule tee times, sell golf merchandise, rent golf carts and other golf equipment and all other functions and services normally provided by a golf course Pro Shop manager.

1.22

TOUCHSTONE will have a minimum of one staff member who is a PGA or LPGA class A professional at the golf course to teach lessons, answer golf related questions and assure that the golf course is current with industry standards. TOUCHSTONE shall be solely responsible for security and storage of items in the Pro Shop and facility.

1.22 TOUCHSTONE shall maintain customer service as a top priority. TOUCHSTONE's employees shall be professional, friendly, well dressed and courteous to the golfer and general public; maintain a neat appearance, exercise good public relations skills; respond to customer complaints and questions; have excellent telephone manners; and conduct themselves in a high standard that is acceptable to OPR. TOUCHSTONE must also maintain a good working relationship with the other City staff. TOUCHSTONE must maintain at a minimum two incoming telephone lines, one fax line and may elect to install automated tee time reservation systems.

1.23 TOUCHSTONE shall provide a high quality, appetizing and appealing menu for customers with reasonable and competitive prices and maintain a high level of staff and visitor satisfaction.

TOUCHSTONE shall obtain and keep current all licenses and permits necessary to run a food service facility at Lake Chabot Golf Course.

TOUCHSTONE must provide all necessary staff to prepare and provide the menu listed. All merchandise and supplies necessary for the production of the menu must be kept stocked at all times.

TOUCHSTONE must adhere to all Federal, State and Local laws, including current Health Department regulations and standards.

1.24 TOUCHSTONE nor its directors or officers will have any interest in any concession at the Golf Course Facility.

## 2. Budget and Accounts

2.1 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. The budget for the subsequent fiscal year shall be completed no later than May 30. Until the budget is complete and approved, TOUCHSTONE will use its best commercially reasonable efforts to operate the Golf Course Facility under the existing budget framework provided to TOUCHSTONE by City, or in a manner consistent with the current market position of the Golf Course Facility.

2.2 TOUCHSTONE must maintain a system that accounts for all moneys received at time of sale and be prepared to submit accurate records of all transactions. TOUCHSTONE shall provide receipts to customers for all goods and services sold in the Pro Shop, including all golf play. TOUCHSTONE will keep and maintain all required financial and activity reports (i.e. rounds of play, discount or pass play, league play etc.) in accordance with City policy and procedures while utilizing accounting procedures compatible with City's accounting and financial system.

2.2.1 TOUCHSTONE must maintain a separate system that accounts for all moneys received for all sales of alcoholic beverages and be prepared to submit accurate records of all alcoholic beverage sales.

2.2.2 TOUCHSTONE must maintain another separate system for the Charity Fund, which accounts for all moneys received for all sales of alcoholic beverages above the Beverage Compensation, as set forth above in Section 1.2, and be prepared to submit accurate records for the Charity Fund."

2.3 City shall maintain a Depository (Revenue) Account in the name of "City of Oakland dba Lake Chabot Golf Course" This shall be an interest bearing account at the Bank of America. City shall be sole authorized signatory. TOUCHSTONE shall deposit all revenues received by TOUCHSTONE for and on behalf of City in connection with the management and operation of Golf Course Facility.

2.4 City shall maintain an Operating Account in the name of "City of Oakland dba Lake Chabot Golf Course" at the Bank of America, on which TOUCHSTONE shall be the sole authorized signatory, except for checks in excess of \$2,500 which shall require a counter signature by a City designated representative.

2.5 The City shall fund the Operating Account from the Depository Account, for all eligible costs of operating the Lake Chabot Golf Course.

2.6 City shall transfer funds to the Operating Account bi-weekly for such operating expenses as have been approved in advance by City's designated representative.

2.7 City shall periodically request documentation such as invoices and cancelled checks supporting such expenditures.

2.8 TOUCHSTONE shall ensure that all amounts due to vendors or contractors shall be paid within thirty days of receipt or such lesser time as may be required or as will benefit City such as when vendors give discounts for early payments. Any late charges or lost discounts shall be paid by TOUCHSTONE unless such failure to make timely payment is due solely to the fault of City,

### 3. Compensation

3.1 TOUCHSTONE's monthly management fee is \$7,500 per month, plus \$500 a month for the management of the Alcohol business, or \$8,000 a month equaling a maximum total of \$96,000 a year or \$ 480,000 over \_ years for the

initial \_\_\_ year period with increase based on the consumer price index for the option periods in subsequent years.

3.2 The funds for management compensation shall be paid from the revenue of the operation of the Golf Course Facility.

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

4. **Reporting**

4.1 On execution of this Agreement, City and TOUCHSTONE shall inventory all tangible property of City transferred to the custody of TOUCHSTONE. All tangible property acquired during the course of this Agreement shall be the property of City when acquired by City grant, operating revenues, refunds, fund raising revenues, governmental grants and other grants. At the termination of this Agreement, TOUCHSTONE shall provide an acquisition and disposal report for tangible property. At termination of this Agreement, all City tangible property shall physically remain at Golf Course Facility.

4.2 TOUCHSTONE 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.

4.3 TOUCHSTONE 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.

4.4 TOUCHSTONE shall provide requested records to City within five (5) working days of receipt of City's request and shall allow City access to books and records at all reasonable times. At the option of City, TOUCHSTONE shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government.

4.5 TOUCHSTONE shall maintain financial and operational records until the later of five (5) years after the end of the Agreement or two (2) years after closure of all disputed matters. Such records during the period of the Agreement and the retention period are to be retained at a site of local administration or a storage site nearby with availability to City.

4.6 TOUCHSTONE does not give any general or specific guarantee as to the profitability of the Golf Course Facility, its attendance or its revenues.

4.7 TOUCHSTONE shall create and maintain the following records and reports:

4.7.1 Accounting Records. TOUCHSTONE shall maintain a double entry set of accounting records maintained in accordance with generally accepted accounting principles based on an accrual system.

4.7.2. Monthly Reports to be submitted on or before the 25th of the next succeeding month (twelve times a year):

a. Monthly statement of Total Income, Operating Expenses as well as all other expenses arising out of the operations of the Lake Chabot Golf Course and showing Net Income or loss and Net Income or loss compared to the same month of prior year (if prior year information is available);

b. Cumulative statement of Total Income, Operating Expenses as well as all other expenses arising out of operation of the Golf Course compared with the approved budget, e.g. on a monthly and quarterly basis;

c. Statement listing the Accounts Receivable with an aging analysis;

d. Statements listing the Accounts Payable with an aging analysis; and

e. Statement listing the names of the parties with security deposits; and Monthly bank reconciliation.

4.7.3 Annual Reports to be submitted on or before, on or before November 1 of each year, commencing in 2012, its written annual evaluation findings:

a. Balance Sheet;

b. Statement of income and expense;

c. Statement of Concessionaire income and expense;

d. Itemized additions or disposition of fixed assets; and

e. Operational Type Reports, including number of rounds played on the 18-hole and 9-hole course.

f. Employment and Contracting statement of compliance with the City's local employment and contracting programs.

g. Employees (position, compensation, ethnicity, gender and residency);

h. Marketing efforts (advertising, promotions, etc.);

i. Community outreach (including special programs for the disadvantaged);

- j. Special events;
- k. Physical changes to the facility; and
- i. Changes in programs and operations.

4.8 At the end of each fiscal year, an audit of the books and records shall be performed; such audit to be completed and a report furnished within one hundred and twenty (120) days after the end of such fiscal year. Such audit may be waived at City's sole election. The report shall include a statement reflecting Gross Receipts, Operating Expenses, Gross Operating Profit or Loss and Net Operating income or Loss. Such reports shall also include a balance sheet, statements of income and expenses, and a statement of retained earnings (deficit). The cost of such audit shall be deemed to be an Operating Expense. An independent certified public accounting firm selected by City shall perform such audit or the audit may be performed by the Oakland City Auditor. The audit will be paid for out of funds from Golf Course Facility Income.

4.9 TOUCHSTONE shall permit City and its authorized representatives to have access to its books, records, accounts and any and all data relevant to this agreement, for the purpose of making an audit or examination for a period of four years following the fiscal year of the last expenditure under this agreement.

4.10 On termination of this Agreement, all account balances shall be determined and certified by an independent Certified Public Accountant.

## 5. Termination/Default

5.1 In addition to the provisions set forth herein TOUCHSTONE, on termination shall turn over and transfer all assets and operations to City or its designated representative, and City will assume all financial and operational responsibilities for the Golf Course Facility, except TOUCHSTONE's debts and liabilities, for which TOUCHSTONE shall be solely responsible.

5.2 TOUCHSTONE shall also transfer all licenses and permits that are required for the operation of the Golf Course Facility to the new management entity if identified; if not identified at termination of this Agreement, TOUCHSTONE shall transfer all such licenses and permits to City.

5.3 On termination, TOUCHSTONE shall also conduct a full inventory of Golf Course Facility, which shall be reviewed and approved by OPR prior to TOUCHSTONE's transfer of all assets and operations to either the subsequent new management entity, if identified; and if not identified shall transfer same to City.

5.4 if TOUCHSTONE defaults or fails to perform under any of the obligations herein, the City Administrator shall give written notice to TOUCHSTONE expressly stating the nature of the default or nonperformance. TOUCHSTONE shall have sixty (60) days from receipt of notice to correct its default or nonperformance, and in the event of TOUCHSTONE's failure to do so, City, in addition to any other legal or equitable rights it may have, may elect any of the following:

5.4.1 Terminate this Agreement upon written notice to TOUCHSTONE; or

5.4.2 Direct TOUCHSTONE to assign its interest in and to this Agreement to a party designated by Oakland City Council without compensation to TOUCHSTONE; or

5.4.3 Perform whatever corrective measures are deemed necessary, which costs of such services, plus administrative overhead, shall be charged to and paid by TOUCHSTONE to City on demand.

5.5 if TOUCHSTONE breaches or fails to perform any of its obligations under this Agreement, and notice and opportunity to cure has been given to TOUCHSTONE as provided above, City may, but is not obligated to, cure TOUCHSTONE's noncompliance. Prior to effecting such cure, and if City elects to cure, City shall give TOUCHSTONE notice of its intent to cure. Any amounts expended by City along with the maximum legal rate of interest, not to exceed 10% per annum, shall be reimbursable by TOUCHSTONE to City.



**EXHIBIT 1**  
**TO SCHEDULE A, Paragraph 1.17**

**MAINTENANCE REQUIREMENTS**

General Specifications

TOUCHSTONE shall perform such duties that are normally performed at outstanding public-access golf courses as follows.

**1. CLUBHOUSE & ENTRANCE**

The entry, parking lot and all traffic areas must be maintained to the highest standard level of presentation. The clubhouse and entranceway must be kept in a pristine condition at all times.

Landscaped areas must be free of weeds, debris and freshly mulched.

A landscape management plan must be developed within the first six months of the approved agreement to address pest control, and presentation. This must include annual testing of soil fertility and for diseases as needed.

Trees and shrubbery must be kept in good health and trimmed routinely.

Hardscapes, including the parking lot, entryways, pathways and sidewalks must be free of weeds, debris, and cleaned daily.

Entry signs and parking lot signs must be painted and kept in good repair. Landscape lighting must be fully operational. Bulbs must be replaced immediately as needed.

**2. GOLF COURSE GREENS**

A specific Turfgrass Management Plan must be developed within the first six months of the approved agreement to achieve the desired results, including regular aerifications, spiking, verticuttings, testing of fertility, topdressing sand, testing for pests, etc.

Greens must be kept healthy and pest free through the use of accepted turf management practices.

Greens must be kept smooth and putting true using the appropriate grooming methods to control grain, maintain good density, texture and prevent excess thatch accumulation.

Green speeds must be maintained as consistently as possible between 8.0 and 11.0 feet on the stemp meter depending on the green's contours, weather, turf conditions and specific goals.

The greens must be aerified as needed, typically twice annually. The number of annual aerifications, tine size and method must be adjusted according to the level of organic mat accumulation, compaction levels and the green's performance.

Greens must be mowed dally in the growing season and as heeded in the off-season, or according to turf conditions. Height of cut will vary from approximately .175" to .200" to achieve the desired playing condltlons, and as turf manufacture mower differences and weather conditions allow.

The original greens edge must be maintained to prevent green creep from occurring and encroachment from surrounding undesirable turf.

The clean up lap on the green must be mowed at least three days per week during the growing season and adjusted accordingly in the off-season according to growth and turf conditions.

All ball marks must be repaired daily. Sunken cups, old hole locations and scars on the greens must be repaired as they become apparent.

Collars must be kept mowed at a height ranging from .250" to .5". The collars are to be mowed at least three times per week in season and adjusted during the off-season, or according to weather and growth patterns. They must be appropriately groomed to prevent excessive thatch and grain accumulation.

### 3. TEES

The tees must be maintained in a healthy state, be pest free, drain well, have good texture and density, and provide good footing and quality teeing surfaces. A Turf Management Plan, including regular aerifications, verticuttlngs, topdressing, fertility testing, etc. must be developed and implemented within the first six months of the approved agreement to achieve the desired results.

The tees must be mowed at least two days per week, or more often during the growing season, and adjusted as needed out of season and according to the weather and growth rates.

The tee mowing height must be maintained between .250" and .750". The tees must be cut as low as reasonably possible to achieve the desired results.

Divots must be cleaned off and filled daily in season using the appropriate mixture to promote fast recovery, maintain a level surface and clean appearance. Divot mix must be spread evenly into the holes and not left in piles.

#### 4. FAIRWAYS

Fairways must be maintained in a healthy state, be pest free, drain well, have good texture and density, and provide good footing and quality fairway surfaces. A Turf Management Plan including iPM practices, regular aerification, verticutting, fertility testing, etc. must be implemented within the first six months of the approved agreement to achieve the desired results.

Fairways must be kept mowed typically ranging in height between .325" and .750". The fairways must be routinely kept at the lowest height of cut that will provide a quality playing surface consistent with desired goals but without sacrificing turf quality and health.

The fairways must be mowed at least two days per week or more often during the growing season, and adjusted as needed in the off-season according to weather and growth rates. Frequency must be enough to maintain a tight and consistent surface without generating an excessive amount of grass clippings.

Clippings from fairway mowings must be evenly dispersed so they are not left in piles or clumps.

Divots must be cleaned up daily and filled with an appropriate site specific mixture at least weekly during the growing season.

#### 5. ROUGHS

The roughs must be maintained in a healthy state, have minimal pest issues, drain well and have good texture, density and uniformity. A Turf Management Plan including IPM practices, aerification, spiking and annual fertility testing must be implemented to achieve the desired results.

The rough height of cut must typically range between .750" to 3.0".

The frequency of mowing must be set according to growth rates to prevent excessive clipping accumulation on the surface and to promote healthy turf grass. The frequency may range from less than once a week to two times per week.

Leaf clippings and debris must be scattered, mulched or vacuumed as needed to maintain a clean and uniform looking rough.

## 6. BUNKERS AND HAZARDS

Bunkers must be fully raked daily in season and adjusted according to play levels out of season. The bunkers must be at least inspected and touched up every day when open for play regardless of play levels.

All bunker rakes must be evenly placed outside of the bunker and parallel to the bunker in line with play.

Bunkers must be kept free of weeds, debris and rocks and have a defined edge between the sand and turf or soil. The bunkers must be edged frequently enough to prevent long runners from creeping into the sand.

Bunkers must be checked regularly for appropriate sand levels and to ensure the drains are working correctly and repaired as needed.

The bunker shape and integrity must be maintained by observing proper edging techniques and avoiding bunker creep. Any excess sand accumulation on the faces must be blown off and removed as need to slow build up. Periodically excess sand accumulation must be removed.

All water hazards, out of bound markers, must be in place as specified by the USGA Rules of Golf. The stakes must be an approved 2" by 2" stake, clean and freshly painted in appearance, installed straight and maintained on a regular basis.

## 7. COURSE SERVICE AND DETAIL STANDARDS

Holes must be rotated daily in season to a fresh area according to the playing conditions and pin location systems in place. Holes must be cut to a proper depth with a sharp edge and the cup liner set to exactly a one-inch depth.

Freshly painted cups must be rotated every week. The lip of the cup must be painted for special events.

New flags and poles must be rotated as necessary. Worn, soiled or damaged flags must be replaced immediately.

Tee markers must be in good repair and rotated as necessary to avoid wear and be optimally position for the day's playing conditions. All markers must be placed with a T-line pointing at the landing area. Markers must be placed 12" from each edge of the tee, unless the tee is being divided into sections to spread wear. in

this case, the markers must be placed a minimum of 15' apart. Replace worn or damaged markers regularly.

Fencing, ropes and stakes must be inspected daily. Only clean, approved hollow-core rope with approved stakes must be used. Ropes must be stretched tightly between stakes, and replaced as necessary. Knots are not allowed. Ropes and stakes must be moved as needed to control traffic and prevent wear.

Cart paths must be kept clean, and in good repair. Cracks in the paths must be kept free of weeds and grass. Cart path yardage markers or markings must be kept clean in appearance.

Sprinkler heads must be checked for damage and edged routinely to maintain a groomed appearance.

Hazard stakes must be checked daily for condition and proper location, and must be straightened as needed.

Tee consoles must be inspected daily for damage, wiped clean and kept freshly painted.

Ball washers must have clean water, a fresh cloth towel, and be in good working order.

Trash containers must be emptied and wiped clean.

All steps, walkways and ramps must be clean, edged and repaired. Distance monuments must be clean, edged and freshly painted.

Landscaped beds must be weed free with healthy plants.

Trees must be kept in good health and trimmed.

Restrooms must be clean, freshly painted and well stocked. This includes floors, walls, ceilings, basins, mirrors, urinals, paper dispensers, steps and walkways.

Water coolers must be kept clean and sanitized daily.

Wooden shelters are to be kept in good repair and freshly painted or treated.

All signs must be in good repair and freshly painted.

All debris and rubbish, including green waste, shall be regularly removed from the golf course premises and disposed of properly.

## 8. PRACTICE TEES AND FAIRWAY

Ropes must be free of knots and routinely replaced.

Loose divots must be removed regularly. Divots must be filled with sand, seed, and fertilized to ensure maximum turfgrass recovery.

Practice tee must be maintained in a healthy state, have minimal pest issues, drain well, and have good texture, drainage and uniformity. A Turf Management Plan must be implemented to achieve the desired results.

## 9. PUTTING GREENS

Putting green cups must be rotated as needed.

Putting greens must be mowed daily, at least one hour prior to the start of play. The height of cut must match the golf course.

### Golf Carts

The golf course operator shall provide and maintain all golf carts.

### Kitchen Equipment

TOUCHSTONE shall be responsible for the maintenance of all kitchen equipment supplied by City. This includes all cooking production equipment, fixtures and furniture within the restaurant. All equipment will be inventoried and in acceptable operating condition when TOUCHSTONE commences operation.

During the term of the Agreement, all items shall be kept clean, fully operational and show no signs of visual or structural damage.

TOUCHSTONE shall acquire and provide additional necessary kitchen equipment and supplies necessary for the operation of the facility.

TOUCHSTONE shall acquire, provide and maintain first aid equipment and supplies in all production and service areas.

### Janitorial Maintenance

TOUCHSTONE shall maintain and be responsible for all daily janitorial maintenance of all areas.

Housekeeping functions must be maintained to OPR standards of cleanliness. Custodial and sanitation of all areas shall strictly adhere to all federal, state and local laws, ordinances and regulations.

**EXHIBIT 2 TO SCHEDULE A  
CAPITAL IMPROVEMENT REQUIREMENTS**

These projects will be prioritized by the Director of the Office of Parks and Recreation who will also have final approval on any final expenditures.

**Major Capital Improvements -- Golf Fund**

Project	Description	Budget	Actual	Update
Driving Range	New range -- In planning	900,000		
Maintenance Bathroom	Portable Bathroom	50,000		
Toro Workman w/ProPass 200	Toro Workman Vehicle with topdresser	32,000		
Toro Greensmaster 3150	Toro greens and tee mower to replace existing unit which is 15 years old.	28,000		

**Minor Improvements (In House Projects)**

Cart Paths	Re-pave asphalt cart paths	30,000		
Tree Work	Removal of dying Monterey Pine Trees and Trimming	12,000		
Fencing for golf course	Fencing on Hole 16	5,000		
Irrigation Improvement	Continue to purchase irrigation parts (e.g. sprinkler heads, pipes, controllers and valves).	10,000		
Road Safety Markings	Striping road and crosswalk	5,000		
Tee Work	Tee Leveling	10,000		
Kitchen Floor	Seal back kitchen floor	5,000		
Kitchen Expansion Plan	Hire a professional kitchen designer to provide kitchen layout options and recommendations	5,000		

**Equipment (In House Projects)**

Item	Details	Price Est.	Actual	Update
Refrigerator	Replace non-compliant unit	4,500		
Freezer	Replace unreliable unit	4,500		
HVAC System	Replacement of existing heater which can no longer be	25,000		

	repaired			
Keg Refrigeration	Replacement of Refrigeration behind bar which is unreliable	12,000		
Food Warmer (holder)	To service catering function needs	3,000		
Food Smoker	To service catering function needs	15,000		
Computers	Replacement of current Point of Sale and Back of House Computers	6,000		

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