

**FIFTH AMENDMENT  
TO  
MANAGEMENT SERVICES AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE  
AND  
CECIL FIELD GOLF COURSE, LLC**

**THIS FIFTH AMENDMENT** to Management Services Agreement, by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation (the “City”) and **CECIL FIELD GOLF COURSE, LLC**, a Florida limited liability company (“Cecil Field Golf”), is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

**WITNESSETH:**

**WHEREAS**, the City and Meadowbrook Golf Group, Inc., a Delaware corporation (“Meadowbrook”) entered into that certain Management Services Agreement dated October 4, 1999 (the “Agreement”); and

**WHEREAS**, Meadowbrook, with the consent of the City, assigned said Agreement to Capstone Golf, LLC, a Florida limited liability company (“Capstone”) pursuant to an Assignment of Management Services dated May 31, 2005; and

**WHEREAS**, Capstone, with the consent of the City, assigned said Agreement to Fiddler’s Green Golf Course, LLC, a Florida limited liability company (“Fiddler’s Green”) pursuant to an Assignment of the Management Services dated September 20, 2011; and

**WHEREAS**, Fiddler’s Green, with the consent of the City, assigned said Agreement to Cecil Field Golf pursuant to an Assignment of Management Services Agreement dated September 15, 2014; and

**WHEREAS**, from October 3, 2020, through the day and year first above written, the parties have worked together continuously and without interruption on the Project; and

**WHEREAS**, the Agreement has been amended four times previously; and

**WHEREAS**, the City and Cecil Field Golf desire to amend the Agreement as set forth herein; and

**WHEREAS**, said Agreement should be amended further by accepting, adopting, and ratifying all actions of the parties under said Agreement from October 3, 2020, through the day and year first above written, by removing the restaurant, kitchen, and snack bar areas and the FFE in those areas from the real and personal property included in the defined term

“Facility” in the Agreement, by removing the sit-down restaurant, the snack bar, and the sales of food and beverages from the activities to be managed by Cecil Field Golf, by extending the term of the Agreement for an additional five (5) years, by revising the annual base fee for the extended term of the Agreement, by revising the annual percentage fee for the extended term of the Agreement and to exclude food and beverage (including liquor) sales from the definition of “Gross Revenues,” by excluding the restaurant and the snack bar from aspects of the operation for which Cecil Field Golf must provide suitable staffing, equipment, and property, by updating the Indemnification and Insurance Requirements language, and by providing for compliance with recent changes to Florida law regarding public records contract requirements, with all other provisions, terms, and conditions remaining unchanged; now therefore

**IN CONSIDERATION** of the premises and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration acknowledged by the parties to be sufficient, the parties hereto agree to amend said Agreement as follows:

1. The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

2. Capitalized terms used but not defined herein shall have the meanings in the Agreement.

3. All actions of the parties under the provisions, terms, and conditions of said Agreement from October 3, 2020, through the day and year first above written are accepted, adopted, and ratified.

4. Section 1.1 of said Agreement is amended in part by removing the restaurant, kitchen, and snack bar areas and the FFE in those areas from the real and personal property included in the defined term “Facility” in the Agreement, and as amended shall read as follows:

“1.1 Facility comprises: (i) an eighteen (18) hole municipal golf course, including improvements consisting of a pro shop, restrooms, lockers, and storage, as well as appurtenances and all related furnishing, fixtures, and equipment, as listed on **Exhibit C** (“FFE”), located in Duval County, Florida; and (ii) the Lake Newman Center, located generally at 13531 Lake Newman Drive, Jacksonville, Florida, and all appurtenance and all related furnishing, fixtures, and equipment as listed on **Exhibit D**, attached hereto and incorporated herein by this reference.”

5. Section 1.4 of said Agreement is amended, in part, by removing the sit-down restaurant, the snack bar, and the sales of food and beverages from the activities to be managed by Cecil Field Golf, and as amended shall read as follows:

“1.4 The purpose of this Agreement is for Cecil Field Golf Course to operate and manage a daily fee public eighteen (18) hole golf course, a Frisbee

golf course, and other activities customarily associated with the operation of a daily fee golf course, including the sale or rental of golf-related merchandise at a pro shop, the furnishing of lessons by a golf professional, and the operation of a driving range. Cecil Field Golf Course shall not use the Facility for any other purpose of any kind or for any unlawful purpose and shall comply with all laws, rules, and regulations applicable to the Facility or the businesses conducted therein.”

6. Section 2.1 of said Agreement is amended, in part, by extending the term of the Agreement for an additional five (5) years, and as amended, shall read as follows:

“2.1. The term of the Agreement shall be for twenty-six (26) years beginning upon the commencement date. The commencement date shall be October 4, 1999, the date property interests in the Facility were transferred to the City from the Federal Government and the City obtained the legal authority to assume control of the Facility pursuant to that certain license dated August 6, 1999, between the United States, acting through the Department of the Navy, and the City (the “License”). Said Agreement shall expire on October 3, 2025.”

7. Section 2.2 of said Agreement is amended, in part, by revising the annual base fee for the extended term of the Agreement, and as amended shall read as follows:

“2.2 Cecil Field Golf Course will pay a base fee, plus applicable sales taxes, to the City on an annual basis within thirty (30) days after the end of each calendar year, as follows:

YEAR	BASE FEE
1999 through 2000	0
2001 through 2003	\$6,000
2004 through 2007	\$15,000
2008 through 2011	\$22,000
2012 through 2014	\$30,000
2015	0
2016 through 2018	\$10,000
2019	0
2020 through 2025	\$10,000”

8. Section 2.3 of said Agreement is amended, in part, by revising the annual percentage fee for the extended term of the Agreement and by excluding food and beverage (including liquor) sales from the definition of “Gross Revenues,” and as amended shall read as follows:

“2.3 Cecil Field Golf Course will also pay a percentage fee, plus applicable sales taxes, to the City (based on gross revenues) on an annual basis, within thirty (30) days after the end of each calendar year as follows:

YEAR	PERCENTAGE OF GROSS REVENUES
1999 through 2000	0%
2001 through 2002	1%
2003 through 2014	2%
2015	0%
2016 through 2018	1%
2019 through 2025	0%

In respect of calendar years 2001 and 2002, percentage rent shall not be payable if gross revenues of the facility are less than \$900,000 during the applicable calendar year. Gross revenues shall mean all revenues generated in respect of or related to the use of the Facility, including, without limitation, greens fees, cart fees, sale or rental of golf related merchandise, golf lessons, driving range, and rental of the Facility or a portion thereof for golf or non-golf functions.”

9. Section 3.2 of said Agreement is amended by excluding the restaurant and the snack bar from aspects of the operation for which Cecil Field Golf must provide suitable staffing, equipment, and property, and as amended shall read as follows:

“Cecil Field Golf shall provide suitable staffing, equipment, and property to cover all aspects of operation, including but not limited to pro shop and ground maintenance. A PGA or LPGA professional shall be made available to the public for golf lessons.”

10. Section 5 of said Agreement is deleted in its entirety and is hereby replaced with the Indemnification and Insurance Requirements language contained in **Exhibit E**, attached hereto and incorporated into the Agreement by this reference.

11. Said Agreement is amended by creating a new Section 8.3 to provide for compliance with recent changes to Florida law regarding public records contract requirements, and as amended shall read as follows:

“8.3 As required by Section 126.108, *Ordinance Code*, in its performance of the Agreement, Cecil Field Golf Course must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances (hereinafter collectively the “Laws”) with respect to the Agreement as such Laws exist and may be amended from time to time. Such Laws shall include, but are not limited to, Chapter 119, Florida Statutes (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Sunshine Law). Specifically with respect to public records and as required by Section 119.0701, Florida Statutes, Cecil Field Golf Course shall:

A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Services.

B. Provide the public with access to public records on the same terms and conditions that City would provide the records and at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

D. Meet all requirements for retaining public records and transfer at no cost to City all public records in possession of the Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to City in a format that is compatible with City’s information technology systems.

**IF CECIL FIELD GOLF COURSE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; [PRR@COJ.NET](mailto:PRR@COJ.NET); CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.**

12. This Fifth Amendment may be executed in counterpart and facsimile signature, the counterpart and facsimiles of which, when taken together, shall be deemed to constitute an entire and original Amendment.

13. Attach and incorporate into said Agreement **Exhibit E**.

**SAVE AND EXCEPT** as expressly amended in and by this instrument, the provisions, terms, and conditions of said Agreement, as previously amended, shall remain unchanged and shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and affixed their seals as of the day and year set forth below.

**ATTEST:**

**CITY OF JACKSONVILLE**

\_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

\_\_\_\_\_  
Lenny Curry  
Mayor

[Corporate Seal]

**WITNESSES:**

**CECIL FIELD GOLF COURSE,  
LLC**

\_\_\_\_\_  
\_\_\_\_\_  
Print or type name

By: \_\_\_\_\_  
\_\_\_\_\_  
Print or type name

Its \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Print or type name

Form Approved:

By: \_\_\_\_\_  
Office of General Counsel

## EXHIBIT E

### Attachment G Indemnification

Contractor shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees, and agents (collectively the "City Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs, and expenses of whatsoever kind or nature, which may be incurred by, charged to, or recovered from any of the foregoing City Indemnified Parties for:

1. General Tort Liability, for any negligent act, error, omission, recklessness, or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Contract, operations, services, or work performed hereunder; and

2. Environmental Liability, to the extent this Contract contemplates environmental exposures arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up, or damages, whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right. If in any suit or proceeding the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall immediately make every reasonable effort to secure within 60 days for the Indemnified Parties a license authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer so that the Service or product is non-infringing.

If Contractor exercises its rights and obligations under this Contract, Contractor will (1) provide reasonable notice to the City Indemnified Parties of the applicable claim or liability, and (2) allow City Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

**Attachment H  
Insurance Requirements**

Without limiting its liability under this Contract, Contractor shall procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its, subcontractors, laborers, materialmen, and suppliers to provide, as applicable), insurance of the types and limits and in amounts no less than the amounts stated below:

**Insurance Coverages**

Schedule	Limits
<b>Worker’s Compensation Employer’s Liability</b>	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000    General Aggregate \$2,000,000    Products & Comp. Ops. Agg. \$1,000,000    Personal/Advertising Injury \$1,000,000    Each Occurrence \$    50,000    Fire Damage \$     5,000    Medical Expenses
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City’s Office of Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

<b>Automobile Liability</b> (Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)	\$1,000,000    Combined Single Limit
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, and must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Property Special Form (All Risk)**                      Full Replacement Cost

For all buildings, improvements, betterments, equipment, materials, and personal property at the Leased Premises. The City shall be included as a Loss Payee.

**Liquor or Host Liquor Liability**                      \$1,000,000 Each Occurrence

**Professional Liability**                                      \$1,000,000 per Claim and Aggregate

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

**Pollution Liability**                                      \$1,000,000 per Loss  
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, disease, mental anguish, and shock sustained by any person, including death; property damage, including physical injury to and destruction of tangible property, including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages; and, coverage for losses caused by pollution conditions that arise from the operations of the contractor, including transportation.

**Pollution Legal Liability**                              \$1,000,000 per Loss  
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

**Builders Risk/Installation Floater**                      %100 Completed Value of the Project

To the extent construction services above \$10,000.00 will occur, a Builder's Risk policy shall be required and include the SPECIAL FORM/ALL RISK COVERAGES. The

Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: CONTRACTOR, the CITY, and respective members, officials, employees, and agents, the ENGINEER, and the PROGRAM MANAGEMENT FIRM(S) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees, and agents are to be named as a loss payee.

### **Additional Insurance Provisions**

- A. Certificates of Insurance. Contractor shall deliver to City Certificates of Insurance that show the corresponding **City Contract or Bid Number** in the Description, **Additional Insureds, Waivers of Subrogation** and **Primary & Non-Contributory statement** as provided below. The Certificates of Insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- B. Additional Insured: All insurance except Workers' Compensation shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees, and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, and for Automobile Liability in a form no more restrictive than CA2048.
- C. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers, employees, and agents.
- D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- E. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees, and agents.
- F. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- G. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor or its subcontractors, employees, or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees, or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

- H. Waiver/Estoppel. Neither City's approval of, nor its failure to disapprove, the insurance furnished by Contractor shall relieve Contractor of its full responsibility to provide insurance as required under this Agreement.
- I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including through expiration or non-renewal. If such endorsement is not provided, Contractor, as applicable, shall provide thirty (30) days' written notice of any change in the above coverages or limits, or of coverages' being suspended, voided, or cancelled, including through expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Contractor under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.