

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

THIS FIFTH AMENDMENT TO MANAGEMENT SERVICES AGREEMENT (the “Fifth Amendment”), 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 Course”), 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 the 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 the 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 the Agreement to Cecil Field Golf Course, LLC pursuant to an Assignment of Management Services Agreement dated September 15, 2014; and

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

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

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings in the Agreement.
2. Section 2.1 of said Agreement is amended, in part, to extend 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 are transferred to the City from the Federal Government and the City has 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”).”

3. Section 2.2 of said Agreement is amended, in part, to amend 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”

4. Section 2.3 of said Agreement is amended, in part, to amend the annual percentage fee for the extended term of the Agreement 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, food and beverage (including liquor) sales, rental of the Facility or a portion thereof for golf or non-golf functions.”

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

6. Section 8 of said Agreement is amended, in part, to create 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; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.

7. All of the other terms of the Agreement remain unchanged and in full force and effect and are hereby ratified and confirmed as of this Fifth Amendment date.

8. 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.

[Remainder of page left intentionally blank; signatures on following page.]

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 “D”

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 or 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 a Contractor exercises its rights and obligations under this Contract, the 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 at all times during the term of this Contract 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 not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	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.

Commercial General Liability	\$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

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 Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)

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, 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, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to 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; coverage for losses caused by pollution conditions that arises 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 contract 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 contract.

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

To the extent construction services above \$10,000.00 will occur, 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 the City Certificates of Insurance that shows 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 Worker's 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, Automobile Liability 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 State 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 Contract 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 Contract.

- G. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract 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 Contract or otherwise.
- H. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.
- 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 expiration or non-renewal. If such endorsement is not provided, the Contractor, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract 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, the 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.