

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **BC EVERGREEN LLC**, a Colorado limited liability company, (the “Contractor”), both of which parties may be individually referred to in this Agreement as a “Party” or jointly referred to as the “Parties.”

RECITALS:

A. The Parties entered into an Agreement executed on or about April 5, 2013, an Amendatory Agreement on or about May 19, 2014 and a Second Amendatory Agreement on or about July 21, 2017 (collectively, the “Agreement”) for the performance of certain work set forth in that Agreement and **Exhibit A** thereto; and

B. Rather than enter into a new contract, the Parties desire to revise the terms and conditions of the Agreement as they previously existed and the Parties further desire to amend the Agreement to add beverage cart provisions.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 4 (A) (2) of the Agreement entitled “**Motorized Food-Cart Service**” is amended to read as follows:

“2. **Motorized Food-Cart Service.**

A. The Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcohol beverages, through motorized food-cart(s) of the type and scale typically used for such services at golf courses. While the beverage cart is owned by the Concessionaire, it is in the shared best interests of the City, the Concessionaire, and the golf patrons to have this equipment operating in a safe and reliable manner. As the City has the local resources to perform routine repair and maintenance of this equipment, the City’s golf maintenance department will perform all of the annual preventative maintenance on the beverage carts and repairs according to the following:

B. The City will perform annual preventative maintenance such as oil changes, adjustments, greasing, safety inspections, and pressure washing. Such maintenance will generally occur in the off-season but can be performed as necessary throughout the golf season and at no cost to the Concessionaire.

(i) The City may perform minor repairs at no cost to the Concessionaire at the discretion of the Golf Course Superintendent or mechanic.

(ii) The City will perform all repairs to the beverage cart and the Concessionaire shall reimburse the City for all repairs. Labor for mechanic hours shall be billed at \$32 per hour, and all parts and shipping will be invoiced to the Concessionaire for reimbursement at cost, without markup. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City. Repairs will only occur during the City's golf course maintenance department's normal working hours. Callback rates may apply in emergencies.

(iii) In the event the City cannot perform any repairs due to lack of expertise or time, the City will arrange for a vendor to perform the repairs and invoice the Concessionaire for reimbursement of the repairs at cost, without markup. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City.

C. The City will use TRIMS software to track repairs and maintenance of the beverage cart and will utilize work orders generated through TRIMS as the basis for invoicing the Concessionaire for reimbursement. The City reserves the right to modify its choice of software at any time.

(i) The City will put forth its best effort to perform the repair and maintenance on the beverage cart and without delay so long as it does not detract from high priority equipment such as greens mowers and other exigencies.

(ii) The Concessionaire must inform the City's maintenance staff of any problems with the beverage cart, providing the City's mechanic as much lead time as possible to acquire the parts, make repairs, or contract with a vendor to make repairs.

(iii) The City maintenance department will be considered the subject matter expert and shall be granted broad discretion as it pertains to the repair and maintenance of the beverage cart. The City will adhere to industry and equipment standards for repair and maintenance of the beverage cart. If a repair is in excess of five hundred dollars (\$500.00), the City will notify the Concessionaire prior to performing the repair.

D. In the interests of safety and efficiency, the Concessionaire may use the off-road gas available from the City's maintenance department's off-road gas tanks under the condition that the Concessionaire shall reimburse the City for the fuel within thirty (30) days following receipt of an invoice from the City. Fuel reimbursement rates shall be based on average fuel cost per gallon for the respective month. At least one motorized cart shall provide food and beverage service at any time there are more than 40 players on the Golf Course, unless the City Golf Professional determines the beverage cart is not necessary. The City Golf Professional shall determine the number of players on the Golf Course."

2. Section 1-9 of the Terms and Conditions to the Agreement is amended to read as follows:

“Gross Revenues’ shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession after deducting any discount at the point of sale, but before deducting any costs, expenses, or losses, except applicable excise taxes collected from customers on behalf of government agencies and tips and gratuities may be deducted. If Concessionaire provides discounts the amount of which the Concessionaire is later reimbursed, then the discount shall not be deducted from Gross Revenues, but shall be included in the reported Gross Revenues.”

3. Except as herein amended, the Agreement continues in effect, and is affirmed and ratified in each and every particular.

4. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PARKS-201309937-03

Contractor Name: BC Evergreen LLC

By: KB Caldwell

Name: Kevin Caldwell
(please print)

Title: MANAGING MEMBER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

