

**CAPITAL PROJECT GRANT AGREEMENT #4  
MCINNIS PARK GOLF CENTER**

This Capital Project Grant Agreement #4, hereinafter referred to as "Agreement " is made July 21, 2009, by and between the COUNTY OF MARIN, hereinafter referred to as the "COUNTY", and MCINNIS PARK GOLF CENTER (A California Limited Partnership), hereinafter referred to as "GOLF CENTER", without regard to number and gender. COUNTY and GOLF CENTER together shall be referred to as the "Parties" hereinafter.

**RECITALS**

COUNTY is the owner of certain property commonly known as John F. McInnis Park (McInnis Park).

COUNTY entered into a Concession Agreement with the GOLF CENTER on January 14, 1992 for the purpose of promoting the development of recreational facilities on a portion of McInnis Park by GOLF CENTER. This Concession Agreement is for a thirty-one (31) year term with a beginning effective date of February 14, 1992.

GOLF CENTER pursued, completed construction, operated and maintained a golf course, driving range, clubhouse/restaurant and other related recreational facilities on a portion of McInnis Park consistent with terms and conditions of the Concession Agreement. This complex of recreational improvements is hereinafter referred to as "Golf Center Facilities".

COUNTY has an express interest on behalf of the public in maintaining and sustaining the Golf Center Facilities at McInnis Park as an important community asset and recreational facility.

GOLF CENTER has expressly notified COUNTY that the historic, current and future operating revenues of the Golf Center Facilities have not and will not support maintaining the facilities at a level consistent with the expectations and requirements of the public and has specifically requested modifications to the Concession Agreement to restructure some financial terms and conditions.

COUNTY entered into a Concession Agreement Amendment on November 6, 2007 that contained provisions for grants by the COUNTY to the GOLF CENTER for the purpose of funding capital investments for Golf Center facilities. These grants included funding for new projects as well as limited reimbursements for capital projects completed up to twelve (12) months prior to the date of the Amendment. In addition, these grants were established in connection with a modified level of rents established in the Amendment and an express COUNTY interest to maintain and improve facilities at the McInnis Park Golf Center.

COUNTY has a further interest that the capital projects constructed pursuant to these grants will be of high quality and durability.

PURSUANT to this Agreement, GOLF CENTER has submitted to the COUNTY a list of capital items for implementation. These items will be put into place no later than December 31, 2010.

NOW THEREFORE, in consideration of the above, the Parties hereto mutually agree to the following terms and conditions:

1. **PURPOSE OF AGREEMENT.** The purpose of this Agreement is to define the terms and conditions for the COUNTY's grant of funding to the GOLF CENTER for installation of Capital Items pursuant to Paragraphs 4 and 5 of the Amendment to McInnis Park Golf Center Concession Agreement Dated January 14, 1992. The Capital Items will be operated and maintained in accordance with the above noted Concession Agreement. Subject to the GOLF CENTER's compliance with the terms and conditions of this Agreement, the COUNTY agrees to provide a Grant in an amount not to exceed \$184,388 to the GOLF CENTER.
2. **TERM.** GOLF CENTER shall maintain Capital Items in serviceable working order for a period of not less than ten (10) years from the date of completion. This Agreement shall run from the date of execution to a period of ten (10) years after the date of completion, unless otherwise terminated or amended as provided in this Agreement.
3. **SCOPE OF CAPITAL ITEMS.** A listing of the Capital Items included in this agreement are attached hereto as Exhibit A, and incorporated by reference.
4. **GOLF CENTER'S OBLIGATIONS.**
  - a. GOLF CENTER shall be responsible for the development of all plans, drawings, approvals and permits necessary to fully implement these Capital Items (with the exception of accessible path of travel work at clubhouse entry), including but not limited to: (i) Planning and design, (ii) Hiring, contracting for or retaining the professional services of architects, engineers, and other professional experts as required, (iii) Preparation and review of all environmental documents required as a prerequisite to implementation of Capital Items, pursuant to the California Environmental Quality Act and any other regulatory requirements, as applicable; (iv) Demonstrating that all proposed improvements comply with applicable standards of the Americans for Disability Act (ADA); and (v) Delivering a copy of

all draft and final plans, maps, and diagrams to COUNTY at no additional cost.

- b. **Approvals.** GOLF CENTER shall provide access to COUNTY to review Capital Items and ensure that installation has met all necessary construction standards.
- c. **Conditions Precedent.** COUNTY shall not be obligated to disburse any portion of the Grant unless and until the following conditions precedent have been met: (i) All parties to this Agreement have executed this Agreement; (ii) COUNTY has conducted a visual audit to ensure that all items described in Exhibit A are in place and meet minimum requirements for quality; (iii) Written evidence has been provided to COUNTY that all permits and approvals necessary for the completion of Capital Items under applicable local, state and federal laws and regulations have been obtained; and, (iv) GOLF CENTER has provided for liability insurance and an additional insured endorsement, or is self-insured, as described in the insurance section of this Agreement.
- d. **Notice of Completion.** GOLF CENTER shall provide COUNTY with “as built” drawings for Capital Items and a summary record of total payments to any and all contractors and material suppliers. Thereafter, COUNTY will perform a visual audit to ensure that Capital Items have been satisfactorily completed, and upon COUNTY’S determination that the Capital Items have been satisfactorily completed, COUNTY will issue of letter of acknowledgement.
- e. **Maintenance.** GOLF CENTER shall maintain and operate Capital Items for the time period remaining on the Concession Agreement dated January 14, 1992 and consistent with purposes for which the Grant was made. GOLF CENTER assumes all operation and maintenance costs of Capital Items and the COUNTY shall not be liable for any cost of such maintenance, management, or operation.
- f. **Records.** GOLF CENTER shall maintain financial accounts, documents, and records (collectively, “records”) relating to this Agreement. The records shall include without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the installation or construction of Capital Items. GOLF CENTER shall provide COUNTY access to its premises upon reasonable notice, during normal business hours, to interview employees and/or

contractors and inspect and copy books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement and any applicable laws and regulations. GOLF CENTER shall retain the required records for a minimum of three (3) years following the final disbursement of funds hereunder, and the final year to which the particular records pertain.

- g. **Indemnification.** GOLF CENTER shall defend, indemnify and hold harmless COUNTY and its employees and agents from and against any loss, injury, or damage arising out of or in any way connected with or incident to this Agreement, including any acts or omissions related to these Capital Items or GOLF CENTER's performance under this Agreement. GOLF CENTER waives any and all rights to any type of express or implied indemnity or right of contribution from COUNTY or their employees or agents, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.
- h. **Insurance.** GOLF CENTER shall provide and maintain liability and property damage insurance for liability assumed by GOLF CENTER under this Agreement with minimum limits of liability as follows: A single limit for bodily injury (including death) and property damage liability combined of \$1,000,000 each occurrence and \$1,000,000 in the aggregate. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The liability insurance policy shall contain an endorsement specifying that COUNTY, its employees and agents are included as additional insureds for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. The policy will not be cancelled or reduced in coverage without (30) days prior written notice to COUNTY. GOLF CENTER shall require its contractors to name COUNTY as additional insureds on all liability insurance required hereunder. GOLF CENTER shall require all contractors that it hires in connection with the Capital Projects to comply with this paragraph.

## **5. COUNTY'S CONTRIBUTION.**

- a. It is understood that COUNTY will furnish all or a portion of the total funds used for completion of these Capital Items. COUNTY's liability for any contribution under this Agreement shall not exceed \$184,388. COUNTY shall incur no liability to GOLF CENTER, its officers, agents, employees, suppliers, or

contractors for any delay in making such payments. No portion of the Grant provided by COUNTY hereunder shall be used for salary, administrative expenses or office space incidental to the Capital Items.

- b. In no case shall COUNTY be liable for any costs for these Capital Items in excess of \$184,388 nor for any unauthorized or ineligible costs. GOLF CENTER shall be responsible for any and all costs of Capital Items that exceed \$184,388. If COUNTY determines that GOLF CENTER has used the Grant provided under this Agreement for purposes not authorized or prohibited hereunder, GOLF CENTER shall pay COUNTY 100% of the amount improperly expended with 30 days of COUNTY's written request.

## 6. REIMBURSEMENT PROCESS

- a. **Invoices.** GOLF CENTER shall request disbursement by filing with COUNTY a written request for reimbursement after satisfactory completion of Capital Items. GOLF CENTER shall include in the request its name and address, a reference to this Agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, an itemized description, including time, materials, and expenses incurred, attached receipts and other documents that verify that the items have been paid by GOLF CENTER as part of the Capital Items, of all work done for which disbursement is requested. Documents may include consultant or construction contracts, fee schedules and invoices and copies of the front of GOLF CENTER checks issued for the Capital Items.
- b. **Reimbursement.** Disbursements shall be made on the basis of costs incurred for satisfactory completion of the Capital Items and compliance with this Agreement. COUNTY shall have 60 days to provide payment for the requested reimbursement if COUNTY finds the work completed, and invoice therefore satisfactory. COUNTY has the option to 1) require additional information which will cause the invoice to be satisfactory; 2) pay that part of the invoice which is satisfactory and decline payment for the remainder; or 3) any combination of 1 and 2.

- 7. **NOTICES.** Any notices or copies of documents to be provided hereunder shall be mailed to the respective parties addressed as follows:

County of Marin  
Stephen Petterle, Principal Park Planner  
Department of Parks and Open Space  
3501 Civic Center Drive #260  
San Rafael, CA 94903

Catherine Munson  
McInnis Golf Center  
350 Smith Ranch Road  
San Rafael, CA 94903

8. **DELEGATION OF AUTHORITY.** COUNTY hereby delegates authority to the Director of the Department of Parks and Open Space to execute any documents needed to fulfill the intent of this Agreement.
9. **NONDISCRIMINATION.** Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age, or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.
10. **TERMINATION.** COUNTY shall have the right to terminate this Agreement upon ten (10) days prior written notice to GOLF CENTER, if COUNTY reasonably determines any of the following: GOLF CENTER has incurred obligations or made expenditures which are not permitted or are prohibited under this Agreement; or GOLF CENTER has failed to fulfill its obligations under this Agreement in a timely and professional manner; or GOLF CENTER is in material violation of any of the terms of this Agreement. Termination shall have no effect on the Parties' rights and obligations arising out of this Agreement occurring before the effective date of such termination.
11. **SEVERABILITY.** If any provision of this Agreement or application thereof is held invalid, that invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.
12. **MISCELLANEOUS.** Time is of the essence in this Agreement. No changes in this Agreement shall be valid unless made in writing and signed by the Parties hereto. No oral understanding or agreement not incorporated herein shall be binding on the Parties. Without the written consent of COUNTY, this Agreement is not assignable by GOLF CENTER in whole or in part.
13. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the Parties. No promise, representation, warranty, or covenant no included in the Agreement has been or is

relied upon by either Party. Each Party has relied on his own examination of this Agreement, the counsel of his own advisors, and the warranties, representations and covenants in the Agreement itself. The failure or refusal of either Party to read the Agreement or other documents, or to obtain legal or other advice relevant to this Agreement constitutes a waiver of any objection, contention, or claim that might have been based on such reading or advice.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year above written.

County Counsel  
Approved As To Form

McInnis Park Golf Center

By: \_\_\_\_\_  
Steven Perl

By: \_\_\_\_\_  
Catherine Munson

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Donald Ham

By: \_\_\_\_\_  
Robert Kaplan

ATTEST:

COUNTY OF MARIN

By: \_\_\_\_\_  
Clerk, Board of Supervisors

By: \_\_\_\_\_  
President, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_