

**CITY OF EL PASO, TEXAS**  
**DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Airport  
**AGENDA DATE:** 9-2-08  
**CONTACT PERSON/PHONE:** Patrick T. Abeln, 780-4724  
**DISTRICT(S) AFFECTED:** 3

**SUBJECT:**

Approve a Resolution authorizing the City Manager to sign the 5th Amendment to the original Golf Course Operation and Concession Agreement for Lone Star Golf Club, 1510 Hawkins Blvd, El Paso, Texas

**BACKGROUND / DISCUSSION:**

Golf Management, Inc. operates the Lone Star Golf Club pursuant to the Golf Course Operation and Concession Agreement dated April 1, 1985, as subsequently amended. Mr. Eschenbrenner, as President of Golf Management, Inc., now wishes to amend the Agreement to:

- Extend the agreement by adding 5-years to the term and add a 5-year option.
  - Original term expires: March 31, 2021
  - New term would expire: March 31, 2026
  - Option, if exercised, would expire: March 31, 2031
- Revise the Green Fees, and the procedure in setting such fees
- Update the Trade Fixture inventory originally provided in the Agreement
- Provide over \$350,000.00 in facility and course improvements
- Surrender approximately 150 parking spaces

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**PRIOR COUNCIL ACTION:**

The existing Agreement was approved by Council action in 1985, and Council further approved four amendments to the Agreement in, 1991, 2000, 2002, 2004

**AMOUNT AND SOURCE OF FUNDING:**

N/A This is a revenue generation agreement.

**BOARD / COMMISSION ACTION:**

The Airport Advisory Board at their July 31, 2008 meeting recommended approval of the 5th Amendment to the original Course Operation and Concession Agreement.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** \_\_\_\_\_

  
Raymond J. Telles, Asst. City Attorney

**FINANCE:** (if required) \_\_\_\_\_

**OTHER:** \_\_\_\_\_

  
Patrick T. Abeln, A. A. E., Director of Aviation

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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## RESOLUTION

**WHEREAS**, the City and John William Eschenbrenner entered into a Golf Course Operation and Concession Agreement with an effective date of April 1, 1985 (the "Original Concession Agreement") concerning the improved real property known as the Lone Star Golf Club (f/k/a Cielo Vista Golf Course) located at 1510 Hawkins Boulevard, El Paso, Texas;

**WHEREAS**, John William Eschenbrenner assigned his rights and obligations under the Original Concession Agreement to Golf Management, Inc. ("Concessionaire"), pursuant to Section 11 of the Original Concession Agreement and such Original Concession Agreement has subsequently been amended by the parties four (4) times; and

**WHEREAS**, City and Concessionaire now desire to further amend the Original Concession Agreement because of the Concessionaire's desire to: (i) replace equipment and purchase additional equipment; (ii) make substantial improvements to the leased premises and the improvements and fixtures thereon; (iii) more efficiently and effectively respond to increased competition; (iv) recognize increased costs (largely out of control of Concessionaire) incurred by Concessionaire; and (v) permit for the Concessionaire's surrender of a portion of the leased premises;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the City Manager be authorized to sign a Fifth Amendment to the Golf Course Operation and Concession Agreement between the CITY OF EL PASO (as Owner) and GOLF MANAGEMENT, INC. (as Concessionaire) for the real property known as Lone Star Golf Course located at 1510 Hawkins Boulevard, El Paso, Texas.

**APPROVED ON THIS 2<sup>ND</sup> DAY OF SEPTEMBER 2008.**

THE CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
John F. Cook, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

STATE OF TEXAS            )  
                                  )  
COUNTY OF EL PASO        )

**FIFTH AMENDMENT TO GOLF COURSE  
OPERATION AND CONCESSION AGREEMENT**

**THIS FIFTH AMENDMENT TO GOLF COURSE OPERATION AND CONCESSION AGREEMENT** (the "Fifth Amendment") is made by and between the City of El Paso ("City") and Golf Management, Inc., a Texas corporation ("Concessionaire").

**WITNESSETH:**

**WHEREAS**, City and John William Eschenbrenner entered into a Golf Course Operation and Concession Agreement with an effective date of April 1, 1985 (the "Original Concession Agreement") concerning the improved real property known as the Lone Star Golf Club (f/k/a Cielo Vista Golf Course) located at 1510 Hawkins Boulevard, El Paso, Texas;

**WHEREAS**, John William Eschenbrenner previously assigned his rights and obligations under the Original Concession Agreement to Golf Management, Inc., pursuant to Section 11 of the Original Concession Agreement; and

**WHEREAS**, the Original Concession Agreement was amended by the execution of the First Amendment to Golf Course Operation and Concession Agreement dated March 28, 1991, for the purposes set forth therein;

**WHEREAS**, the Original Concession Agreement, as previously amended, was further amended by the execution of a Second Amendment of Lease with an effective date of June 1, 2000 for the purposes set forth therein;

**WHEREAS**, the Original Concession Agreement, as previously amended, was further amended by the execution of a Third Amendment of Lease dated April 30, 2002 for the purposes set forth therein;

**WHEREAS**, the Original Concession Agreement, as previously amended, was further amended by the execution of a Fourth Amendment to Golf Course Operation and Concession Agreement with an effective date of August 9, 2004 for the purposes set forth therein; and

**WHEREAS**, City and Concessionaire now desire to further amend the Original Concession Agreement, as previously amended because of the need to: (i) replace equipment and purchase additional equipment; (ii) make substantial improvements to the Leased Premises and the improvements and fixtures thereon; (iii) enable Concessionaire to more efficiently and effectively respond to increased competition; (iv) recognize increased costs (largely out of control of Concessionaire) incurred by Concessionaire; and (v) permit for the Concessionaire's surrender of a portion of the Leased Premises;

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**WHEREAS**, any term or phrase not otherwise defined in this Fifth Amendment shall have the meaning given such term or phrase in the Original Concession Agreement, as amended by the first four (4) amendments thereof; and

**WHEREAS**, the Original Concession Agreement, as amended by the first four (4) amendments thereof and by this Fifth Amendment shall be collectively referred to herein as the “Concession Agreement”;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Extension of Term; Renewal Option.** As partial consideration for this Fifth Amendment:

- (a) The term of this Concession Agreement is hereby extended by five (5) years, so that the existing term of this Concession Agreement shall expire on March 31, 2026; and
- (b) Concessionaire is hereby granted one (1) option, provided that Concessionaire is not then in default, to extend the existing term of the Concession Agreement, for one (1) additional term of five (5) years, such option term, if exercised, to expire on March 31, 2031. To exercise such option right, Concessionaire must notify City in writing of Concessionaire’s election to exercise such option at least one hundred and twenty (120) days prior to the inception of such option. In the event Concessionaire exercises such option, the Concession Agreement shall be extended upon the same terms and conditions.

**2. Green Fees.**

- (a) As used herein, the following terms shall have the indicated meanings:
  - (1) “Effective Date” shall mean the date this Fifth Amendment is fully executed by all parties as evidenced by the later of dates identified within the acknowledgement sections below.
  - (2) “Fee Cap Measurement Years” shall mean each of the five (5) years following the Effective Date of this Fifth Amendment, with the individual years within such Fee Cap Measurement Years being as follows: (i) First Fee Cap Measurement Year – the first year following the Effective Date of this Fifth Amendment; (ii) Second Fee Cap Measurement Year – the second year following the Effective Date of this Fifth Amendment; (iii) Third Fee Cap Measurement Year – the third year following the Effective Date of this Fifth Amendment; (iv) Fourth Fee Cap Measurement Year – the fourth year following the Effective Date of this Fifth Amendment; and

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(v) Fifth Fee Cap Measurement Year – the fifth year following the Effective Date of this Fifth Amendment.

(3) “Present Annual Green Fees” shall mean and refer to the annual green fees applicable with respect to the Concession Agreement immediately prior to the Effective Date of this Fifth Amendment, those being as follows: (i) regular -- \$1,150.00; and (ii) senior -- \$1,025.00.

(4) “Present Daily Green Fees” shall mean and refer to the daily green fees applicable with respect to the Concession Agreement immediately prior to the Effective Date of this Fifth Amendment, those being as follows: (i) week-day - \$20.00; and (ii) week-end and holiday - \$24.00.

(b) Notwithstanding anything to the contrary in the Concession Agreement, City and Concessionaire acknowledge and agree that Concessionaire shall have the authority to establish, in Concessionaire's discretion, the daily and annual green fees to be charged at the golf course upon the Leased Premises; PROVIDED, HOWEVER, THAT unless otherwise agreed by City and Concessionaire, such green fees can not exceed the following:

(1) With respect to the Fee Cap Measurement Years (i.e., the first five [5] years following the Effective Date of this Fifth Amendment), green fees shall not exceed maximum amounts established as follows:

[a] With respect to the First Fee Cap Measurement Year: (i) such daily green fee shall not exceed the Present Daily Green Fee, increased by seven percent (7%) (such maximum limit with respect to a Fee Cap Measurement Year, the “Maximum Allowable Daily Green Fee”); and (ii) such annual green fee shall not exceed the Present Annual Green Fee, increased by ten percent (10%) (such maximum limit with respect to a Fee Cap Measurement Year, the “Maximum Allowable Annual Green Fee”).

[b] With respect to each Fee Cap Measurement Year after the First Fee Cap Measurement Year: (i) such daily green fee shall not exceed the Maximum Allowable Daily Green Fee with respect to the immediately previous Fee Cap Measurement Year, increased by seven percent (7%); and (ii) such annual green fee shall not exceed the Maximum Allowable Annual Green Fee with respect to the immediately previous Fee Cap Measurement Year, increased by ten percent (10%).

(2) With respect to any periods of time following the Fee Cap Measurement Years (i.e., after the first five (5) years following the Effective Date of this Fifth Amendment):

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- [a] Such daily green fee shall not be increased to an amount greater than the Maximum Allowable Daily Green Fee with respect to the Fifth Fee Cap Measurement Year; and
- [b] Such annual green fee shall not be increased to an amount greater than the Maximum Allowable Annual Green Fee with respect to the Fifth Fee Cap Measurement Year.

3. **Trade Fixtures and Equipment.** City and Concessionaire acknowledge and agree that except for the trade fixtures and equipment described on Exhibit "1" attached hereto (all of which described on Exhibit "1" being owned by City), all of the trade fixtures and equipment currently in use at the Leased Premises were purchased by Concessionaire with the approval of City and are owned by Concessionaire. Exhibit "B" to the Original Concession Agreement, which was mutually created to identify the original inventory of equipment provided to Concessionaire, is hereby replaced in its entirety by Exhibit "1" to this Fifth Amendment.

4. **Improvements, Alterations, Additions.**

- (a) As partial consideration for this Fifth Amendment, Concessionaire agrees to complete the following improvements to the Leased Premises:
  - (1) Within five (5) years following the Effective Date of this Fifth Amendment, Concessionaire agrees to: (i) renovate the kitchen and bring it into compliance with all applicable laws, rules, regulations, codes and ordinances; and (ii) improve the patio area.
  - (2) Within ten (10) years following the date of this Fifth Amendment, Concessionaire agrees to: (i) make significant capital improvements to the irrigation system at the Leased Premises, partly in order to promote the conservation of water; (ii) purchase additional golf course equipment; (iii) repair and improve sand bunkers existing as of the Effective Date of this Fifth Amendment; and (iv) construct not less than twelve (12) new sand bunkers (i.e., sand bunkers not existing as of the Effective Date of this Fifth Amendment).
- (b) In effecting the improvements, alterations, and additions described above, Concessionaire agrees to: (i) expend not less than \$350,000.00; (ii) submit all plans for review by the Director of Aviation; (iii) coordinate Concessionaire's activities with the Director of Aviation and such other appropriate City departments as said Director of Aviation shall direct; and (iv) at Concessionaire's sole cost and expense, obtain all necessary permits for any construction on the Leased Premises.

5. **Surrender of Surrendered Premises.** It is understood by City and Concessionaire, that during the existing term and any extensions thereto, the City may wish to lease to Patriot Place, Ltd., its successors and assigns (the "Valet Parking Lessee") certain real property for

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approximately one hundred fifty (150) parking spaces in that portion of the parking lot currently located within the Leased Premises which portion is located immediately in front of the swimming pool improvements adjacent to the Leased Premises but would, in the future, be located and described with greater specificity by the then written agreement between City and Concessionaire (the "Surrendered Premises). Such written agreement between City and Concessionaire would be reasonably negotiated between them, will be reasonably and efficiently implemented and effected between them, and will contain, among other provisions to then be reasonably agreed between them, the following: (i) the Surrendered Premises will be described with greater specificity; (ii) Concessionaire will agree to exclude from the Concession Agreement the Surrendered Premises so that Concessionaire will no longer have possessory or (other than any provided with respect to such future agreement between the parties) other rights with respect to the Surrendered Premises; (iii) the Surrendered Premises shall only be used for parking for the swimming pool uses and on certain days and times to be agreed for valet parking with respect to the Valet Parking Lessee; (iv) the Surrendered Premises must, pursuant to plans and specifications reasonably acceptable to City and Concessionaire, be physically separated (by fence or otherwise, and in a manner to be agreed as consistent with the functionality and aesthetics required for such parking area and for the Leased Premises) from that portion of the parking lot which shall remain a part of the Leased Premises; (v) the Surrendered Premises must, pursuant to plans and specifications reasonably acceptable to City and Concessionaire (including, but not limited to Concessionaire's requirements with respect to turning radius requirements, curb cut requirements across both lanes of traffic on Hawkins Blvd., etc.), have separate access to a public roadway, it being agreed that Concessionaire's access to its parking area within the Leased Premises must be exclusive to it and not shared with uses to be associated with the Surrendered Premises and that Concessionaire shall have the right to restrict access to its parking area within the Leased Premises by persons using the Surrendered Premises; (vi) obligations associated with cleaning and routine maintenance associated with the valet parking uses of the Surrendered Premises must be specified and reasonably agreed by City and Concessionaire; and (vii) Concessionaire shall not bear, or otherwise be responsible for, any costs or expenses arising out of or related to the use by Valet Parking Lessee of the Surrendered Premises (including, by way of example and without limitation, those matters described in (iv), (v), or (vi) of this Section 5). The City Manager is hereby authorized to execute the referenced agreement in order to effectuate such surrender, upon the terms and conditions for such surrender as agreed upon between the parties.

6. **Ratification.** All terms and conditions of the Original Concession Agreement as amended by the First, Second, Third and Fourth Amendments, not specifically changed by this Fifth Amendment, shall remain unchanged and in full force and effect.

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(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

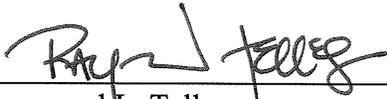
IN WITNESS WHEREOF, the parties have approved of this Fifth Amendment on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**CITY:**

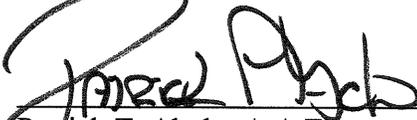
**CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Patrick T. Abeln, A.A.E.  
Director of Aviation

**ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2008,  
by **Joyce A. Wilson as City Manager of the City of El Paso, Texas** (City).

\_\_\_\_\_  
Notary Public, State of Texas

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(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**CONCESSIONAIRE:**

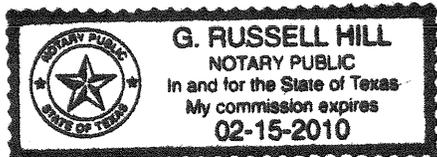
**GOLF MANAGEMENT, INC.**

By: *John William Eschenbrenner*  
Name: John William Eschenbrenner  
Title: President

**ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 25<sup>th</sup> day of August 2008, by **John William Eschenbrenner** as **President** of **Golf Management, Inc.**, a Texas corporation on behalf of said corporation (Concessionaire).



*G. Russell Hill*  
Notary Public, State of Texas

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**EXHIBIT "1"**

**Trade Fixtures and Equipment Owned by City**

2 - Metal Bag Racks

6 - Stone Trash Cans

**In Clubhouse Area:**

1 - Water Fountain

**In Restaurant Area:**

16 - Tables

72 - Chairs

1 - Three Compartment Sink

**In Kitchen Area:**

1 - Grill Top

1 - Two-Burner Range

1 - Fryer

1 - Ice Machine

1 - Hobart Slicer

**In Bar Area:**

1 - Can Cooler

**In Maintenance Building Area:**

8 - Metal Lockers

**In Cart Barn Area:**

1 - Air Compressor

END OF EXHIBIT

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