

**THIRD AMENDMENT
TO
AMENDED AND RESTATED EQUESTRIAN CENTER SERVICES CONTRACT
BETWEEN
CITY OF JACKSONVILLE
AND
NORTHEAST FLORIDA EQUESTRIAN SOCIETY/H.O.R.S.E. THERAPIES, INC.**

THIS THIRD AMENDMENT to Amended and Restated Equestrian Center Services Contract is made and entered into this ____ day of 2018, by and between **CITY OF JACKSONVILLE**, a consolidated municipal corporation and political subdivision of the State of Florida (“City”), and **NORTHEAST FLORIDA EQUESTRIAN SOCIETY/H.O.R.S.E. THERAPIES, INC.**, a Florida non-profit corporation (“NFES” or “Contractor”).

WITNESSETH:

WHEREAS, City and NFES entered into that certain Amended and Restated Equestrian Center Services Contract dated October 1, 2015, as amended by the First Amendment to Amended and Restated Equestrian Center Contract dated December 2, 2016, and the Second Amendment to Amended and Restated Equestrian Center Contract dated October 5, 2017, (collectively the “Contract”); and

WHEREAS, said Contract has been amended twice previously; and

WHEREAS, said Contract should be amended further by establishing an Extraordinary Repairs and Maintenance Budget and a procedure for emergency repairs, by setting forth additional provisions regarding capital improvements, and by removing the requirement that NFES submit an annual audit and providing instead that such audits are to be submitted every five years, with all other provisions, terms, and conditions of said Contract remaining unchanged; now therefore

IN CONSIDERATION of the mutual benefits each to flow to the other the parties covenant and agree as follows:

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

2. Article 4 of said Contract is amended by adding a new Section 4.9 to establish an Extraordinary Repairs and Maintenance Budget and a procedure for emergency repairs, and as amended shall read as follows:

“4.9 Extraordinary Repairs and Maintenance Budget. City shall establish and fund an Extraordinary Repairs and Maintenance Budget for any large scale, non recurring repair or maintenance project. NFES will have the right, with the prior approval of the Director of the Department of Parks, Recreation and Community Services, to act in a situation which it determines to be an emergency for the safety, welfare, and protection of the general public and/or staff, including for the continuity of operations during an event. Immediately following such action, NFES shall inform City of the action(s) taken.

NFES shall be reimbursed by City for the full amount of any City-approved emergency expenditure. Emergency expenditures may include, but are not limited to, damage from fire, storms, burglary, and vandalism, failure of building or structural components, and repair or replacement of critical machinery necessary for facility operations.”

3. Section E.(h) of Exhibit A to said Contract is amended by setting forth additional provisions regarding capital improvements, and as amended shall read as follows:

“(h) Capital Improvements.

i. City will be responsible for all necessary Capital Expenditures, defined as all expenditures in excess of \$2,500.00 for building alterations or improvements and furniture, machinery, or equipment replacement. Capital items shall include all fixtures, signs, displays, equipment, machinery, appurtenances, improvements, alterations, ADA compliance needs, and systems, including but not limited to plumbing systems, electrical systems, wiring and conduits, heating and air conditioning, access controls, and items of identical or similar nature and character, including, for example, seating and chairs which are replaced or repaired in multiple units contemporaneously. The expense sum for such repairs, maintenance, or replacement shall be the total cost of same for all such multiple units.

ii. NFES is hereby authorized to develop the Equestrian Center grounds and construct capital improvements consistent with the Work Plan set forth on Exhibit B. The Work Plan includes, without limitation, the construction of the covered arena and livestock cover (collectively, the “Covered Arena”). The City agrees to waive the City’s Purchasing Rules (as defined in Section 8.1 herein) during NFES’s construction of the Covered Arena. NFES shall adhere to applicable competitive bidding and advertising requirements under Chapter 255, Florida Statutes, regarding the construction of capital improvements, including the Covered Arena, under this Section. The Director of the Parks Department, and the City Council member whose district includes the Equestrian Center, shall have the right to review and approve all capital improvement plans and designs in advance. The City will not unreasonably deny, condition or delay its approval of any proposed capital improvements request and the City will use best efforts to communicate all decisions to NFES within ten (10) business days of such request. NFES must comply with all zoning, engineering, permitting and other legal requirements relating to the construction of such capital improvements, and the City’s approval under this subsection shall not waive or constitute approval of such requirements. The City’s indemnity, insurance and bond requirements for capital improvements projects in excess of \$10,000 are set forth on Exhibit G. For Fiscal Year 2016-2017, the City has agreed to provide match funding to NFES in the not-to-exceed amount of \$1,300,000.00 and NFES has agreed to provide

\$1,300,000 in donated materials and labor for the construction of the Covered Arena (“Covered Arena Project”) depicted on **Exhibit J**. NFES shall complete the Covered Arena Project on or before October 1, 2018. All funds disbursed to NFES by the City for the Covered Arena Project shall be in accordance with the Approved FY 2017 Capital Improvements Budget (Covered Arena) attached hereto as **Exhibit I**. The City shall pay NFES on a progress payment basis during the Covered Arena Project. NFES shall make monthly progress payment requests to the City on a City approved progress payment form (“Progress Payment Request”). The City’s progress payment shall cover the amount of City approved work that has been completed by NFES at the time of invoice on the Covered Arena Project as indicated on the Progress Payment Request. All Progress Payment Requests shall provide accounting backup (including invoices, and/or receipts) and other supporting documentation satisfactory to the City to allow payment of City funds to NFES in accordance with the Approved FY 2017 Capital Improvements Budget (Covered Arena). Upon receipt and approval of NFES’s accounting backup and other supporting documentation, City shall process NFES’s Progress Payment Request with the City’s Accounting Division and deposit such request amount into the Capital Improvements Account. There shall be no release of City funds into the Capital Improvements Account pursuant to this Contract in the absence of accounting backup and other supporting documentation satisfactory to the City as specified herein. PRCS shall review and approve the final plans and designs of the Covered Arena prior to the commencement of any work. On or before December 31st of each year, NFES shall provide the City with a list of all completed capital improvements made to the Equestrian Center during the immediately preceding fiscal year ending September 30th under this Section E(h) (“*Completed Capital Improvement List*”). The Completed Capital Improvement List shall provide at a minimum with respect to each improvement listed: (i) the useful life, (ii) the monetary value, and (iii) such other specific project information as may be reasonably requested by the City.

iii. City will give reasonable consideration to funding requests in the Annual Budget for new capital projects, replacement of obsolete equipment, and/or acquisition of new equipment and program items for future new expansions.”

4. Section E.(i)v.(c) of said Contract is amended by removing the requirement that NFES submit an annual audit and providing instead that such audits are to be submitted every five years, and as amended shall read as follows:

“(c) On or before April 30 of every fifth calendar year, a balance sheet, a statement of profit or loss, and a statement of cash flows, prepared in accordance with generally accepted accounting principles and accompanied by an

independent auditor's report containing an opinion of the independent certified public accountant preparing the report. The auditor shall also give a negative assurance statement that NFES has complied with the terms, covenants, provisions, and conditions of the Contract including review, testing, and verification of calculations as applicable, and a certification of the gross operating revenues and operating expenses. The audit shall be conducted by a reputable firm hired by NFES, approved by City, and paid for from the Operating Account."

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

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Third Amendment, the day and year above written.

ATTEST:

CITY OF JACKSONVILLE, a consolidated municipal corporation and political subdivision of the State of Florida

James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

In compliance with the Charter of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement and provision has been made for the payment of the moneys provided therein to be paid.

Director of Finance
City Contract No. 10028, 3rd Amd

**NORTHEAST FLORIDA
EQUESTRIAN SOCIETY/H.O.R.S.E.
THERAPIES, INC.**, a Florida non-profit corporation

By: _____
Print Name: _____, its President
Dated: _____

Form Approved:

By: _____
Office of General Counsel