

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: JUNE 9, 2014 AGENDA ITEM NUMBER: 12

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN FORSYTH COUNTY AND BROWN GOLF MANAGEMENT LLC FOR MANAGEMENT CONSULTING SERVICES FOR GOLF OPERATIONS AT TANGLEWOOD PARK**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

**SUMMARY OF INFORMATION:**

See attached

ATTACHMENTS:  YES  NO

SIGNATURE: *J. Dudley Roberts, Jr.* DATE: June 4, 2014  
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN  
FORSYTH COUNTY AND BROWN GOLF MANAGEMENT LLC  
FOR MANAGEMENT CONSULTING SERVICES FOR  
GOLF OPERATIONS AT TANGLEWOOD PARK**

**WHEREAS**, in order to increase efficiency, the County Manager recommends entering into the attached Agreement for the appointment of a management consultant for Tanglewood Park golf operations consisting of two golf courses (Championship and Reynolds Courses), Par 3 Course, Clubhouse, Pro Shop, Par 3 Shop, driving ranges, grill, and other golf related amenities; and

**WHEREAS**, under the terms of the proposed Agreement, Forsyth County will compensate Brown Golf Management LLC at the rate of \$4,000 per month for an eighteen month term, representing a total of \$72,000.

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby authorizes the Chairman or County Manager and Clerk to the Board to execute, on behalf of Forsyth County, the attached agreement between Forsyth County and Brown Golf Management LLC for management consulting services relating to the above-described golf operations at Tanglewood Park at a cost to the County of \$4,000 per month for a term of eighteen months, representing a total of \$72,000, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this 9<sup>th</sup> day of June 2014.

## AGREEMENT

THIS AGREEMENT is made and entered into as of July 1, 2014, by and between Forsyth County, North Carolina, ("the County") and Brown Golf Management, LLC, a Delaware limited liability company qualified to do business in North Carolina ("Provider").

### WITNESSETH:

WHEREAS, the County owns Tanglewood Park which includes golf operations ("Golf Property") consisting of two golf courses, the Championship Course and the Reynolds Course; Par 3 course; Clubhouse; Pro Shop; Par 3 Shop; driving ranges; grill; and other golf club related amenities; and

WHEREAS, subject to the terms and provisions of this Agreement, the County desires to appoint Provider as the management consultant for the Golf Property, and Provider wishes to accept such appointment.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, intending to be legally bound, it is agreed as follows:

### COVENANTS

1. Appointment of Provider. Subject to all the terms and conditions of this Agreement, and for the term hereof, the County hereby appoints and designates Provider as the management consultant for the Golf Property.

2. Provider Duties. Provider shall be authorized to perform the following management consulting services:

a.) Subject to approval by the County Manager, Provider shall recommend green fees, membership fees, cart rental rates, outing fees, food and drink prices, selection and quality, merchandise prices, selection and quality and all other charges associated with the operation of the Golf Property.

b.) Provider shall advise the County in all steps necessary to ensure the maintenance of the Golf Property in such fashion so as to promote the best interests of the County, keeping the Golf Property in a neat and attractive condition, ensuring all necessary repairs and all alterations required to maintain the Golf Property in such condition, ensuring that all supplies necessary for the operation of the Golf Property are on hand, and providing documentation to ensure payment of operational invoices by the County, all in accordance with the terms of this Agreement. Provider shall implement such steps as set forth in its Tanglewood Park Golf Operational Analysis prepared for the County as it deems feasible and as approved by the County.

c.) On behalf of the County and in compliance with North Carolina law, Provider shall negotiate contracts and subcontracts for supplies, materials, labor, equipment,

utilities and services in connection with the usual and ordinary operation, maintenance and safety of the Golf Property. Notwithstanding anything to the contrary herein, Provider shall not have any authority to enter into any agreements or contracts on behalf of the County. No contract shall have any effect until executed by the County and in compliance with North Carolina law and Forsyth County ordinances and policies.

d.) Provider shall develop marketing, advertising and membership programs for the Golf Property for the County's approval.

e.) Provider shall advise the County with regard to Tanglewood Park's Golf Property employees and park policies, procedures, and means of performing golf operations. Provider shall have no authority to hire, fire, or discipline any County employee or contractor. Provider shall bring any concerns about County employees, policies, procedures, and golf operations to the attention of the County Manager or his designee. All Tanglewood Park employees shall remain employees of the County. Further, the County shall be responsible for filing and paying federal, state, and local payroll taxes and other required withholding for these County employees.

f.) Notwithstanding anything to the contrary herein contained, all obligations of Provider hereunder are expressly subject to and conditioned upon the County's budget containing sufficient funds, whether in the Operations Account, or otherwise, to enable such obligations to be undertaken. The Provider shall use its best efforts to negotiate the most favorable prices for products and services necessary to the performance of its duties, taking into account the quality, utility and necessity of each product or service.

g.) Provider and the County Manager shall meet on at least a monthly basis to discuss matters relating to the Property's operation, including but not limited to financials, operations, improvements and marketing with a minimum of Profit & Loss, Account Receivables and Cash Flow Statement. Provider shall confer with County Golf Property staff on an as needed basis, but with a minimum frequency of twice per week.

### 3. Budgets and Operations Account.

(a) During the term of this Agreement, Provider shall (i) prepare all operating budgets for the Golf Property, and (ii) be responsible for advising the County regarding the management of the day-to-day affairs of the Golf Courses. Provider shall prepare and submit annual Operating Budget, Cash Flow Projection and Capital Budget to the County for its review. The County agrees that the Budgets are intended to be reasonable estimates; as such, the County acknowledges that Provider has not made any guarantee, warranty or representation of any nature concerning the Budgets, gross receipts or operating expenses except in regards to the minimum baseline budget.

(b) Provider will provide the County the proposed Operating Budget, Cash Flow Projection, and Capital Budget for each fiscal year no later than February 1 preceding the beginning of the fiscal year on July 1.

4. Provider Compensation. As compensation for the services rendered by Provider under this Agreement, the County agrees to pay Provider an amount equal to Seventy-Two Thousand Dollars (\$72,000.00) for an initial 18-month term ending December 31, 2015, payable on a monthly basis at a rate of \$4,000.00 per month. Payment shall be made to Provider no later than the 15<sup>th</sup> day of the month following the month of service provided.

5. Travel Expense.

All Travel Expense for Provider's employees shall be the responsibility of Provider and shall not be paid for or reimbursed by the County.

6. Insurance.

(a.) Insurance required by Provider during the term of this contract and for a period of at least one year upon the expiration or cancellation of the management contract:

i. Professional Management Liability with minimum limits of One Million Dollars (\$1,000,000.00) per claim from an insurance carrier acceptable by the County.

ii. Workers Compensation Insurance with statutory limits, and employer's liability with limits of at least One Million Dollars (\$1,000,000.00) each accident for bodily injury by accident; Five Hundred Thousand Dollars (\$500,000.00) policy limit bodily injury by disease; and Five Hundred Thousand Dollars (\$500,000.00) each employee limit for bodily injury by disease. This insurance shall be for Provider's employees.

iii. Commercial General Liability Insurance with limits of at least One Million Dollars (\$1,000,000.00) for each occurrence; One Million Dollars (\$1,000,000.00) any one person or organization for personal and advertising injury; General Aggregate other than products/completed operations Two Million Dollars (\$2,000,000.00) and Two Million Dollars (\$2,000,000.00) products and completed operations Aggregate Limit.

iv. Commercial Auto Coverage with a limit of at least One Million Dollars (\$1,000,000.00) for any autos owned, leased or rented to Brown Golf.

(b) Provider's insurance policies shall list the County as an additional insured party.

7. Indemnification.

(a) The County agrees, to the extent permissible by North Carolina law, to indemnify, hold harmless and defend Provider and Provider's members, employees, agents and representatives from any and all damage, liability or loss they may suffer as a result of claims, costs, demands or judgments against them from third party claimants (including, without limitation, reasonable attorney's fees and court costs) arising from the County's material breach of any term or condition of this Agreement. The County shall have no duty to indemnify, hold harmless or defend Provider, however, for liabilities or claims resulting from the negligence, gross negligence, or willful misconduct of Provider or its members, Providers, employees, agents, or representatives, or resulting by reason of the reckless disregard by any such person of Provider's obligations under this Agreement or their breach of this Agreement.

(b) Provider agrees to indemnify, hold harmless and defend the County and the County's officers, employees, agents and representatives from any and all damage, liability or loss they may suffer as a result of claims, costs, demands or judgments against them from third party claimants (including, without limitation, reasonable attorney's fees and court costs) arising from Provider's negligent acts, gross negligence, or willful misconduct at the Property or Provider's material breach of any term or condition of this Agreement. Provider shall have no duty to indemnify, hold harmless or defend the County, however, for liabilities or claims resulting from the negligence or willful misconduct of the County or its employees, agents or representatives.

9. Final Authority. The County is a licensee of the Alcohol Beverage Control Board. The County shall have final decision making authority in all matters involving the serving or possession of alcohol at the Golf Property.

10. Effective Dates and Cancellation.

(a) This Agreement shall be effective as of July 1, 2014, and, unless sooner canceled in accordance with the express provisions of this Section 10, shall terminate on December 31, 2015. Thereafter, the parties may renew the Agreement by written agreement.

(b) This Agreement may be sooner terminated by the County based on either one of the Early Termination Clauses listed below:

- (i) The County may terminate this Agreement without cause, without penalty or fee, by providing Provider with 90 days written notice of termination.
- (ii) The County may elect to terminate this Agreement on thirty (30) days' notice after one year if Provider fails to meet an operational standard of eighty five percent (85%) of the

budgeted earnings before interest, taxes depreciation and amortization. (EBITDA).

In the case of termination under this Section, 10(b)(i), the parties agree Provider will continue to manage the property up to the date of termination, and the County will pay all amounts due through the date of termination.

(c) This Agreement may be sooner terminated by either party if, after written notice, the other party fails to cure within thirty (30) days the occurrence of any of the following: (i) the party is insolvent or fails generally to pay its debts as they become due; (ii) a proceeding under bankruptcy, reorganization, arrangement of debt or receivership law is filed against the party which proceeding is not dismissed within thirty (30) days of the date of its filing; or (iii) a material violation of any term of this Agreement by the party including, but not limited to, the nonpayment of sums when due.

13. Governing Law. This Agreement shall be governed by the laws of North Carolina, without regard to its conflicts of law principles.

14. General Provisions.

(a) This Agreement represents the entire agreement between the parties and supersedes all prior oral and written proposals, communications and agreements. This Agreement may be modified only by a written instrument signed by the parties hereto.

(b) This Agreement shall be for the benefit of, and binding upon the heirs, successors, transferees and assigns of the parties hereto. Neither party may assign this Agreement without the written consent of the other party.

(c) Except as required by law, Provider shall not disclose to any third person financial or other information relating to this Agreement, the Golf Property or the County.

(d) Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. Provider shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. Provider understands that neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of Provider or the employees of Provider. Provider further understands and agrees that Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

(e) Provider declares that it has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

15. Notice. Any notice required under the terms of this Agreement shall be valid in writing and delivered by hand, one day after deposit with an overnight mail courier, or three days after deposit with the U.S. Mail, certified, return receipt requested.

16. Audit Provision. The County, at its own expense, shall have at all reasonable times during normal business hours and upon at least twenty-four (24) hours advance notice, the right to audit, examine, and to make copies of all financial statements, records, and documents regarding the management of the property maintained by Provider.

17. Employment Restrictions. The Parties agree to mutually restrict themselves from offering employment of an employee of the other for a period of two (2) years. This restriction is to be construed in the most restrictive manner, and may be waived only in writing and signed by both Parties.

18. Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. It is the expectation of Forsyth County that the Provider will comply, and the Provider agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to the services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting on October 23, 2006.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in multiple counterpart copies and by facsimile transmission, as of the date first above written.

**PROVIDER:**

BROWN GOLF MANAGEMENT, LLC

By: \_\_\_\_\_

Its:

**FORSYTH COUNTY:**

By: \_\_\_\_\_

Its: \_\_\_\_\_