

**FIFTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE
AGREEMENT**

THIS FIFTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT (this “Amendment”) is made and entered into this day ____ of July, 2021 (the “Effective Date”), by and between CITY OF PENSACOLA, a Florida municipal corporation (the “City”) and NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC, a Florida limited liability company (“NFPB”).

WITNESSETH:

WHEREAS, Community Maritime Park Associates, Inc. (the “CMPA”) and NFPB entered into a certain Multi-Use Facility Non-Exclusive Use Agreement dated July 20, 2011, as amended by the First Amendment to Multi-Use Facility Non-Exclusive Use Agreement dated July , 2014, and the Second Amendment to Multi-Use Non-Exclusive Use Agreement dated April 2, 2015, and the Third Amendment to Multi-Use Non-Exclusive Use Agreement dated October 4, 2017, and the Fourth Amendment to Multi-Use Non-Exclusive Use Agreement dated March 25, 2019 (collectively, the “Use Agreement”);

WHEREAS, pursuant to that certain Omnibus Bill of Sale, Assignment and Related Agreements between the CMPA and the City dated June 1, 2017 (the “Omnibus Agreement”), the CMPA assigned to the City all of its right, title and interest in, to and under the Use Agreement and transferred and conveyed to City all of its right, title and interest in and to all buildings, structures and improvements at the Vince Whibbs Sr. Community Maritime Park in Pensacola, Florida, which improvements include without limitation the Multi-Use Facility as such term is defined in the Use Agreement;

WHEREAS, pursuant to sections 1(d) and 2 of the July 20, 2011 Use Agreement between the Parties, the Parties agree upon the Beneficial Use Date of April 1, 2012, with this date representing the commencement of the original 10-year term of the Use Agreement;

WHEREAS, also pursuant to section 2 of the July 20, 2011 Use Agreement between the Parties, NFPB provided notice of their intention to extend the Use Agreement and exercises their option through March 31, 2032, utilizing both of the two 5-year renewal terms available under the terms of the Use Agreement, with the execution of this Amendment;

WHEREAS, NFPB desires to make certain capital improvements and repairs the Multi-Use Facility, as more particularly described in Section 2 below, and the City wishes to reimburse NFPB up to \$2,000,000 towards the total cost of the improvements and repairs;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Project Description. The project contemplates certain capital improvements and repairs at the Multi-Use Facility identified in Attachment A, incorporated herein by reference. Such improvements include, but are not limited to, the conversion of the Blue Wahoos Stadium baseball field from natural grass to synthetic turf and any irrigation changes needed to accommodate the conversion, the conversion of the Blue Wahoos Stadium lights to LED, the removal of existing bullpens and construction of new bullpens, the construction of new batting cages, the purchase of additional training tables, dishwashers and surveillance equipment, internet and phone upgrades, replacement of HWC chairs, painting, repairs to seats, flooring, electrical outlets and elevators. As used in this Amendment, the term “Improvements” refer to the project described in this section as more particularly delineated in Attachment A.
3. Partial Reimbursement by the City. NFPB will pay in full the cost of the Improvements and the City shall reimburse NFPB an amount up to \$2,000,000 for the Improvements upon receipt of invoice from NFPB and copies of vendor invoices and proof of payment.
4. Ownership of Improvements. The parties acknowledge and agree that the City is the sole and exclusive owner of the Improvements.
5. NFPB Consent. NFPB consents to Improvements and agrees that the Improvements comply with all requirements and standards of NFPB and the Major League Baseball. To maximize the City’s contribution towards the Improvements, NFPB consents to prioritize the completion of the two major capital expenses of Attachment A, specifically, the installation of the artificial turf field and the installation of the new LED-lights. These two projects must be contracted and scheduled for completion in a timely manner before funds are reimbursed for any other line-item identified in Attachment A with an estimated cost over \$5,000.

6. City Consent. NFPB will submit to the City for written approval a detailed plan for the Improvements prior to engaging in any contracts for goods or services. Should such Improvements affect anything other than what is identified in Section 2 above, the City shall have the authority to reject the plan or modify the plan so as to minimize any negative effects on other elements of the Multi-Use Facility or Community Maritime Park.
7. Monitoring. The City shall have the right to monitor the replacement of the grass turf with artificial turf and NFPB shall coordinate with the City to ensure a City representative is onsite for the commencement of the turf replacement project.
8. Installation. NFPB shall be responsible for the installation of the Improvements. The installation of the Improvements shall be performed in a good and workmanlike manner.
9. Maintenance and Repair. NFPB shall be responsible, at its sole cost and expense, for all maintenance and repair of the Improvements. In addition, if the subsurface drainage and/or irrigation system is damaged during installation of the artificial turf field, NFPB shall be responsible for making the repairs. It is understood that the irrigation lines under the field will likely be removed and capped at the valves during installation of the field and such process shall not constitute “damage” under this provision. Subsequent to installation of the field, if the subsurface drainage or irrigation systems is damaged due to negligence by NFPB in fulfilling its maintenance obligation related to the artificial turf, then NFPB shall be responsible for making all repairs.
10. Limited Warranties. NFPB agrees to obtain warranties acceptable by the City for the improvements. NFPB and the City agree to cooperate with each other to enforce any warranties whenever appropriate and commercially reasonable.
11. Defined Terms. Unless otherwise defined in this Amendment, all capitalized terms in this Amendment shall have the meanings assigned to them in the Use Agreement.
12. Amendment to Use Agreement. The terms of this Amendment shall be, and hereby are, made a material part of to the Use Agreement, and the Use Agreement is hereby amended to include the terms of this Amendment.
13. Entire Agreement. The Use Agreement as hereby amended contains the entire agreement and understanding between the parties concerning the Improvements, and all prior representations, negotiations, agreements and understandings concerning the replacement, whether verbal or written, and

whether by or between the CMPA, the City and/or NFPB, are hereby superseded.

14. No Amendment or Waiver. No amendment or waiver of any term or provision of this Amendment shall be effective unless set forth in a written document executed by both the City and NFPB.
15. Ratification of Use Agreement. The Use Agreement, as hereby amended, is hereby ratified and affirmed.
16. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Florida.
17. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument as of the Effective Date.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ON FOLLOWING PAGES.]*

CITY:

CITY OF PENSACOLA,
a Florida municipal corporation

By: _____
Grover C. Robinson, IV, Mayor

ATTEST:

Ericka L. Burnett, City Clerk

(AFFIX CITY SEAL)

WITNESS:

Print Name: _____

WITNESS:

Print Name: _____

LEGAL IN FORM AND EXECUTION:

City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of July, 2021 by Grover C. Robinson IV, Mayor of the City of Pensacola, a municipal corporation of the State of Florida, on behalf of said Municipal Corporation. Said person is personally known to me and/or produced a current Florida driver's license as identification.

NOTARY PUBLIC _____

(AFFIX NOTARY SEAL)

NFPB:

NORTHWEST FLORIDA
PROFESSIONAL BASEBALL, LLC
a Florida limited liability company

By: _____
Quinton D. Studer, its Managing Member

WITNESS:

Print Name: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of July, 2021 by Quinton D. Studer, the Managing Member of Northwest Florida Professional Baseball, LLC, a Florida limited liability company, on behalf of the company. Said person is personally known to me and/or produced a current Florida driver's license as identification.

NOTARY PUBLIC _____

(AFFIX NOTARY SEAL)

Signature page to Fifth Amendment to Multi-Use Facility Non-Exclusive Use Agreement

ATTACHMENT A

Summary of Capital Projects and Estimated Cost

	<u>Estimated Cost</u>
Capital Expenses for Updated MLB Standards	
1. Bullpens Moved to left field	\$ 270,000.00
2. Internet & Phones for MLB standards	12,500.00
3. Surveillance Equipment for a command post MLB required	10,000.00
4. Batting Cage MLB required 2	50,000.00
5. Additional training tables	1,000.00
6. Artificial Field	1,053,000.00
7. Irrigation for Field	4,000.00
8. Lights	515,000.00
9. (2) Dishwasher (other appliances on site)	1,000.00
Subtotal Estimated Cost of Items need for MLB Standards	<u>1,916,500.00</u>
Other Upkeep & Age related Repairs	
10. HWC Chair Replacement (64)	25,600.00
11. Interior Painting	15,000.00
12. Regions Seating repair (73)	7,500.00
13. Flooring in Winn Dixie Deck	7,500.00
14. Water Accessing Electrical Outlets	1,000.00
15. Elevator Servicing (pre-season checkup)	1,000.00
16. Painting HWC Poles (not covered by insurance)	1,200.00
Subtotal Estimated Cost of Stadium Upkeep and Agree Related Repairs	<u>58,800.00</u>
Total of Estimated Cost of Required Capital Improvements	<u>\$ 1,975,300.00</u>