I. AGENDA SCHEDULE

Please register to speak on items 9, 11 and 13 with the Clerk of the Commission. (Sign-up sheets at entrance of Commission Chambers.)

1. Call Meeting to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Minutes
6. Communications and Petitions Distribution (if any)
7. Special Awards/Recognition
8. Discussion of City Manager’s Recommendations (See Section II)
9. Citizen Comments on City Manager's Recommendations
10. City Commission Action on City Manager’s Recommendations
11. Public Hearings: N/A
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:
(All contracts are valid until delivery is complete or through December 31st of the current year).

1. Purchase Orders:

   INFORMATION TECHNOLOGY
   A1. Dell Marketing LP (Microsoft licenses) $37,468.20
1. (Cont’d):

PUBLIC WORKS

B1. McNeilus Truck & Manufacturing Company (one side loader and one rear loader refuse truck bodies) $286,183.00

RECREATION AND YOUTH SERVICES

C1. Cole’s Cleaning Service LLC (janitorial services as needed through 04-30-25) $84,000.00

WATER

D1. Allied Builders, Inc. (fencing products related items and services as needed through 12-31-21) 63,000.00
-Depts. of Information Technology, Public Works, Recreation & Youth Services, and Water. Total: $470,651.20

2. Montgomery County Land Reutilization – Contract Modification – first amendment to Blight Abatement/Demo 2.0 Program – Planning and Community Development/Housing Inspection $2,000,000.00 (Thru 12/31/24)

3. National Processing Solutions (NPS) – Contract Modification – first amendment for merchant services fees – Dept. of Clerk of Courts $67,000.00 (Thru 03/31/22)

B. Construction Contracts:

4. St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical – Service Agreement – for a wellness–fitness program for the Dept. of Fire. – Dept. of Fire/Strategic Prog. & Safety $300,000.00 (Thru 12/31/24)

C. Revenue to City:

5. V.P. & Associates, Inc. – Contract Modification – for a sixth renewal and amendment for food and beverage concessions at Community Golf Course – Dept. of Recreation & Youth Services/Golf $30,000.00 (Thru 12/31/21)
E. Other – Contributions, Etc.:

BY THE BOARD OF REVISION OF ASSESSMENTS

6. In the Matter of Declaring the Intention of the Commission to Vacate the Alley East of Brown Street from Wyoming Street to the North Property Line of City Lot #84003 – Recommendation to Proceed.

IV. LEGISLATION:

Ordinance – First Reading:

7. No. 31871-21 To vacate the Alley east of Brown Street from Wyoming Street to the North Property Line of City Lot #84003.

VI. MISCELLANEOUS:

ORDINANCE NO. 31872 -21
RESOLUTION NO. 6565-21
IMPROVEMENT RESOLUTION NO. 3599-21
INFORMAL RESOLUTION NO. 985-21
City Manager’s Report

From 2730 – PMB/Procurement

Supplier, Vendor, Company, Individual See Below
Address See Below

Date March 3, 2021
Expense Type Purchase Order
Total Amount $470,651.20

2021 Purchase Orders

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<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>See below</td>
<td>See below</td>
<td>See below</td>
</tr>
</tbody>
</table>

Includes Revenue to the City Yes ☑ No
Affirmative Action Program Yes ☑ No N/A

INFORMATION TECHNOLOGY

(A1) P0210682 – DELL MARKETING LP, ROUND ROCK, TX
- Microsoft licenses.
- These goods are required to build a secure remote access infrastructure to support work from home users during the COVID-19 pandemic.
- Rates are in accordance with the State of Ohio Contract #0A1252 with pricing through 6/30/2025.
- One hundred percent of funding is ensurant from the Coronavirus Aid, Relief and Economic Securities (CARES) Act.
- The Department of Information Technology recommends approval of this order.

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Signatures/Approval

Melissa Wilson, CAFB
Division
Department
City Manager

Approved by City Commission

Clerk
Date

FORM NO. MS-16 Updated 06/2016
PUBLIC WORKS – WASTE COLLECTION

(B1) P0210683 – MCNEILUS TRUCK & MANUFACTURING COMPANY, MORGANTOWN, PA

- One (1) side loader and one (1) rear loader refuse truck bodies.
- These goods are required for trash and recycle services to City residents.
- Rates are in accordance with the Sourcewell Contract #112014-MCN.
- The Department of Public Works recommends approval of this order.

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RECREATION AND YOUTH SERVICES - GOLF

(C1) P0210679 – COLE’S CLEANING SERVICE LLC, HUBER HEIGHTS, OH

- Janitorial services as needed through 12/31/2021.
- These services are required to maintain the Community Golf course.
- Seventeen (17) possible vendors were solicited and four (4) responses were received. This order establishes a price agreement per IFB N21008 with pricing through 4/30/2025.
- The Department of Recreation and Youth Services requests additional authority of $70,000.00 through 4/30/2025.
- The Department of Recreation and Youth Services recommends acceptance of the low response.

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<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2024</td>
<td>Community Golf &amp; Recreation Fund</td>
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<td>2025</td>
<td>Community Golf &amp; Recreation Fund</td>
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<td>$12,000.00</td>
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</table>
WATER – WATER SUPPLY AND TREATMENT

(D1) P0210681 – ALLIED BUILDERS, INC., DAYTON, OH

- Fencing products, related items and services as needed through 12/31/2021.
- These goods and services are required to secure City owned properties.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20010D with pricing through 12/31/2021.
- Allied Builders, Inc. qualifies as a Dayton local entity.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
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The aforementioned departments recommend approval of these orders.
FIRST AMENDMENT TO BLIGHT ABATEMENT/ DEMO 2.0 PROGRAM

The Department of Planning and Community Development is requesting approval to amend the Blight Abatement/ Demo 2.0 Community Agreement with the Montgomery County Land Reutilization Corporation (MCLRC) that was approved by City Commission via Resolution on October 14, 2020. The Amendment increases the spending authority from $744,473.00 to $2,000,000.00 to account for future phases of funding for the Demo 2.0 Program, as well as give the City flexibility to have access to funds if they are not utilized by other communities in the program. In addition to this change, the Amendment clarifies our financial obligation to reflect a recent credit of $207,418.47, resulting from the final billing from the Ohio Housing Finance Agency at the conclusion of the Neighborhood Initiative Program.

The four-year original Agreement will enable the City to demolish properties we currently own, nuisance properties, or properties that MCLRC obtains on our behalf through the tax foreclosure process.

This Amendment shall commence upon execution and it shall terminate on December 31, 2024.

This Amendment has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds for $537,054.53, the Amendment and the original Agreement are attached.
"2021 CMR Demo 2.0 First Amendment" History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-02-22 - 3:18:21 PM GMT - IP address: 198.30.33.2

Document emailed to Todd M. Kinskey (todd.kinskey@daytonohio.gov) for signature
2021-02-22 - 3:18:34 PM GMT

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2021-02-22 - 4:15:06 PM GMT - IP address: 198.30.33.2

Document e-signed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-02-22 - 4:15:25 PM GMT - Time Source: server - IP address: 198.30.33.2

Agreement completed.
2021-02-22 - 4:15:25 PM GMT
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<tr>
<th>X</th>
<th>New Contract</th>
<th>_____</th>
<th>Renewal Contract</th>
<th>_____</th>
<th>Change Order</th>
</tr>
</thead>
</table>

**Required Documentation**
- Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract

**Contract Information**
- Contract Start Date: Upon Execution
- Expiration Date: 12/31/24
- Original Commission Approval: $2,000,000.00
- Initial Encumbrance: $537,054.53
- Remaining Commission Approval: $1,462,945.47

**Increase Encumbrance**
- Original CT/CF
- Decrease Encumbrance
- Remaining Commission Approval: $-

<table>
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<th>Amount: $ 537,054.53</th>
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<tr>
<td>Fund - Org - Acct - Prog - Act - Loc</td>
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<table>
<thead>
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<td><strong>Sequence Number</strong></td>
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<td>Fund Code - - - - - - XXXX - XXXX</td>
</tr>
<tr>
<td>Fund - Org - Acct - Prog - Act - Loc</td>
</tr>
</tbody>
</table>

**Attach additional pages for more FOAPALs**

- Vendor Name: Montgomery County Land Reutilization Corporation
- Vendor Address: 130 West Second Street, Suite 1425, Dayton, Ohio 45402
- Street: 130 West Second Street
- City: Dayton
- State: Ohio
- Zip code + 4: 45402
- Federal ID: 453258410
- Commodity Code: 96832
- Purpose: To provide funds to pay for Blight Abatement/ Demolition 2.0 Program.

**Contact Person:** Kevin Powell 3766
**Planning & Community Development Department/Division:** 2/19/2021
**Date:**

**Originating Department Director's Signature:**

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

**Finance Director Signature:** 2/23/2021
**Date:**
"CF - 16022 Land Bank Demo 2.0 2021" History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-02-19 - 1:35:56 PM GMT - IP address: 75.166.30.18

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2021-02-19 - 1:36:18 PM GMT

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Document e-signed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-02-19 - 5:17:17 PM GMT - Time Source: server - IP address: 74.83.54.61

Agreement completed.
2021-02-19 - 5:17:17 PM GMT
February 24, 2021

TO: Shelley Dickstein, City Manager
    City Manager’s Office

FROM: Todd M. Kinskey, FAICP, Director
      Department of Planning and Community Development

SUBJECT: Demo 2.0 First Amendment to Community Agreement

Following is additional detail explaining the City Manager’s Report scheduled for the March 3, 2021 City Commission meeting regarding the First Amendment to the Blight Abatement/Demolition 2.0 Community Agreement.

In mid-summer of 2020, the Land Bank announced a new program for demolition funded at $1.5M and set at a $1 for $1 match. Using a formula, the Land Bank divided the money across the County and allotted $744,473.00 to the City of Dayton. They required all participants to sign a Community Agreement in the Fall, which we did as authorized by City Commission on October 14, 2020. However, we did not specifically identify the project funds at that time.

The purpose of going back to Commission now was initially intended just as a vehicle to get a CF approved. However, after examining the Agreement approved in October and talking with the Land Bank, we realized our need to modify the Agreement for a couple of reasons.

First, they introduced the notion of the Land Bank potentially doing another round of funding in the future (maybe next year) in addition to raising the issue of us not being able to access potential funds that other communities do not use. Because our Agreement was capped at $744,473.00, we lacked flexibility to spend beyond the cap. After consultation with Law and the Land Bank, raising the maximum spending to $2M and setting a four-year threshold for the program seemed to be the best way to give us such flexibility.

The other component in the Amendment is that we have a credit with the Land Bank because of a final billing decision made by OHFA as they wound down the NIP program. At the end of the program, the Land Bank said they would only fund demos at a maximum of $12,500, but then changed their mind to cap it at $25,000 — although we had already paid for several buildings under that $12,500 cap. As a result, we have $207,418.47 on hand at the Land Bank. Because this new program is set up to require a $5k deposit for each building, the decision was made (after consultation with PMB) to use this balance to serve as a deposit fund until it runs out. These reasons are why the CF being requested is only $537,054.53.

Please let me know if you have any questions.

Thank you.
"CM Memo - Demo 2.0 explanation" History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-02-24 - 8:16:59 PM GMT- IP address: 75.186.30.18

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2021-02-24 - 8:17:22 PM GMT

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2021-02-24 - 8:26:56 PM GMT- IP address: 74.83.54.61

Document e-signed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-02-24 - 8:27:21 PM GMT - Time Source: server- IP address: 74.83.54.61

Agreement completed.
2021-02-24 - 8:27:21 PM GMT
FIRST AMENDMENT TO THE
MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION
BLIGHT ABATEMENT/DEMOLITION 2.0
COMMUNITY AGREEMENT

THIS FIRST AMENDMENT, entered into this ___ day of ________________, 2021, by and between MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit, having an address of 130 West Second Street Suite 1425, Dayton, Ohio ("MCLRC"), and the City of Dayton.

WITNESSETH:

WHEREAS, O.R.C. Section 1724.02 authorizes the Montgomery County Land Reutilization Corporation (MCLRC) to facilitate the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for the purpose of promoting economic and housing development in the county; and

WHEREAS, The MCLRC has established the Blight Abatement/Demolition 2.0 Program to strategically demolish structures in targeted neighborhoods in order to stabilize property values and curtail health and safety concerns associated with abandoned and nuisance properties; and

WHEREAS, The MCLRC has allocated $744,473.00 for demolition activities in the City of Dayton to be matched / funded by the City on a dollar for dollar basis, and

WHEREAS, At the conclusion of Neighborhood Initiative Program ("NIP") the Ohio Housing Finance Agency ("OHFA") modified the final billing to the MCLRC resulting in the City of Dayton having a $207,418.47 credit which will be used to support the City’s match of the Blight Abatement/Demolition 2.0 Program; and

WHEREAS, There are thousands of abandoned buildings in the City of Dayton of which at least eleven hundred are currently on the Nuisance List and eligible for demolition, and

WHEREAS, The City of Dayton and MCLRC have developed a plan for the abatement of nuisance properties or for MCLRC to acquire properties in targeted areas, and

WHEREAS, On October 14, 2020, the City of Dayton Commission passed a Resolution authorizing the City Manager to sign and execute the Blight Abatement/Demolition 2.0 Community Agreement as set forth in Exhibit A attached hereto thereby authorizing the City of Dayton to participate in the Blight Abatement/Demolition 2.0 Program; and

WHEREAS, the Department of Planning and Community Development has budgeted the necessary funds to fully match the allocation for this program as outlined in Section 3.C. of the Blight Abatement/Demolition 2.0 Community Agreement; and

NOW, THEREFORE, In consideration of the mutual promises hereinafter set forth, MCLRC and the City of Dayton agree as follows:
The last sentence of the last paragraph of Section 3 (C) “Funding and Cost Allocation” which reads “Total payment by Participant during the term of the Agreement shall not exceed Seven Hundred Forty-Four Thousand Four Hundred Seventy Three Dollars and Zero Cents ($744,473.00).” shall be deleted and the paragraph amended as follows:

Total payment by the City of Dayton during the four year term of the Agreement shall not exceed Two Million ($2,000,000.00) dollars. During the first phase of the program, the City allocates Seven Hundred Forty-Four Thousand Four Hundred Seventy Three Dollars and Zero Cents ($744,473.00) to fulfill the obligations of the Agreement. If additional program funds become available from the MCLRC, the City may encumber additional funds to satisfy the Agreement. During the first phase of the program, Two Hundred Seven Thousand Four Hundred Eighteen Dollars and Forty Seven Cents ($207,418.47) of the programs matching requirement will be satisfied by an existing credit on hand at the MCLRC as a result of reimbursements from the Ohio Housing Finance Agency’s Neighborhood Initiative Program. Both Parties will make their committed funds available upon execution of the agreement, and may expend them as necessary to fulfill the obligations in the Agreement. All funds from both Parties shall be committed and fully expended by the end of calendar year 2024 unless otherwise agreed to by the Parties.

Except as modified in this First Amendment, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION

By: ____________________________
    Michael J. Grauwelman
    Executive Director

CITY OF DAYTON, OHIO

By: ____________________________
    Shelley Dickstein
    City Manager
APPROVED AS TO FORM
AND CORRECTNESS

2/18/2021

X  John Musto for
City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

_________________________, 2021

Min. / Bk. _____ Pg. ______

__________________________
Clerk of the Commission
"Agreement Amendment draft 2-18-2021 Demo 2.0_version4" History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-02-18 - 9:33:59 PM GMT - IP address: 75.186.30.18

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Document e-signed by Mike Grauwelman (mikeg@mclandbank.com)
Signature Date: 2021-02-19 - 2:23:21 PM GMT - Time Source: server - IP address: 192.181.179.118

Agreement completed.
2021-02-19 - 2:23:21 PM GMT
A RESOLUTION

Authorizing the City Manager to Enter into a Community Agreement with the Montgomery County Land Reutilization Corporation to Participate in the Blight Abatement/Demolition 2.0 Program, and Declaring an Emergency.

WHEREAS, O.R.C. Section 1724.02 authorizes the Montgomery County Land Reutilization Corporation (MCLRC) to facilitate the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for the purpose of promoting economic and housing development in the county; and

WHEREAS, The MCLRC has established the Blight Abatement/Demolition 2.0 Program to strategically demolish structures in targeted neighborhoods in order to stabilize property values and curtail health and safety concerns associated with abandoned and nuisance properties; and

WHEREAS, The MCLRC has identified $744,473.00 for demolition activities in the City of Dayton to be funded on a dollar for dollar basis, and

WHEREAS, There are thousands of abandoned buildings in the City of Dayton of which at least eleven hundred are currently on the Nuisance List and eligible for demolition, and

WHEREAS, The City of Dayton and MCLRC will cooperate in developing a plan for the abatement of nuisances properties or for MCLRC to acquire properties in targeted areas, and

WHEREAS, The City of Dayton and MCLRC are desirous of mutually cooperating to complete, where applicable, the acquisition or declaring properties a nuisance /condemnation, demolition, grading, disposition, re-greening and maintenance activities referenced in this Blight Abatement/Demolition 2.0 Community Agreement, on the terms and conditions stated in this Agreement, and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and to assist with the immediate need to strategically demolish structures in these targeted neighborhoods, it is necessary that this Resolution take effect immediate upon its adoption; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. The Dayton City Commission hereby authorizes the City Manager to sign and execute the “Blight Abatement/Demolition 2.0 Community Agreement” as substantially set forth in Exhibit A attached hereto and incorporated herein thereby authorizing the City of Dayton to participate in the Blight Abatement/Demolition 2.0 Program.
Section 2. For the reasons stated in the preamble hereof, this Resolution is declared an emergency measure and shall take effect immediately upon its adoption.

Adopted by the Commission .......... October 14 ....... , 2020

Signed by the Mayor .......... October 14 .......... , 2020

[Signature]
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:
[Rochelle Lavender]
Clerk of Commission

APPROVED AS TO FORM:
[Signature]
City Attorney
MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION
BLIGHT ABATEMENT/DEMOLITION 2.0 PROGRAM
COMMUNITY AGREEMENT

THIS AGREEMENT is entered into as of the 24th day of October, 2020, by and between MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit, having an address of 130 West Second Street Suite 1425, Dayton, Ohio ("MCLRC"), and the CITY OF DAYTON, OHIO ("Participant").

WITNESSETH:

WHEREAS, in August of 1961, O.R.C. Section 1724.01 became effective and provided for the establishment of county land reutilization corporations for the purpose of facilitating the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for whose benefit the corporation is organized and the purpose of promoting economic and housing development in the county; and

WHEREAS, pursuant to O.R.C. Section 1724.02, MCLRC has, among other powers, the power to do all acts and things necessary or convenient to carry out the purposes of O.R.C. Section 1724.01; and

WHEREAS, MCLRC will strategically demolish structures in targeted neighborhoods in order to stabilize property values and curtail health and safety concerns associated with abandoned and nuisance properties; and

WHEREAS, MCLRC has adopted or will adopt certain policies and procedures that were or will be developed in connection with this demolition program; and

WHEREAS, MCLRC and Participant will cooperate in developing a plan for the abatement of nuisances at properties or for MCLRC to acquire properties in targeted areas through tax foreclosures, donations, acquisitions of tax liens, purchase, declaring properties a nuisance / condemning them under the law, or any other means MCLRC deems appropriate, and if necessary MCLRC will hold the acquired properties for a period of time as provided in this Agreement; and

WHEREAS, MCLRC, the City of Dayton, Ohio and the City of Kettering, Ohio (each a "Project Manager" and collectively, the "Project Managers") are supporting the effort by contracting for, and the management of, environmental survey and remediation, demolition, grading, re-greening, and maintenance activities, and Participant has designated a community

Land Bank Blight Abatement/Demo 2.0 Program
Community Agreement
Page 1 of 12
representative who has authority to make decisions on Participant’s behalf and who will be responsible for coordinating Participant’s responsibilities with MCLRC and the Project Managers throughout the term of this Agreement; and

WHEREAS, MCLRC and Participant are desirous of mutually cooperating to complete, where applicable, the acquisition or declaring properties a nuisance /condemnation, demolition, grading, disposition, re-greening and maintenance activities referenced in this Agreement on the terms and conditions stated in this Agreement; and

WHEREAS, Participant has sufficient statutory or other legal authority and the management and financial capability needed to assume its obligations under this Agreement, and Participant has agreed to perform those obligations on the terms and conditions provided in this Agreement; and

WHEREAS, MCLRC’s Executive Director (the “Director”) has authority to enter into and perform the agreements with Participant on behalf of MCLRC.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements stated in this Agreement, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. **Community Representative and Notices**

   Participant designates City Manager Shelley Dickstein, or her designee, (the “Community Representative”) as Participant’s agent for purposes of this Agreement, and this Community Representative will have authority to make decisions on behalf of Participant and to bind Participant as provided in this Agreement and in the performance of Participant’s obligations. All notices, correspondence and communications to or from Participant, which are provided for or to be given under this Agreement, whether with MCLRC, the Director, a Project Manager or their respective agents and contractors, will be communicated or made to Participant through the Community Representative or her designee. All notices, correspondence and communications to the Project Manager provided for or to be given under this Agreement by Participant or its agents, contractors or representatives will be simultaneously given to the MCLRC Program Manager, Susie Crabill by email to SCrabill@MCLandBank.com read receipt confirmed.

2. **Target Area and Property Identification**
Participant will provide to MCLRC a target area(s) or specific properties according to the Program Guidelines attached hereto and made a part hereof that may be amended from time to time within Participant’s jurisdiction (the “Target Area”) for demolition activities as provided in this Agreement. These Target Areas may include properties owned by Participant and will be either part of a larger community stabilization effort, connect to or be a part of a previously identified target area, have been determined to present a threat to human health, safety, environment and/or presents a nuisance to the community or otherwise significant to the community, and approved by MCLRC at its sole discretion. Participant will identify specific property(s) within a Target Area at which Participant believe nuisance conditions exist or that Participant desires MCLRC to acquire for demolition. MCLRC or the Participant will determine if the property(s) meet the vacant abandoned criteria. For property(s) that are to be acquired, upon MCLRC’s determination that the property(s) meets the criteria, notice will be provided to the Participant, and MCLRC may proceed with the acquisition of the property(s) through tax foreclosures, deed in lieu of tax foreclosure or donation. For nuisance property(s) that are not being acquired, MCLRC and Participant shall determine the statutory process that will be followed to allow for demolition at the property(s) and whether MCLRC or Participant will initiate and pursue the process to completion.

3. Scope of Work, Schedule and Budget

A. Approvals. Upon MCLRC’s approval or acquisition of each property for participation in the program, doors, windows and openings of any structures at the property will be covered to discourage trespassing. All work to be done under this Agreement will be in accordance with the Construction and Material Specifications of the City of Dayton dated October 1, 2008 (the “Construction and Material Specifications”). An environmental survey will be scheduled to determine if environmental remediation is needed prior to the demolition. Once the scope of environmental work is determined, bids will be requested from prequalified remediation contractors. Review of the bids and awarding the remediation contract will be performed by the Project Manager. Upon successful completion of the environmental remediation, the property will be re-inspected by the original environmental survey contractor to confirm that all environmental concerns

Land Bank Blight Abatement/Demo 2.0 Program
Community Agreement
Page 3 of 12
have been resolved. The property will then be submitted for bidding to demolish the structure(s). The demolition will include removal of all structural components of the buildings. The cavity that is created by removal of the buildings will be backfilled with clean fill materials and topped with 4 inches of high quality topsoil. The entire area affected by the demolition will be reseeded.

B. Inspections and Completion of Work. The Project Manager or their staff will perform all inspections pertaining to the scope of work, and will be solely responsible in determining when the scope of work has been completed in accordance with the Construction and Material Specifications. Only upon successful completion of the work will payment be approved.

C. Funding and Cost Reconciliation. Participant acknowledges that MCLRC has assigned a 2020 funding allocation amount for their community ("MCLRC Share") and that amount is the limit that MCLRC will provide for demolition and other eligible costs defined in the Guidelines. The minimum allocation amount per Participant is $7,500. Participant acknowledges that MCLRC will receive invoices for the work and be responsible for payment to contractors and vendors. For property(s) to be acquired, upon the Participant’s identification of properties for MCLRC to acquire or when the Participant offers properties that Participant already owns for demolition, Participant will pay to MCLRC $5,000 per property as a "Property Deposit". For nuisance property(s), Participant will pay to MCLRC the Property Deposit upon MCLRC’s determination that applicable statutory requirements are satisfied to allow demolition to legally proceed, and MCLRC will (i) certify to the Montgomery County Auditor such information required for abatement costs to be collected with real estate taxes, or (ii) follow other available statutory processes to place a lien against the applicable property for abatement costs. If the assessed amount or lien amount, as applicable, is recovered, the recovered amount shall be shared by Participant and MCLRC in proportion to the shared cost of demolition between the Participant and MCLRC. Upon completion of the demolition and re-greening of the property, MCLRC will issue an invoice to the Participant for the balance of Participant’s share of costs. “Participant’s Share” shall be equal to one half of the total cost of the demolition, acquisition, disposition, maintenance, environmental survey and remediation,
project oversight, insurance, assessment, and demolition costs. "Participant's Balance" shall be equal to Participant's Share less the Property Deposit. Participant shall pay this balance in full within 60 days after the date of the invoice. Participant understands that, for property(s) that are acquired, the Property is exempt from real estate taxes but not assessments while title to the Property is held by MCLRC. Participant further understands that upon the transfer of the Property to Participant, the Property will no longer be exempt from real estate taxes (unless Participant otherwise obtains an exemption), and Participant will be responsible for real estate taxes and assessments, including those charges for periods before MCLRC or Participant took title. Total payment by Participant during the term of the Agreement shall not exceed Seven Hundred Forty-Four Thousand Four Hundred Seventy Three Dollars and Zero Cents ($744,473.00).

4. Participant Services

Participant will waive all permits, fees and charges that would otherwise be chargeable or collected by Participant in connection with the activities to be undertaken pursuant to this Agreement. Participant further agrees to provide, at Participant's expense, all public safety support (e.g. fire department, police, etc.) if requested by the Project Manager in connection with the administration and performance of this Agreement. Participant also agrees to cooperate with MCLRC in good faith to collect and assemble information required under this Agreement.

5. Maintenance

Participant will be responsible for the mowing of the property upon acquisition by MCLRC. Upon completion of all demolition activities, including the seeding of the property, Participant will immediately be responsible for the maintenance of the property when notified by MCLRC that demolition activities are complete, and regardless of whether title has been transferred to Participant. All contractors who perform maintenance on the properties must provide to MCLRC proof of Worker's Compensation insurance and liability insurance in coverage amounts acceptable to MCRLC.

6. Disposition of Acquired Properties

Disposition of acquired properties to Participant will occur once all costs for the demolition have been submitted to and paid by MCLRC, and Participant has paid to
MCLRC the Participant’s Balance owed pursuant to Section 3.C of this Agreement. All costs and fees associated with the transfer of the property to Participant will be included in the total amount that will be paid for by MCLRC, and Participant will pay half of these costs and fees. Participant will accept the Property in its as-is condition and subject to all defects, patent or latent and whether known or unknown at the time of MCLRC’s acquisition of title to the Property.

7. **Liability; Insurance**

   A. **Scope of Project Party Obligations.** Neither MCLRC, the Project Manager nor their respective contractors, agents, representatives, directors, officers, managers, members, partners or principals (collectively, the “Project Parties”) will have any duties or obligations whatsoever in connection with the work to be performed pursuant to this Agreement or with respect to the properties where such work occurs except as expressly stated in this Agreement. Nothing in this Agreement or otherwise will be construed as any warranty or representation of any kind by MCLRC or the Project Manager with respect to the properties or otherwise. Effective upon the date demolition and reseeding work have been completed and approved for payment, any and all duties and obligations of MCLRC and the Project Manager arising under this Agreement or otherwise relating to the applicable property will terminate. Upon this termination, Participant, its successors and assigns, will release and waive all liabilities, claims and causes of action against all Project Parties, whether known or unknown, foreseen or unforeseen, actual or contingent, and whether arising directly or indirectly in connection with this Agreement or the property.

   B. **Liability.** Except as expressly stated in this Agreement, MCLRC will have no duty, obligation, liability or responsibility for the control, care, operation, management, repair, replacement or restoration of the property(s), or any waste committed on the property(s) or any dangerous or defective condition of the property(s) or any vandalism or break-ins at the property(s). Nothing in this Agreement or otherwise will be construed as any warranty or representation of any kind by MCLRC or the Participant with respect to the property(s) or otherwise. To the extent permitted by law, MCLRC and Participant shall be responsible for any claim or cause of action made against it arising out of the performance of its duties under this Agreement, and neither party shall be required or
responsible to indemnify, defend, or hold harmless the other for any such claim or cause of action. Each party shall obtain for itself insurance or other security for the performance of this Agreement. Nothing in this Agreement shall be construed to waive any immunity of MCLRC or Participant provided at law. In addition, MCLRC will have no liability or responsibility for any negligence in the management, upkeep, or repair of the Property. The terms and conditions of this Section will survive any conveyance of the Property from MCLRC or any termination or expiration of this Agreement without limitation.

C. **Insurance.** During the period MCLRC holds title to any acquired property(s), MCLRC will maintain commercial general liability insurance against claims for bodily injury, personal injury, or death, occurring in, on, under or about the property(s) in amounts and in form and substance satisfactory to MCLRC and as otherwise required by the terms of Schedule I attached to this Agreement. The insurance to be maintained by MCLRC pursuant to this Agreement will be provided for under valid and enforceable policies issued by financially responsible insurers authorized to do business in Ohio in accordance with the terms stated in Schedule I to this Agreement. Participant will maintain commercial general liability insurance on all property(s) owned by Participant, and such insurance will comply with the terms of Schedule A. During all periods that MCLRC is conducting activities at property(s) owned by Participant, MCLRC will be named as an additional insured on policies maintained by Participant. Except as required by this Agreement, Participant will be solely responsible for determining any other types of insurance coverage to be maintained and the policy limits and deductible amounts. MCLRC will have no liability or responsibility whatsoever with respect to such matters.

D. **Damage.** In the event of any damage or destruction to a property covered by this Agreement, MCLRC or Participant may elect to terminate this Agreement with respect to the damaged property by written notice to the other. Upon termination, MCLRC will be relieved of all obligations under this Agreement. MCLRC will have no liability or responsibility for any damage or destruction or for the repair or restoration of the property. MCLRC and Participant will reasonably cooperate with the other with respect to making claims on any applicable insurance to the extent the other party is deemed to hold any rights to such insurance. Any proceeds payable will be used for the payment of the costs of work.
performed pursuant to this Agreement, or if this Agreement is terminated, proceeds will be retained by or assigned to the party holding title to the property. If neither MCLRC nor Participant terminates this Agreement, they will work together to modify, if needed, and the demolition plan for the property.

8. **No Third Party Beneficiaries**

Under no circumstances will MCLRC be responsible or liable to any person or business for, or on account of, any disbursement of, or failure to disburse, the demolition funds paid to any firm under contract to MCLRC or any part thereof, and no contractor, subcontractor, vendor, material supplier, laborer or other party will have a right or claim against MCLRC under this Agreement or in connection with the administration of the work provided for in this Agreement.

9. **No Assignment**

The parties agree that this Agreement will not be assigned by Participant.

10. **No Discrimination**

During the performance of this Agreement, Participant will not discriminate against any employee or applicant for employment, or any person or business entity considered for engagement by Participant in connection with any activities related to this Agreement, because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Participant will ensure that any person or business entity engaged in the activities related to this Agreement are treated, without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action will include, but is not limited to, the following: Participant and all persons claiming through Participant agree not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. **Cumulative Remedies**

No remedy provided in this Agreement is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy given to MCLRC under this Agreement or now or hereafter existing at law or in equity.
12. **No Waiver**

No delay or omission of MCLRC in exercising or enforcing any of its rights, powers, privileges, discretion or remedies will constitute a waiver thereof, and no waiver by MCLRC of any default of Participant under this Agreement will operate as a waiver of any other default. No term or provision of this Agreement will be waived except with the prior written consent of MCLRC.

13. **Severability**

If any term or provision of this Agreement or the application thereof to any entity, person or circumstance is held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid, unenforceable or illegal, will not be affected thereby, and each remaining term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

14. **Entire Agreement**

The Blight Abatement/Demo 2.0 Program Guidelines issued by MCLRC, as may be amended from time to time, are incorporated into and made a part of this Agreement along with Schedule I. This Agreement, together with the Program Guidelines and Schedule I, contains the entire agreement of the parties with respect to the subject matter addressed in this Agreement. All work to be done under this Agreement, will be in accordance with the Construction and Material Specifications of the City of Dayton dated October 1, 2008 (the “Construction and Material Specifications”). This Agreement will supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. This Agreement will not be modified in any manner except by an instrument, in writing, signed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

15. **Governing Law**

This Agreement and any modifications, amendments, or alterations, are governed, construed, and enforced under the laws of the State of Ohio.
16. Authority

The signatures to this Agreement will act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

17. Conflict of Interest

No personnel of MCLRC or Participant, any subcontractor of MCLRC or Participant, or any public official, employee or member of the governing body of Participant, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Agreement, will prior to the completion of said work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his, her or its functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his, her or its interest to MCLRC in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless MCLRC determines that, in light of the personal interest disclosed, his, her or its participation in any such action would not be contrary to the public interest.

[Signature page follows immediately]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION

Mike Grauwellman
By: [Signature]
Michael J. Grauwellman
Executive Director

CITY OF DAYTON, OHIO

By: [Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS

[Signature]

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

October 14, 2020

By Resolution No. 6343-20

Land Bank Blight Abatement/Demo 2.0 Program
Community Agreement
Page 11 of 12
Schedule I

Required Insurance Coverage:

General liability coverage limits for the locations/premises that contain buildings:
  General Liability Each Occurrence - $1,000,000
  General Aggregate - $2,000,000
**First Amendment to the Merchant Services Agreement**

The Clerk of Court requests approval to modify the current merchant services agreement with National Processing Solutions (NPS). Merchant Services fees increased as a result of reestablishing the Clerk of Court as the payment processor of Photo Enforcement tickets and a shift in more online payments as opposed to in-person or mail-in by citizens.

The Dayton City Commission approved the initial agreement and spending authority on April 19, 2019 for $120,000.00, which will expire 3/31/2022. The first amendment will increase the contract amount by $67,000.00 with a total amount of $187,000.00.

The First Amendment to the Agreement has been reviewed and approved the Law Department for form and correctness.

A copy of the original agreement, first amendment, and Certificate of Funds in the amount of $45,000.00 for the fiscal year 2021 are attached.
# CERTIFICATE OF FUNDS

## SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>X Change Order</th>
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<tbody>
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<td>Expiration Date</td>
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<td>Initial Encumbrance</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$67,000.00</td>
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</tbody>
</table>

### Required Documentation
- Initial City Manager’s Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager’s Report
- Copy of Original Certificate of Funds

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<th>Amount:</th>
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<td>Fund</td>
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<td>Amount:</td>
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<td>10000 - 2500 - 1158 - 74 -</td>
</tr>
<tr>
<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

### Attach additional pages for more FOAPALs

**Vendor Name:** National Processing Solutions

**Vendor Address:** 400 Sugar Camp Circle, STE 301 Dayton, OH 45409

**Federal ID:** 27-0088061

**Commodity Code:** 94635

**Purpose:** To encumber funds for credit card merchant fee services for 2021

**Current CT212258**

**Contact Person:** Meghan Thomas

**Clerk of Court:** 2/11/2021

**Department/Division:**

**Originating Department Director’s Signature:**

### SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

**Finance Director Signature**

**Date:** 2/22/21

**CF/CT Number:** CT21-2258

**CF Prepared by:**

**Date:** 2/22/21

Finance Department

October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract       Renewal Contract       Change Order:

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<td>Copy of City Manager's Report</td>
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<td>Copy of Original Certificate of Funds</td>
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</table>

<table>
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<tr>
<th>Original CT/CF</th>
<th>Increase Encumbrance $</th>
<th>Decrease Encumbrance $</th>
<th>Remaining Commission Approval</th>
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<td>Fund Org Acct Prog Act Loc</td>
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Attach additional pages for more FOAPALs

Vendor Name: National Processing Solutions
Vendor Address: 400 Sugar Camp Circle, STE 301 Dayton, OH 45409
Federal ID: 27-0088061
Commodity Code: 94635
Purpose: To encumber funds for credit card merchant fee services for 2021
Current CT202258

Contact Person: Meghan Thomas

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: [Signature]

CF Prepared by: [Signature]

Date: 10/14/2020

CF/CT Number: CT21-22258

Finance Department

October 18, 2011
FIRST AMENDMENT TO MERCHANT SERVICES AGREEMENT

This First Amendment, entered into this ___ day of __________, 2021, is between the City of Dayton, Ohio ("City") and National Processing Solutions ("NPS").

WHEREAS, The City and NPS entered into an agreement ("Agreement") to have NPS provide payment processing services for the Dayton Municipal Court; and

WHEREAS, The City of Dayton Commission approved the Agreement on April 10, 2019; and

WHEREAS, The Agreement covers a three-year term of April 1, 2019 to March 31, 2022; and

WHEREAS, The Dayton Municipal Court has experienced a significant increase in both the dollar volume processed as well as credit card transactions completed; and

WHEREAS, the increase in payment processing services necessitates additional encumbrance authority to cover the additional services over the term of the Agreement; and

WHEREAS, The Encumbrance Authority needed to continue this Agreement is an additional Sixty-Seven Thousand Dollars and Zero Cents ($67,000.00); and

NOW, THEREFORE, The City and NPS agree as follows:

1. Article 3, Compensation, of the Agreement is deleted in its entirety and replaced with the following:

NPS shall submit invoices, not more frequently than monthly, for payment of the Services provided. Such invoices shall state the invoice period, total amount requested, and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

Payment for Services will be dispersed according to the following maximum payment amounts per year:

<table>
<thead>
<tr>
<th>Date</th>
<th>Funds Amount</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>January 1, 2022- March 31-2022</td>
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</tr>
</tbody>
</table>
2. Except as modified by this First Amendment, the Merchant Services Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and NPS, each by a duly authorized representative, have executed this First Amendment as of the day and date first set forth above.

CITY OF DAYTON, OHIO

________________________________________
City Manager

NATIONAL PROCESSING SOLUTIONS

By: ________________

Print: Natalie Dunlevey

Its: President

APPROVED AS TO FORM
AND CORRECTNESS:
☑ Recoverable Signature

X John Musto for

City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

________________________________________, 2021

Min. Bk. _____ Pg. _____
MERCHANT SERVICES AGREEMENT

THIS MERCHANT SERVICES AGREEMENT is dated this 16th day of April, 2019, between the CITY OF DAYTON, OHIO ("City") and NATIONAL PROCESSING SOLUTIONS ("NPS").

WHEREAS, The City has selected NPS, via competitive bid, to serve as its NPS for payment processing for the Dayton Municipal Court; and,

WHEREAS, City and NPS seek to utilize the existing operational infrastructure and technology in place.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, City and NPS agree as follows:

ARTICLE 1. TERM
The Agreement shall commence on upon execution and shall terminate upon expenditure of all funds provided herein or on March 31, 2022 whichever date is earlier. The Agreement shall be renewable for three (3) 1-year possible optional periods at the discretion of the Clerk.

ARTICLE 2. SERVICES TO BE PERFORMED BY NPS
NPS shall provide all services described in the Scope of Work in Exhibit A, which is attached and incorporated herein by reference. NPS shall also perform the banking and merchant services described in the Request for Proposal, hereinafter referred to as the ("RFP"), a copy of which is attached as Exhibit B and incorporated herein by reference. To the extent not inconsistent with Exhibits A and B, NPS shall perform the work and services for the project and comply with the representations detailed in NPS's response to the RFP, hereinafter referred to as the ("Proposal"), a copy of which is attached as Exhibit C and incorporated herein by reference.

ARTICLE 3. COMPENSATION
NPS shall submit invoices, not more frequently than monthly, for payment of the Services provided. Such invoices shall state the invoice period, total amount requested, and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

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<tr>
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<td>January 1, 2022 – March 31, 2022</td>
<td>$14,000</td>
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</table>

ARTICLE 4. CITY’S RESPONSIBILITIES
The City will furnish NPS, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement.
ARTICLE 5. STANDARD OF CARE

NPS shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. NPS shall have no liability for defects in the Services attributable to NPS’s reliance upon or use of data or other information furnished by the City or third parties retained by the City.

If, during the one-year period following completion of the Services, it is shown there is an error in the Services caused by NPS’s failure to meet such standards and City has notified NPS in writing of any such error within that period, NPS shall perform, at no additional cost to City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. INDEMNIFICATION

NPS shall indemnify and defend the City and its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys’ fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of NPS and its agents, employees, contractors, sub-contractors and representatives in undertaking and performing the Services.

This Article shall survive early termination or expiration of this Agreement.

ARTICLE 7. INSURANCE

During the term of this Agreement, NPS shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

1. General Liability Insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
2. Automobile Liability Insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
3. Employers’ Liability Insurance, having a limit of $500,000 for each occurrence.
4. Professional Liability Insurance, having a limit of $1,000,000 annual aggregate.
5. NPS shall maintain errors and omissions insurance in the amount of $1,000,000.00.

Current certificates of insurance for all policies and concurrent policies required to be maintained by NPS pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. NPS also shall maintain Workers’ Compensation Insurance in such amounts as required by law for all employees and shall furnish to the City evidence of same.

ARTICLE 8. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents and reports prepared by NPS as part of the Services shall become the sole and exclusive property of the City upon payment. However, NPS shall have the unrestricted right to their use.
NPS shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of NPS.

ARTICLE 9. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by NPS to perform in accordance with the terms of this Agreement. NPS shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to NPS. In the event of termination by the City hereunder, the City will pay NPS for Services provided up to the date of termination.

Any such termination shall not relieve the NPS of any liability to the City for damages sustained by any breach by the NPS. The City will be under no further monetary obligation or commitment to the NPS. The City may terminate this contract at any time upon thirty (30) days written notice to the NPS. In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

ARTICLE 10. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor NPS shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or NPS under this Agreement, provided the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, contractors, sub-contractors and/or representatives.

Should such circumstances occur the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

B. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

C. COMMUNICATIONS

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first-class U.S. mail, postage pre-paid to the address specified below:

NPS:  National Processing Solutions
       10 W Second Street
       Dayton, OH 45402
       Attention: Natalie Dunlevy, President
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of NPS and the City.

D. EQUAL EMPLOYMENT OPPORTUNITY
NPS shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically, rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option and may bar NPS from receiving future City contracts.

E. WAIVER
A waiver by the City or NPS of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party’s rights with respect to any other or further breach.

F. SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the portion or provision.

G. INDEPENDENT CONTRACTOR
By executing this Agreement for professional services, NPS acknowledges and agrees that it will be providing services to the City as an “independent contractor.” As an independent contractor for the City, NPS shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Article. NPS shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

NPS, its employees and any persons retained or hired by NPS to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, NPS shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes. NPS acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.
H. ASSIGNMENT
NPS shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent NPS from employing independent contractors, associates, and subcontractors to assist in the performance of the Services.

I. THIRD PARTY RIGHTS
Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and NPS.

J. AMENDMENT
The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

K. POLITICAL CONTRIBUTIONS
NPS affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. INTEGRATION
This Agreement, together with Exhibits A, B, and C, represents the entire and integrated agreement between the City and NPS. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

M. PCI COMPLIANCE
NPS represents and warrants that, for the entirety of any agreement that involves processing credit and/or debit card revenue transactions on behalf of the City of Dayton that the solution is clearly defined to warrant the following:

1. All computer software, hardware, firmware, payment card processing policies, procedures and related services proposed to be utilized to process City of Dayton revenue transactions shall be:
   a. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

2. NPS shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance ("AOC") Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Officer.docx?agreement=true&time=1493826893795).
IN WITNESS WHEREOF, City and NPS, each by a duly authorized representative, have executed this Agreement as of the day and date first set forth above.

CITY OF DAYTON, OHIO

Shelley Bokstein
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

NATIONAL PROCESSING SOLUTIONS

By: Natalie Byrnes
Title: President

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

April 10, 2019
Min./Bk. 1-15 Pg. 

Clerk of the Commission
City Manager’s Report

From: 6340 - Fire/Strategic Prog & Safety

Supplier, Vendor, Company, Individual: St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical

Address: 6612 E. 75th Street, Suite 200
Indianapolis, IN 46250

Date: March 3, 2021

Expense Type: Service Agreement

Total Amount: $300,000.00 (thru 12/31/2024)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims Administration/Workers Comp.</td>
<td>65000-5610-1159-62</td>
<td>$140,000.00</td>
</tr>
<tr>
<td>General Fund/Fire</td>
<td>10000-6340-1159-71</td>
<td>$160,000.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City: Yes / No: Yes

Affirmative Action Program: Yes / No / N/A: Yes

Description:

Professional Services Agreement

The Department of Fire, in coordination with the Department of Human Resources, requests permission to enter into an agreement with St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical ("Public Safety Medical"), in the amount of $300,000.00 for four years to administer a Wellness-Fitness Program for the Department of Fire.

Public Safety Medical is qualified and licensed to perform physicals and other related services. Public Safety Medical warrants that all personnel engaged in the performance of required services are qualified and are permitted to perform physicals.

Authorization is requested to fund the 2021 Wellness-Fitness Program in the amount of $75,000.00. Authorization is also requested to fund the remaining three years of the contract terms in the following amounts:

- 2021 - $75,000.00 total ($35,000.00 - Department of Human Resources and $40,000.00 - Department of Fire)
- 2022 - $75,000.00 total ($35,000.00 - Department of Human Resources and $40,000.00 - Department of Fire)
- 2023 - $75,000.00 total ($35,000.00 - Department of Human Resources and $40,000.00 - Department of Fire)
- 2024 - $75,000.00 total ($35,000.00 - Department of Human Resources and $40,000.00 - Department of Fire)

The term of the agreement shall begin upon execution by the City and expires December 31, 2024.

The Department of Law has reviewed and approved the agreement as to form and correctness.

A Certificate of Funds in the amount of $75,000.00 for fiscal year 2021 is attached.

Signatures/Approval

Rice, Thomas
Date: 2021-02-22 14:39:51 -0600

Lykins, Jeff
Date: 2021-02-22 14:46:22 -0600

City Manager

FORM NO. MS-16

Updated 10/2019
Digital Version Updated 04/2020
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date

03/03/21

Expiration Date

12/31/24

Original Commission Approval

$ 300,000.00

Initial Encumbrance

$ 75,000.00

Remaining Commission Approval

$ 225,000.00

Required Documentation

X Initial City Manager's Report

X Initial Certificate of Funds

X Initial Agreement/Contract

Original CT/CF

Increase Encumbrance

Decrease Encumbrance

$ -

Remaining Commission Approval

$ 225,000.00

Amount: $ 35,000.00

Fund Code 65000 - 5610 - 1159 62 - 000 - 000

Fund Org Acct Prog Act Loc

Amount: $ 40,000.00

Fund Code 10000 - 6340 - 1159 - 71 - XXXX - XXXX

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical

Vendor Address: 6612 E. 75th Street, Suite 200 Indianapolis IN 46250

Federal ID: 46-1227327

Commodity Code: 96154

Purpose: Reservation of 2021 funds for the Department of Fire Wellness-Fitness Program.

Contact Person: Kevin Kuntz

Fire Department

Department/Division

Date

2/19/2021

Digitally signed by Kenneth R. Couch

Date: 2021.02.22 14:49:21 -0500'

HR Seq. 1

Kenneth R. Couch

Digitally signed by Lykins, Jeff

Date: 2021.02.22 14:46:46 -0500'

Fire Seq 2.

Lykins, Jeff

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature

Date

Finance Department

October 18, 2011

CP Prepared by

Date

CF/CT Number
Dayton Fire Department  
2021-2024 Service Agreement

Delivery Location: ☑ City of Dayton Wellness Clinic

The following when signed by St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical (PSM) at 6612 E. 75th Street, Suite 200, Indianapolis, IN 46250 and Dayton Fire Department, 300 N. Main Street Dayton, OH 45402 will constitute our agreement for delivery of the services described below under the following terms and conditions.

Scope of Services
PSM agrees to provide the following services:

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>DESCRIPTION</th>
<th>EMR Code</th>
<th>Cost</th>
<th>Sworn</th>
<th>Hazmat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blood and Lab Work</td>
<td>Blood Panel (CMP, CBC, Lipid, Venl.)</td>
<td>3500</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>CMP (Comp. Metabolic Panel)</td>
<td>3522</td>
<td>$25.10</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>CBC (Comp. Blood Count)</td>
<td>3083</td>
<td>$22.72</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Lipid Panel (total chol., HDL, LDL, ratio)</td>
<td>3523</td>
<td>$26.67</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Heavy Metals Blood (ars, merc, lead) hazmat team only</td>
<td>3307</td>
<td>$314.52</td>
<td></td>
<td>X</td>
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<tr>
<td></td>
<td>TB Skin Test</td>
<td>6153</td>
<td>$9.18</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Medical Testing</td>
<td>Wellness Med. Testing:</td>
<td>12416</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vital Signs-ht, wt, BMI, BP, resp., pulse</td>
<td>6000</td>
<td>$0.00</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Vision-Acuity</td>
<td>6050</td>
<td>$34.10</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>PFT – Pulmonary Function Test</td>
<td>6110</td>
<td>$48.76</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Audiometry</td>
<td>6090</td>
<td>$18.38</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>EKG w/interp</td>
<td>6120</td>
<td>$26.23</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Urinalysis – Dipstick</td>
<td>6020</td>
<td>$3.94</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Physical Exam</td>
<td>Respirator/Medical Review</td>
<td>6304</td>
<td>$20.99</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Comprehensive Physical Exam</td>
<td>12500</td>
<td>$128.55</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Health Risk Appraisal</td>
<td>7000</td>
<td>$0.00</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Fitness Services</td>
<td>Treadmill – Max (Indirect VO2)</td>
<td>2082</td>
<td>$200.60</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Muscular Strength/Endurance (push-up/ plank/ pull-up)</td>
<td>2040</td>
<td>$34.10</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Speed and Power Test (vertical jump)</td>
<td>2035</td>
<td>$12.73</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Flexibility Test (leg raise, shoulder flex/extend)</td>
<td>2030</td>
<td>$21.22</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Waist / Hip Ratio</td>
<td>2018</td>
<td>$3.94</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Body Fat Test – BIA</td>
<td>2019</td>
<td>$18.38</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Web-Based Services</td>
<td>OnMed Program</td>
<td>8135</td>
<td>$0.00</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Admin Fees</td>
<td>Admin. Fee (Your Site)</td>
<td>3206</td>
<td>$142.00</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td>$797.59</td>
<td></td>
<td>$1,112.11</td>
</tr>
<tr>
<td>Other Fees and Testing</td>
<td>PSA-Prostate Specific Ag (ages 40+ men)</td>
<td>3115</td>
<td>$45.91</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Rectal/hemoccult (men: ages 40+)</td>
<td>6130</td>
<td>$0.00</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
Billing
Invoices are generated monthly. Payment terms are Net 30 days.

1. Invoices sent to: Thomas Rice Title: Assistant Chief
   Address: Dayton Fire Department, 300 N. Main Street, Dayton, OH 45402
2. Accounts Payable Contact: Kevin Kuntz Title: Senior Business Manager
   Phone: 937-333-4508 Email: kevin.kuntz@daytonohio.gov

Assignability
This Agreement is not assignable.

Right to Receive Notice of Breach
As required by the Health Insurance Portability and Accountability Act (HIPAA), PSM will provide a written notice to all Public Safety Medical Services employees in the event we learn of any unauthorized acquisition, use or disclosure of your personal health information (PHI) as a result of not being properly secured as required by HIPAA. We will notify employees of the breach as soon as possible but no later than sixty (60) days after the breach has been discovered. PSM will incur all expenses for notification and actions necessary to correct breach.

Policy on Additional Testing
In the event that PSM finds it necessary to perform additional testing at Dayton Fire Department expense and at the request of the medical director, the Dayton Fire Department representative will be notified in advance.

Policy on Repeat Testing
In the event that PSM finds it necessary to retest a patient due to a positive test result or the recommendation of the PSM medical director, the cost incurred will be billed to Dayton Fire Department if the retest was not based upon an error on the original test. The Dayton Fire Department representative will be notified in advance. If the retest is due to an error by PSM or a contracted laboratory or other representative, PSM will absorb any additional retest costs. No recommended actions will be made to Dayton Fire Department until PSM has received accurate retest information.

Policy on Reporting Results
PSM will provide a medical/respirator clearance letter for every patient. The letter will state whether or not the employee is medically cleared for duty. No specific medical test results for any patient are provided to any representative without the written consent of the patient unless required by law (i.e. OSHA). If during the medical evaluation, findings are such that the patient cannot be medically-cleared for duty, the patient will be counseled as to the medical concerns and the need to limit duty assignment. The designated Dayton Fire Department representative will be notified, in general terms, of the need for duty restriction and any safety-sensitive responsibilities. It will also be recommended that the patient be re-evaluated by PSM, after appropriate medical treatment, to provide final clearance of return to full duty after a release is first made by the patient’s treating physician. PSM will assist the employee with providing related medical information and their job requirements to the treating physician to assist in their care.

Dates and Location of Services

<table>
<thead>
<tr>
<th>Service</th>
<th>Dates</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLOOD DRAWS</td>
<td>March 3-5 &amp; March 24-26</td>
<td>Dayton Wellness Clinic</td>
</tr>
<tr>
<td>EXAMS</td>
<td>April 19-23 &amp; June 14-18</td>
<td>Dayton Wellness Clinic</td>
</tr>
</tbody>
</table>

Departmental Information
Contact person: Name: Lt. John Hurst/ Capt. Brad French

F: marketing/Goldmine templates
Number of Personnel: 300 (100 evaluations and all will do respirator questionnaires)

Price Increases
Price increases for the following year will be made known by end of April of the current year. Pricing reflected above is valid through December 31, 2024.

Records and Accounts
PSM shall maintain accurate records and accounts of all transactions relating to the Services performed by it pursuant to this Agreement.

Exam Arrival Time
To optimize the service provided to Dayton Fire Department personnel, we request that you send your personnel 15 minutes prior to their appointment time.

When Running Late
If your personnel are running late for their appointment(s), please call your client manager whose name and number is listed on the signature page. This will ensure that appropriate arrangements may be made at PSM to accommodate your personnel or potential rescheduling.

Cancellations
Cancellations should be made at least 3 days (1 shift for fire departments) prior to the scheduled appointment. This enables PSM with enough notice to offer the appointments to another department and properly prepare.

Liability and Indemnification
PSM shall have no liability whatsoever to Dayton Fire Department for any error, act or omission in connection with the services to be rendered by PSM to Dayton Fire Department hereunder unless any such error, act or omission derives from willful misconduct or gross negligence.

Insurance
PSM maintains insurance to protect it and Dayton Fire Department from the claims set forth below which may arise out of or result from PSM operations under this Agreement, whether such operations be by PSM or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:
1. Claims under Workers’ Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
2. Claims for damages because of bodily injury and personal injury, including death, and;
3. Claims for damages to property

PSM insurance shall be not less than the acceptable industry standards for the performance of medical and occupational health-related services.

Confidentiality
PSM agrees to hold in strict confidence, and to use reasonable efforts to cause its employees and representatives to hold in strict confidence, all confidential information concerning Dayton Fire Department furnished to or obtained by PSM in the course of providing the agreed-upon services. PSM will not disclose or release any such confidential information to any person, except its employees, representatives and agents who have a need to know such information in connection with PSM performance under this Agreement or by the express written consent of a Dayton Fire Department employee.
Proprietary Information
PSM asks that all information provided within this document be held confidentially and not shared with any related providers, those organizations who could be considered competition to PSM, other fire or law enforcement organizations, or unnecessary personnel within the Dayton Fire Department.

Termination for Convenience
Either PSM or Dayton Fire Department may terminate this Agreement at any time by giving thirty (30) days written notice. PSM shall be entitled to payment for deliverables in progress, to the extent the work has been performed satisfactorily.

Term of Agreement
This agreement will be reviewed and updated annually. Questions regarding this Agreement may be directed to the Client Manager below.

St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical

Dayton Fire Department

Name Printed

Name Printed

Name Signed

Name Signed

Title

Title

Date

Date

Your Client Manager:

Name: Rhonda Gallagher

Mobile: (317) 437-4005
PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is made this _____ day of ________________, 2021, between the City of Dayton, Ohio, ("City"), and St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension St. Vincent Public Safety Medical 6612 E. 75th Street, Suite 200, Indianapolis, IN 46250 ("Consultant").

WITNESSETH THAT:

WHEREAS, The City desires certain professional services for the performance of physicals for Dayton firefighters on an "as needed basis";

WHEREAS, Consultant is willing to perform such professional services and represents that its staff is fully qualified to perform such services; and

WHEREAS, The professional services to be provided under this Agreement are necessary to achieve the purposes of the City’s Fire Department.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and benefit to be derived by the parties from the execution of this Agreement, the City and Consultant hereby agree as follows:

ARTICLE 1. TERM

The Agreement shall commence upon execution by the City and it shall expire on December 31, 2024, unless terminated earlier pursuant to this Agreement. The City and Consultant may mutually agree to extend the term of this Agreement to a later date by a written agreement signed.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT

A. PROFESSIONAL QUALIFICATIONS

Consultant is qualified and permitted by law to perform the medical testing and other professional services to be furnished under the terms of this Agreement. Consultant represents and warrants that all personnel engaged in the performance of the services to be provided herein are qualified and so permitted to do the work they perform.

B. SERVICES TO BE PERFORMED

Consultant shall provide, upon the City’s request, baseline NFPA 1582 physicals for all uniformed personnel and non-uniformed volunteers, along with other necessary services that are described in Exhibit A, Scope of Services ("Services"), which is attached hereto and incorporated herein by reference.

ARTICLE 3. PAYMENT

A. TOTAL RENUMERATION
The total remuneration by the City pursuant to this Agreement shall not exceed Three Hundred Thousand Dollars and Zero Cents ($300,000.00) for all Services provided pursuant to this Agreement. Consultant will be paid by the City for the Services provided at the rates listed in Exhibit A.

B. INVOICE

Consultant shall submit invoices to the Department of Fire for approval on a monthly basis for the Services actually performed. If approved and/or not disputed, the City will remit payments to Consultant within thirty (30) days after receipt of the invoice and the corresponding supporting documentation.

Consultant shall submit the invoices and supporting documentation to:

Thomas Rice
Title: Assistant Chief
Address: Dayton Fire Dept., 300 N. Main Street Dayton, OH 45402.

ARTICLE 4. POLICY ON REPORTING RESULTS

Consultant will provide a medical clearance letter for every Fire Department employee presented by the City. The letter shall include a determination of whether or not the employee is medically cleared for duty. No specific medical test results for any patient are to be provided by the Consultant without the written consent of the patient, unless required by law (i.e. OSHA). If during the medical evaluation, Consultant determines that the patient cannot be medically-cleared for duty then Consultant shall counsel the employee as to the medical concerns and their need to limit duty assignment. Consultant shall notify the designated City representative, in general terms, of the need for duty restriction and any safety-sensitive responsibilities. The Consultant shall re-evaluated the employee, after appropriate medical treatment and a release is first made by the employee’s treating physician, to provide final clearance of return to full duty. Consultant shall assist the employee with providing related medical information and their job requirements/duties to the treating physician to assist in their care.

ARTICLE 4. STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Consultant shall have no liability for defects in the Services attributable to Consultant’s reliance upon or use of data or other information furnished by the City or third parties retained by the City.

If, during the one year period following completion of the Services, it is shown there is an error in the Services caused by Consultant's failure to meet such standards and the City has notified Consultant in writing of any such error within that period, Consultant shall perform, at no additional cost to the City, such Services necessary to remedy such error.
ARTICLE 5. LIABILITY AND INDEMNIFICATION

Consultant shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees, from and against all claims, losses, damages, and expenses for bodily injury, death, or third party property damage to the extent such claims, losses, damages, or expenses are caused by Consultant’s negligent or willful acts, errors, or omissions.

To the fullest extent permitted by law, (1) Consultant’s liability to the City for all claims, losses, damages, and expenses resulting in any way from the performance or non-performance of the Services shall not exceed the total compensation actually received by Consultant under this Agreement; and, (2) neither party to this Agreement shall be liable to the other party for any special, incidental, indirect or consequential damages of any kind, that may result from this Agreement.

ARTICLE 6. INSURANCE

During the term of this Agreement, Consultant shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

(1) General liability insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
(2) Automobile liability insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
(3) Employers’ liability insurance, having a limit of $500,000 for each occurrence.
(4) Professional liability insurance, having a limit of $1,000,000 annual aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Consultant’s legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. In the event of a claim, Consultant shall make copies of applicable insurance policies available for review by the City. Consultant, however, shall retain its right to restrict disclosure of Consultant’s proprietary information contained in such policies in accordance with Article 7.

Consultant also shall maintain Workers’ Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the City evidence of same.

ARTICLE 7. CONFIDENTIALITY

Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market place or trade of which the party is a part. Confidential
information is information that, under the laws of the State of Ohio, is classified as being “private.” Such information shall be marked “confidential” and/or “proprietary” by the party providing it.

To the extent permitted by law, each party agrees that for a period of two (2) years following the date of disclosure of the confidential or proprietary information, it will not disclose such information of the other to any third party without the other party’s written consent. During this two-year period, each party will protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

Nothing in this Article shall prohibit or limit Consultant’s disclosure of confidential information:

(i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) that is or becomes publicly available through no breach of this Agreement, (iv) when such disclosure is required by an order of a Court or under state or federal law, or (v) when such disclosure is authorized in writing by the City.

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents and reports prepared by Consultant as part of the Services shall become the sole and exclusive property of the City upon payment. However, Consultant shall have the unrestricted right to their use.

Consultant shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of Consultant.

ARTICLE 9. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement. Consultant shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to Consultant. In the event of termination by the City hereunder, the City will pay Consultant for Services actually performed up to the date of termination.

ARTICLE 10. STANDARDS TERMS

A. DELAY IN PERFORMANCE

Neither the City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to,
abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or Consultant under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

B. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

C. Communications

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

Consultant:
St. Vincent Health, Wellness & Preventative Care Institute, Inc. d/b/a Ascension
St. Vincent Public Safety Medical (PSM)
6612 E. 75th Street, Suite 200, Indianapolis, IN 46250
Attention: Rhonda Gallagher, Client Manager

City:
City of Dayton, Department of Fire
300 N. Main St.
Dayton, Ohio 45402
Attention Jeff Lykins, Director

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and the City.

D. Equal Employment Opportunity

Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.
It is expressly agreed and understood that Section 35.14 of the Revised Code of General
Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and
as if specifically rewritten herein and that failure to comply therewith shall constitute a breach
thereof entitling the City to terminate this Agreement at its option.

E. WAIVER

A waiver by the City or Consultant of any breach of this Agreement shall be in writing. Such a
waiver shall be effective only in the specific instance and for the specific purpose for which it is
given and shall not affect the waiving party’s rights with respect to any other or further breach.

F. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the
occurrence of any event rendering any portion or provision of this Agreement void shall in no
way affect the validity or enforceability of any other portion or provision of this Agreement. Any
void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement,
and the balance of this Agreement shall be construed and enforced as if this Agreement did not
contain the particular portion or provision. The parties further agree to amend this Agreement to
replace any stricken provision with a valid provision that comes as close as possible to the intent
of the stricken provision. The provisions of this Article shall not

prevent this entire Agreement from being void should a provision, which is of the essence of this
Agreement, be determined void.

G. INDEPENDENT CONTRACTOR

By executing this Agreement for professional services, Consultant acknowledges and agrees that
it will be providing services to the City as an “independent contractor”. As an independent
contractor for the City, Consultant shall be prohibited from representing or allowing others to
construe the parties’ relationship in a manner inconsistent with this Article. Consultant shall have
no authority to assume or create any obligation on behalf of, or in the name of the City, without
the express prior written approval of a duly authorized representative of the City.

Consultant, its employees and any persons retained or hired by Consultant to perform the duties
and responsibilities under this Agreement are not City employees, and therefore, such persons
shall not be entitled to, nor will they make a claim for, any of the emoluments of employment
with the City of Dayton. Further, Consultant shall be responsible to withhold and pay, or cause
such agents, Consultants and sub-contractors to withhold and pay, all applicable local, state and
federal taxes.

Consultant acknowledges its employees are not public employees for purposes of Ohio Public
Employees Retirement System (“OPERS”) membership.

H. ASSIGNMENT

Consultant shall not assign any rights or duties under this Agreement without the prior written
consent of the City. Unless otherwise stated in the written consent to an assignment, no
assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Consultant from employing independent Consultants, associates, and sub Consultants to assist in the performance of the Services.

I. THIRD PARTY RIGHTS

Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Consultant.

J. AMENDMENT

The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Fire is authorized to extend the term of this Agreement for the City.

K. POLITICAL CONTRIBUTIONS

Consultant affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. INTEGRATION

This Agreement represents the entire and integrated agreement between the City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement shall control over any conflicts between this Agreement and Exhibit A.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Agreement as of the date set forth above.

CITY OF DAYTON, OHIO

__________________________
City Manager

Date: _______________________

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

__________________________, 202__

Min./Bk.: _______ Page: _________

__________________________
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

2/12/2021

× Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

ST. VINCENT HEALTH, WELLNESS & PREVENTATIVE CARE INSTITUTE, INC. D/B/A ASCENSION ST. VINCENT PUBLIC SAFETY MEDICAL

By: _______________________

Print: _______________________

Its: _______________________

Exhibit A
City Manager’s Report

From 6550 - RYS/Golf
Supplier, Vendor, Company, Individual
V.P. & Associates, Inc.
Address
2917 Berkley Avenue
Dayton, Ohio 45409
Date March 3, 2021
Expense Type Contract Modification
Total Amount $30,000.00 (thru 12-31-21)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Golf &amp; Recreation Fund</td>
<td>13000-6550-24111-56</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City Yes No
Affirmative Action Program Yes No N/A

Description

SERVICE AGREEMENT - SIXTH RENEWAL AND AMENDMENT

Recreation and Youth Services, Division of Golf is requesting approval to amend for a sixth renewal and renew a one-year agreement to V.P. & Associates, Inc. for Food and Beverage Concessions at Community Golf Course. The agreement renewal period shall begin on January 1, 2021 and terminate on December 31, 2021.

This represents V.P. & Associates eleventh year operating as the concession vendor at Community Golf Club. Annually, V.P. & Associates generates on average $280,000.00 in food and beverage sales, including alcoholic beverages. Their goal is to provide quality food and beverage services in a clean and friendly environment. The restaurant operates from April through November, weather permitting.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator’s gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.

Kelly Presse
Digitally signed by Kelly Presse
Date: 2021.02.18 16:29:50 -05'00"

Division
Kelly Presse for RW
Digitally signed by Kelly Presse
Date: 2021.02.18 16:29:51 -05'00"

Department

City Manager

FORM NO. MS-16

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
Digital Version Updated 04/2020
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  V.P. & Associates, Inc. Attn: Vicki Warren
Address  2917 Berkley Avenue
City  Dayton State  OH  Zip+4  45409
Customer #  @00001308 Address Location #  G1
Federal ID#  31-0994184

Revenue Information: Fund  13000 Organization  6550 Revenue  24111 Program  56

Contract Information: Contract Start Date  1/1/2021 Contract Expiration Date  12/31/2021

Billing Information: Rate:  Arrears  X  Pre-bill
Monthly (1st month of billing)  April 2021
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  Rate Change Amount

Description of Services (wording on invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department’s POS system and pay-in process.

Departmental Approval  Kelly Russell for RW 2/18/2021

TO BE COMPLETED BY FINANCE

Revenue Contract Number  10-1308 Auditor  Fatima Jones Date  2/18/2021
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance  C. Judson Jr.
SIXTH RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT

This SIXTH RENEWAL OF THE COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT (“Amendment and Renewal”) is entered into this _______ day of _________, 202__, between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (“City”) and V.P. & Associates, Inc., an Ohio limited liability company, created and existing under the laws of the State of Ohio (“Operator”).

WITNESSETH THAT:

WHEREAS, the City and Operator executed the Agreement for Community Golf Course Food and Beverage Concession (“Agreement”) on May 2, 2013; and,

WHEREAS, the City and Operator have exercised the four renewal options provided in the Agreement; and,

WHEREAS, the City has a need for the services provided within the Agreement and desires to amend the Agreement to allow for a sixth renewal term; and,

WHEREAS, the City desires to renew the Agreement and the Operator is willing to provide the services in accordance with the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and herein, the parties hereto agree as follows:

1. Article III – Term and Renewal, subsection B., of the Agreement shall be deleted in its entirety and replaced with the following:

   This Agreement may be renewed by mutual agreement for a maximum of six (6) additional one (1) year periods. Renewals may only be exercised individually for one-year periods. No renewal is effective or binding upon the City unless it is reduced to writing and executed by a duly authorized representative for each party and, if applicable or required, approved by the Commission of the City of Dayton.

2. Pursuant to Article III, subsection B., of the Agreement and this Amendment and Renewal, both City and Operator mutually agree to renew the Agreement for an additional one year term. This renewal period shall begin on January 1, 2021, and shall terminate on December 31, 2021.

3. Except as modified by the Amendment and Renewal and all previously executed amendments or renewals, the Agreement between the City and Operator remains unchanged and in full force and effect.

[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Amendment and Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

City Manager

V.P. & ASSOCIATES, INC, an Ohio limited liability company

By: [Signature]

Its: [President]

Title

APPROVED AS TO FORM AND CORRECTNESS:

☑ Recoverable Signature

X John Musto for

City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

____________________________, 2021

Min. / Bk. _______ Pg. _______

Clerk of the Commission
November 20, 2018

TO: City Commission Office
    City Manager’s Office
    Finance Department

FROM: Robin Williams, Director
      Department of Recreation and Youth Services

SUBJECT: Request for Signature

Please sign the attached agreement between the City of Dayton and V.P. & Associates, Inc. for food and beverage concessions at Community Golf Club. The agreement will be effective January 1, 2019 and expire on December 31, 2019. Authorization for the execution of this agreement was granted by the City Commission on November 14, 2018 by City Manager’s Report, Calendar Item 11.

This agreement has been reviewed by this office and is ready for your execution.

RW/mw

Attachments

Dept copy
FIFTH RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT

This **FIFTH RENEWAL OF THE COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT** ("Amendment and Renewal") is entered into this **December** 2019, between the **City of Dayton, Ohio**, a municipal corporation in and of the State of Ohio, ("City") and **V.P. & Associates, Inc.**, an Ohio limited liability company, created and existing under the laws of the State of Ohio ("Operator").

**WITNESSETH THAT:**

**WHEREAS**, the City and Operator executed the Agreement for Community Golf Course Food and Beverage Concession ("Agreement") on May 2, 2013; and,

**WHEREAS**, the City and Operator have exercised the four renewal options provided for in the Agreement; and,

**WHEREAS**, the City has a need for the services provided within the Agreement and therefore desires to amend the Agreement to allow for a fifth renewal option; and,

**WHEREAS**, the City desires to renew the Agreement and the Operator is willing to provide the services in accordance with the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in the Agreement and herein, the parties hereto agree as follows:

1. Article III – Term and Renewal, subsection B., of the Agreement shall be deleted in its entirety and replaced with the following:

   This Agreement may be renewed by mutual agreement for a maximum five (5) additional one (1) year periods. Renewals may only be exercised individual for one-year periods. No renewal is effective or binding upon the City unless it is reduced to writing, approved by the City’s Director of the Department of Recreation and Youth Services, executed by a duly authorized representative for each party and, if applicable or required, approved by the Commission of the City of Dayton.

2. Pursuant to Article III, subsection B., of the Agreement and this Amendment and Renewal, both City and Operator mutually agree to renew the Agreement for an additional one year term. This renewal period shall begin on January 1, 2020, and shall terminate on December 31, 2020.

3. Except as modified by the Amendment and Renewal and all previously executed amendments or renewals, the Agreement between the City and Operator remains unchanged and in full force and effect.

[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Amendment and Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

City Manager

V.P. & ASSOCIATES, INC, an Ohio limited liability company

By: [Signature]

Its: [President]

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

[Name]

Min. / Bk. [Page]

Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

[Name]

City Attorney
Recreation and Youth Services Golf Division is requesting approval to amend the existing agreement to allow a one-year renewal agreement to V.P. & Associates, Inc for Food and Beverage Concessions at Community Golf Course as well as to approve that one-year renewal. The Golf Division would prefer to extend this agreement for one additional one-year term rather than issue an RFP before receiving the results and recommendations from the National Golf Foundation operations study. This is the fifth of five renewals. The agreement renewal shall begin on January 1, 2020 and expire on December 31, 2020.

This represents V.P. & Associates tenth year operating as the concession vendor at Community Golf Club. Annually, V.P. & Associates generates on average $280,000.00 in food and beverage sales. Their goal is to provide quality food and beverage services in a clean environment and accommodate the golfing public needs to include: full service restaurant operation, special events and golf outings, and on course food and beverage services.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator’s gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.
CERTIFICATE OF REVENUE
TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  V.P. & Associates, Inc.  Attn: Vicki Warren
Address  2917 Berkle Avenue
City  Dayton  State  OH  Zip+4  45409
Customer #  @00001308  Address Location #  G1
Federal ID#  31-0994184

Revenue Information: Fund  59000  Organization  6550  Revenue  24111  Program  56

Contract Information: Contract Start Date  01/01/2020  Contract Expiration Date  12/31/2020

Billing Information: Rate:  X  Arrears  Pre-bill
Monthly (1st month of billing)  April 2020
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  Rate Change Amount

Description of Services (wording on Invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department's POS system and pay-in process.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  3-1308  Auditor  Fatima Jones  Date  12/3/19
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance
FOURTH RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION AGREEMENT

This FOURTH RENEWAL OF THE COMMUNITY GOLF COURSE FOOD AND
BEVERAGE CONCESSION AGREEMENT ("Amendment and Renewal") is entered into this 7
day of December, 2018 between the City of Dayton, Ohio, a municipal corporation in and of the
State of Ohio, ("City") and V.P. & Associates, Inc., an Ohio limited liability company, created and existing
under the laws of the State of Ohio ("Operator").

WITNESSETH THAT:

WHEREAS, the City and Operator executed the Agreement for Community Golf Course Food and
Beverage Concession ("Agreement") on May 2, 2013; and.

WHEREAS, the City and Operator have exercised the three renewal options provided for in the
Agreement; and,

WHEREAS, the City has a need for the services provided within the Agreement and therefore desires
to amend the Agreement to allow for a fourth renewal option; and,

WHEREAS, the City desires to renew the Agreement and the Operator is willing to provide the
services in accordance with the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and
herein, the parties hereto agree as follows:

1. Article III - Term and Renewal, subsection B., of the Agreement shall be deleted in its entirety
and replaced with the following:

This Agreement may be renewed by mutual agreement for a maximum four (4) additional one
(1) year periods. The Operator shall notify the City not more than ninety (90) days and not less
than thirty (30) days prior to the expiration of the then current term of its desire to renew the
Agreement. The City will respond to Operator’s request to renew this Agreement as soon as
reasonably practicable. Renewals may only be exercised individual for one-year periods. No
renewal is effective or binding upon the City unless it is reduced to writing, approved by the
City’s Director of the Department of Recreation and Youth Services, executed by a duly
authorized representative for each party and, if applicable or required, approved by the
Commission of the City of Dayton.

2. Pursuant to Article III, subsection B., of the Agreement and this Amendment and Renewal, both
City and Operator mutually agree to renew the Agreement for an additional one year term. This
renewal period shall begin on January 1, 2019 and shall terminate on December 31, 2019.

3. Except as modified by the Amendment and Renewal and previously executed
amendments, the Agreement between the City and Operator remains unchanged and in full
force and effect.

[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

V.P. & ASSOCIATES, INC, an Ohio limited liability company

[Signature]
By:

[Signature]
Its:

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

November 14, 2018

[Signature]
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney
City Manager's Report

Date November 14, 2018
Expense Type Contract Modification
Total Amount $30,000.00 (thru 12-31-19)

From 6550 - RYS/Golf
Supplier, Vendor, Company, Individual
V.P. & Associates, Inc.
Address 2917 Berkley Avenue
Dayton, Ohio 45409

Fund Source(s)
Golf Operating Fund

Fund Code(s)
59000-6550-24111-56

Fund Amount(s)
$30,000.00

Includes Revenue to the City ☑ Yes ☐ No
Affirmative Action Program ☐ Yes ☑ No ☐ N/A

Description

SERVICE AGREEMENT – FOURTH RENEWAL
FOR FOOD AND BEVERAGE CONCESSIONS AT COMMUNITY GOLF COURSE

Recreation and Youth Services Golf Division is requesting approval to amend the existing agreement to allow a one-year renewal agreement to V.P. & Associates, Inc for Food and Beverage Concessions at Community Golf Course as well as to approve that one-year renewal. The Golf Division would prefer to extend this agreement for one additional one-year term rather than issue an RFP before receiving the results and recommendations from the National Golf Foundation operations study. This is the fourth of four renewals. The agreement renewal shall begin on January 1, 2019 and expire on December 31, 2019.

This represents V.P. & Associates tenth year operating as the concession vendor at Community Golf Club. Annually, V.P. & Associates generates on average $280,000.00 in food and beverage sales. Their goal is to provide quality food and beverage services in a clean environment and accommodate the golfing public needs to include: full service restaurant operation, special events and golf outings, and on course food and beverage services.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator’s gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.

Signature/Approval

Approved by City Commission

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  V.P. & Associates, Inc.  Attn: Vicki Warren

Address  2917 Berkley Avenue

City  Dayton  State  OH  Zip+4  45409  -

Customer #  @00001308  Address Location #  G1

Federal ID#  31-0994184

Revenue Information: Fund  59000  Organization  6550  Revenue  24111  Program  56

Contract Information: Contract Start Date  01/01/2019  Contract Expiration Date  12/31/19

Billing Information: Rate:  ____________  Arrears  X  Pre-bill  ____________

Monthly (1st month of billing)  April 2019

Quarterly (1st month of quarter)  

Semi-annual (1st month of half)  

Annual (1st month of billing)  

Other (explain)  

Rate Change Date  ____________  Rate Change Amount  ____________

Description of Services (wording on invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department's POS system and pay-in process.

Departmental Approval  [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number  3-1308  Auditor  Latania Jones  Date  11/5/18

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance  [Signature]
THIRD RENEWAL OF AGREEMENT
FOR COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION

This THIRD RENEWAL OF AGREEMENT FOR COMMUNITY GOLF COURSE FOOD
AND BEVERAGE CONCESSION ("Renewal") is entered into this ___ day of
December, 2017 between the City of Dayton, Ohio, a municipal corporation in and of the
State of Ohio, (hereinafter referred to as the “City”) and V.P. & Associates, Inc., an Ohio limited liability
company, created and existing under the laws of the State of Ohio (hereinafter referred to as
“Contractor”).

WITNESSETH THAT:

WHEREAS, the City and Contractor entered into an Agreement for Community Golf Course
Food and Beverage Concession ("Agreement") on May 2, 2013; and,

WHEREAS, the City and Contractor both wish to renew the Agreement which expires on
December 31, 2017.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and
herein, the parties hereto agree as follows:

1. Pursuant to Article III of the Agreement, both City and Contractor hereby mutually agree to
renew the Agreement for one year. This renewal period shall begin on January 1, 2018, and
expire on December 31, 2018.

2. Except as modified by this Third Renewal, the Agreement between the City and Contractor
remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative,
have executed this Third Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

V.P. & ASSOCIATES, INC, an Ohio Limited Liability Company

[Signature]
Print: VICTOR J. WARMER

Title: PRESIDENT & CEO

APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:

December 13, 2017

[Signature]
City Attorney

Min./Bk. I * 15 Pg. __________

[Signature]
Clerk of the Commission

APPROVED AS TO FORM AND
CORRECTNESS:

[Signature]
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  V.P. & Associates, Inc.  Attn: Vicki Warren

Address  2917 Berkley Avenue

City  Dayton  State  OH  Zip+4  45409

Customer #  @00001308  Address Location #  G1

Federal ID#  31-0994184

Revenue Information: Fund  59000  Organization  6550  Revenue  24111  Program  56

Contract Information: Contract Start Date  01/01/2018  Contract Expiration Date  12/31/18

Billing Information:

Rate:  Arrears  X  Pre-bill

Monthly (1st month of billing)  April 2018

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date  Rate Change Amount

Description of Services (wording on invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department’s POS system and pay-in process.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  16-1306  Auditor  Vera Brown  Date  11/30/17

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance

11/30/17
City Manager's Report

From 6550 - RYS/Golf
Supplier, Vendor, Company, Individual
Name V.P. & Associates, Inc.
Address 2917 Berkeley Avenue
Dayton, Ohio 45409

Date December 13, 2017
Expense Type Contract Modification
Total Amount $30,000.00 (thru 12-31-18)

Fund Source(s) Fund Code(s) Fund Amount(s)
Golf Operating Fund 59000-6550-24111-56 $30,000.00

Includes Revenue to the City Yes No
Affirmative Action Program Yes No N/A

Description

SERVICE AGREEMENT – THIRD RENEWAL
FOR FOOD AND BEVERAGE CONCESSIONS AT COMMUNITY GOLF COURSE

Recreation and Youth Services is requesting approval to award a one-year renewal agreement to V.P. & Associates, Inc for Food and Beverage Concessions at Community Golf Course. This is the third of three renewals. The agreement renewal shall begin on January 1, 2018 and expire on December 31, 2018.

This represents VP and Associates ninth year operating as the concession vendor at Community Golf Club. Annually, VP and associates generates on average $280,000 in food and beverage sales. Their goal is to provide quality food and beverage services in a clean environment and accommodate the golfing public needs to include: full service restaurant operation, special events and golf outings, and on course food and beverage services.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator’s gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16 Updated 8/2016
December 19, 2017

TO:      City Commission Office
         City Manager’s Office
         Finance Department

FROM:   Robin Williams, Director
         Department of Recreation and Youth Services

SUBJECT:  REQUEST FOR SIGNATURE

Please sign the attached Renewal Agreement with V.P. & Associates, Inc. for Food and Beverage Concession at Community Golf Course. This Agreement will commence on January 1, 2018 and expire on December 31, 2018. Authorization for execution of this Agreement was granted by the City Commission on December 13, 2017 by City Manager’s Report, Calendar Item 18.

This Agreement has been reviewed by this office and is ready for your execution.

RW/mlt
File
SECOND RENEWAL OF AGREEMENT FOR COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION

This SECOND RENEWAL OF AGREEMENT FOR COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION ("Renewal") is entered into this ______ day of January, 2016 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as the "City") and V.P. & Associates, Inc., an Ohio limited liability company, created and existing under the laws of the State of Ohio (hereinafter referred to as "Contractor").

WITNESSETH THAT:

WHEREAS, the City and Contractor executed the Agreement for Community Golf Course Food and Beverage Concession ("Agreement") on April 17, 2013.

WHEREAS, the City and Contractor both wish to renew the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and herein, the parties hereto agree as follows:

1. Pursuant to Article III of the Agreement, both City and Contractor hereby mutually agree to renew the Agreement for a second additional one year period. This renewal period shall begin on January 1, 2017 and will expire on December 31, 2017.

2. Except as modified by this Second Renewal, the Agreement between the City and Contractor remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

[Signature]
Date: December 7, 2016
Min./Bk. 1-14 Pg. 473
Clerk of the Commission

V.P. & ASSOCIATES, INC., an Ohio limited liability company

By: [Signature]
Print: Vicki Warren
Its: President
Title

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: V.P. & Associates, Inc. Attn: Vicki Warren
Address: 4800 Mad River Road
City: Kettering State: OH Zip+4: 45429
Customer #: @00001308 Address Location #: G1
Federal ID#: 31-0994184

Revenue Information:
Fund: 59000 Organization: 6550 Revenue: 24111 Program: 56

Contract Information:
Contract Start Date: 01/01/2017 Contract Expiration Date: 12/31/17

Billing Information:
Rate: Arrears X Pre-bill
Monthly (1st month of billing): April 2017
Quarterly (1st month of quarter):
Semi-annual (1st month of half):
Annual (1st month of billing):
Other (explain):
Rate Change Date: Rate Change Amount:

Description of Services (wording on invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department's POS system and pay-in process.

Departmental Approval: [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 3-1308-1 Auditor: Vera Brown Date: 11/10/16
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance: [Signature]
City Manager's Report

From 6550 - RYS/Golf
Supplier, Vendor, Company, Individual
Name V.P. & Associates, Inc.
Address 4800 Mad River Road
Kettering, Ohio 45429

Date December 7, 2016
Expense Type Contract Modification
Total Amount $30,000.00 (thru 12-31-17)

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>Golf Operating Fund</td>
<td>59000-6550-24111-56</td>
<td>$30,000.00</td>
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</table>

Includes Revenue to the City [ ] Yes [ ] No
Affirmative Action Program [ ] Yes [ ] No [ ] N/A

Description
Recreation and Youth Services is requesting approval to award a one-year renewal agreement to V.P. & Associates, Inc for Food and Beverage Concessions at Community Golf Club. This agreement renewal shall begin on January 1, 2017 and expire on December 31, 2017. The original agreement covered 2013-2015 with the option to renew for three additional one-year periods. This renewal represents the second of three renewal options.

This represents VP and Associates eighth year operating as the concession vendor at Community Golf Club. Annually, VP and associates generates on average $280,000 in food and beverage sales. Their goal is to provide quality food and beverage services in a clean environment with a welcoming and friendly attitude. This philosophy has enabled them to maintain their annual sales, while working closely with the golf professional staff to recognize the needs of the golfing public at Community Golf Course.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator's gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.

Signatures/Approval

Approved by City Commission
Rashella Lavender
Clerk
December 7, 2016
Date

Updated 8/2016
January 5, 2017

TO: City Commission
    City Manager
    Department of Finance

FROM: Robin Williams, Director
    Department of Recreation and Youth Services

SUBJECT: Request for Signature

Please sign the attached agreement between the City of Dayton and V.P. & Associates, Inc. for a one year renewal of the food and beverage concessions at Community Golf Club. The renewal will be effective upon execution by the City and expire on December 31, 2017. Authorization for execution of this renewal agreement was granted by the City Commission on December 7, 2016 by City Manager's Report, Calendar Item 15.

This agreement has been reviewed by this office and is ready for your execution.

RW/mt
Attachment

c: File
April 15, 2016

TO:        City Commission
           City Manager
           Department of Finance

FROM:    Robin Williams, Interim Director
          Department of Recreation and Youth Services

SUBJECT: Request for Signature

Please sign the attached Renewal between the City of Dayton and V.P. and Associates for Food and Beverage Services at Community Golf Club. The Renewal will be effective upon execution by the City and expire on December 31, 2016. Authorization for execution of this Agreement was granted by the City Commission on March 9, 2016 by City Manager’s Report, Calendar Item 5.

This Renewal has been reviewed by this office and is ready for your execution.

A Certificate of Revenue is attached.

RW/mt
Attachment

c: File
CITY OF DAYTON
CITY MANAGER'S REPORT

TO: City Manager

FROM: Recreation and Youth Services/Golf
       Department/Division

(CHECK ONE)

☐ Purchase Order  ☑ Lease Agreement
☐ Price Agreement   ☑ Estimate of Cost
☐ Award of Contract ☐ Payment of Voucher
☑ Other  First Renewal

Date March 9, 2016

Code 59000-6550-24111-56

Fund Title Golf Operating

Amount $35,000 revenue to the City

Supplier/Vendor/Company/Individual:
NAME V.P. & Associates, Inc.
ADDRESS 4800 Mad River Road

Kettering, Ohio 45429

Justification and description of purchase, contract or payment:

Recreation and Youth Services is requesting approval to award a one-year renewal to V.P. & Associates, Inc. for Food and Beverage Concessions at Community Golf Club. The contract renewal shall commence upon approval and expire on December 31, 2016. The original agreement covered 2013-2015 with the option to renew for three additional one-year periods. This renewal represents the first of three renewals options included in the original Agreement.

The Contractor agrees to pay the City a percentage concession fee of ten percent (10%) of Operator's gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the contract is attached in order to receive all revenue generated.

Approved by City Commission
Rashella Lavernder
City Manager
March 9, 2016

Division

Department

Approved Affirmative Action Program on File  ☐ Yes  ☑ No  ☐ NA

Clerk

Date March 9, 2016
FIRST RENEWAL OF AGREEMENT
FOR COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION

This FIRST RENEWAL OF AGREEMENT FOR COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION ("Renewal") is entered into this ______ day of ________, 2016 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as the “City”) and V.P. & Associates, Inc., an Ohio limited liability company, created and existing under the laws of the State of Ohio (hereinafter referred to as “Contractor”).

WITNESSETH THAT:

WHEREAS, the City and Contractor executed the Agreement for Community Golf Course Food and Beverage Concession ("Agreement") on January 18, 2013.

WHEREAS, the City and Contractor both wish to renew the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and herein, the parties hereto agree as follows:

1. Pursuant to Article III of the Agreement, both City and Contractor hereby mutually agree to renew the Agreement for one year, which will expire on December 31, 2016.
2. Except as modified by this First Renewal, the Agreement between the City and Contractor remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

V.P. & ASSOCIATES, INC, an Ohio limited liability company

[Signature]
By: President

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

[Signature]
City/Commissioner

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City/Attorney
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name V.P. & Associates, Inc. Attn: Vicki Warren
Address 4800 Mad River Road
City Kettering State OH Zip+4 45429
Customer # @00001308 Address Location # G1
Federal ID# 31-0994184

Revenue Information: Fund 59000 Organization 6550 Revenue 24111 Program 56

Contract Information: Contract Start Date Upon Commission Approval Contract Expiration Date 12/31/16

Billing Information: Rate: ___________ Arrears X Pre-bill ___________
Monthly (1st month of billing) April 2016
Quarterly (1st month of quarter) ____________________________
Semi-annual (1st month of half) ___________________________
Annual (1st month of billing) ______________________________
Other (explain) _________________________________________
Rate Change Date ___________ Rate Change Amount ___________

Description of Services (wording on invoice): Contractor pays a percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf along with the PCF payment. Golf will pay-in monthly payments through the department’s POS system and pay-in process.

Departmental Approval __________________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number 3-1308-1 Auditor Ivan 129 Date 2/26/2016
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance __________________________ 02/29/16
COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION AGREEMENT

THIS COMMUNITY GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT ("Agreement") is entered into this ______________ day of ____________, 2013 ("Effective Date") between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and V.P. & Associates, Inc., an Ohio corporation ("Operator").

WITNESSETH THAT:

WHEREAS, the City owns and operates the improved real property known and referred to as the Community Golf Course, which is located at 2917 Berkley Street in the City of Kettering ("Golf Course"); and,

WHEREAS, the City issued a "Request for Proposal for Golf Course Restaurant Concessions", seeking proposals from experienced restaurant operators to operate a vending and restaurant concession at the City-owned golf courses ("RFP"); and,

WHEREAS, Operator responded to the RFP identifying its desire and qualifications to operate a vending and restaurant concession at the Golf Course; and,

WHEREAS, the City selected Operator’s response to the RFP for the Golf Course; and,

WHEREAS, the parties enter into this Agreement to set forth the terms and conditions for the operation of a restaurant and vending concession at the Golf Course.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

ARTICLE I – PREMISES AND EQUIPMENT

A. The City leases to the Operator the area at the Golf Course facility known and referred to as the restaurant, which includes the office, kitchen, inside and outside eating areas, bar and storage space, the “Hill concession” area and such other areas at the Golf Course identified by the City’s Manager of the Division of Golf ("Golf Manager") for the sale and distribution of food and beverages (hereinafter collectively referred to as the “Premises”). The City also provides to the Operator for its use in connection with the Concession all improvements, equipment and fixtures located at or upon the Premises, including those items listed in the attached and incorporated Exhibit A (hereinafter collectively referred to as the “Equipment”).

B. By execution of this Agreement, the Operator certifies that it inspected the Premises and Equipment and accepts the Premises and Equipment "as is" and subject to and including all defects, whether latent or patent. THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PREMISES, EQUIPMENT OR ANY OTHER APPURTENANCES, PROPERTY AND/OR FIXTURES SITUATED THEREON, THEIR FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR CONDITION.
C. Within ten (10) consecutive days from the date of expiration or early termination of this Agreement, whichever date is earlier, the Operator shall:

1. Remove Operator’s personal property and any trade fixtures and equipment owned exclusively by Operator (which is not Equipment provided by the City for Operator’s use hereunder) from the Premises; and

2. Restore the Premises to its original state, and deliver the Concession Premises to the City in good condition, normal wear and tear excepted.

The City will grant Operator access to the Premises to complete the activities set forth in 1 and 2 above under such terms and at such reasonable times as the City shall identify in writing. If the Operator fails to remove its personal property, trade fixtures and equipment owned exclusively by Operator within this 10-day period (or other mutually agreed period), ownership of same shall automatically revert to and title vest in the City, and the City may bill, and Operator agrees to pay the cost, to restore the Premises to its original state and in good condition. The requirements of this Subsection C shall survive expiration or early termination of this Agreement.

**ARTICLE II – RIGHTS, PRIVILEGES AND AUTHORIZED USE**

A. Operator, subject to the terms and provisions of this Agreement, is authorized to use the Premises to operate the following “Concessions” at the Golf Course:

1. The exclusive right to operate a full service restaurant to serve food and beverages, including the sale of alcoholic beverages, at and from the Premises designated by the City as the “restaurant” and “bar”.

2. The exclusive right to operate beverage carts (used for the sale and distribution of beverages and snack food items) at such locations at the Golf Course mutually agreed to by the Operator and Golf Manager.

3. The exclusive right to operate the “Hill concession” for the sale and distribution of snack food items and beverages, including alcoholic beverages.

4. The exclusive right to operate vending machines at the Golf Course facilities for the sale and distribution of non-alcoholic beverages and snack food items.

B. Operator shall comply with the following requirements in its operation of the vending concession authorized under Subsection A (4) above:

1. All vending machines are subject to prior written approval of the Golf Manager before installation and operation. Operator and the Golf Manager shall agree to the locations for placement of vending machines at the Golf Course. All City-approved vending machines are and shall remain at all times during the term of this Agreement the property of Operator, unless the parties otherwise agree.

2. Operator represents and warrants that all vending machines will accept U.S. paper currency.
3. Operator shall affix a permanent label, conspicuous in size and color, in a readily visible location, that provides the name, address and 24-hour operable telephone number of a person or service that customers may call to report a problem or receive a refund in the event of a vending machine malfunction.

4. Operator is responsible for maintaining the vending machines in a clean and good working order and shall promptly repair or replace any defective or malfunctioning part.

5. Operator is prohibited from placing any advertising materials, signs or publicity on the vending machines, other than an advertisement or sign identifying the Operator and/or food and beverage items available from the vending machines.

6. Operator shall stock all vending machines with a sufficient quantity of food and beverage items, and shall inspect all vending machines, at least once per week, to insure that it is sufficiently stocked with food items, beverages and supplies, as applicable.

7. In the event Operator fails to comply with the obligations set forth in this Subsection, the City may limit, prohibit or disallow the Operator from installing and operating vending machines at the Golf Course facilities upon giving Operator thirty (30) days advance written notice.

C. Operator is subject to the following general rights and restrictions under this Agreement:

1. The right to use the Premises for all purposes in connection with the conduct of its Concessions at the Golf Course and for no other purpose.

2. The right to use, in common with others authorized to do so, the common areas of the Golf Course and any additions thereto, which may be designated by the City for common use, together with all facilities, equipment, improvements and services which have been or may hereafter be provided at or in connection with the Golf Course for common use.

3. The right of ingress and egress from the Premises for Operator’s employees, agents and customers, to the extent reasonably necessary, in connection with Operator’s use of the Premises and operation of the Concessions, as provided under this Agreement.

4. The right to install and operate on the Premises, entirely at Operator’s expense, signs identifying and/or advertising the Concessions, which shall be substantially uniform in size, type and location with other signs at the Golf Courses. However, all such signs are subject to the prior approval of the Golf Manager.
5. The City reserves the right to prohibit the sale of items or services that, in the opinion of the City, should not be sold or provided by the Operator on or from the Premises and/or Golf Course. The City’s decisions regarding these items or services are final.

6. In the use of the Premises and operation of the Concessions, Operator shall comply with all federal, state and local laws, orders, rules and regulations, including, but not limited to, the rules and regulations of the City’s Division of Golf.

7. The Operator shall not use, or allow others to use, the Premises for any improper, immoral, unlawful, or illegal business or other purpose or use not identified in this Agreement.

8. In the event Operator does not conduct daily Concession operations during the winter months, the Operator specifically agrees that during such period the City’s contractor engaged to operate the Golf Pro Shop or such other City designee can sell pre-packaged snacks and non-alcoholic beverages at and from such locations at the Golf Course as the City may designate.

**ARTICLE III – TERM AND RENEWAL**

A. This Agreement shall commence on the Effective Date and expire on December 31, 2015, unless earlier terminated or renewed as provided in Subsection B below. Notwithstanding the commencement date of this Agreement, the Operator shall have until April 1, 2013 to start operating the Concessions and offering food and beverage services to the public as described herein.

B. This Agreement may be renewed by mutual agreement for a maximum of three (3) additional one (1) year periods. The Operator shall notify the City not more than ninety (90) days and not less than thirty (30) days prior to the expiration of the then current term of its desire to renew the Agreement. The City will respond to Operator’s request to renew this Agreement as soon as reasonably practicable. Renewals may only be exercised individually for one-year periods. No renewal is effective or binding upon the City unless it is reduced to writing, approved by the City’s Director of the Department of Recreation and Youth Services, executed by a duly authorized representative for each party and, if applicable or required, approved by the Commission of the City of Dayton.

**ARTICLE IV – PERCENTAGE CONCESSION FEE**

A. In addition to the payment of any other sums specified in this Agreement, the Operator shall pay to the City a Percentage Concession Fee of TEN PERCENT (10%) of Operator’s Gross Revenues (“PCF”). “Gross Revenues”, as used in this Agreement, means all revenues (whether by cash or credit) derived from the operation of the Concessions at the Golf Course, regardless of when or whether paid for or not. Gross Revenues shall not include tips/gratuities and any federal, state and local excise or sales taxes, if separately stated and collected from a customer.
B. On the fifteenth (15th) day of each month, the Operator shall submit to the Golf Manager a sworn or verified statement, in a format and containing such detail as required by the City, of the Operator’s total Gross Revenues during the preceding month and complete payment of the PCF. The Operator shall send the monthly statement and PCF payment to the Golf Manager at the following address or at such other address as the City may direct the Operator in writing:

City of Dayton, Ohio - Division of Golf
Kittyhawk Administrative Office
3383 Chuck Wagner Lane
Dayton, OH 45414

C. Without waiving any other right or action available to the City under this Agreement or at law, if the Operator is delinquent for a period of thirty (30) days or more on paying to the City any fee due and owing to the City pursuant to this Agreement, including the PCF, the Operator shall pay to the City a late payment penalty at the rate of two percent (2%) per month from the date such item was first due and owing until complete payment (inclusive of late payment penalties) is received. It is agreed that no penalty shall be assessed for disputed amounts that are contested in good faith by the Operator.

ARTICLE V – ACCOUNTING, RECORDS AND REPORTS

A. The Operator shall use Generally Accepted Accounting Principles (“GAAP”) in recording and documenting all financial matters (inclusive of all books of accounts and Gross Revenues) related to its operation of the Concessions at the Golf Course. The Operator shall maintain true and accurate accounts, records, books and data on a daily basis, which shall, among other things, identify all sales made and services performed for cash, on credit, or otherwise (without regard to whether paid or not), the Gross Revenues and the aggregate amount of all sales and services and orders, and of all the business done upon and within the Premises. To insure accurate recordkeeping of Gross Revenues, the Operator shall use a cash register(s) for all food and beverage sales transactions for the Concessions, with the transactions contemporaneously entered on the cash registers at the time of payment.

B. At any time during normal business hours and as often as the City may deem necessary, the Operator shall make available to the City and its designees all of Operator’s books and records with respect to all matters covered under this Agreement, and will permit the City and its designees to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement.

C. Beginning April 1, 2013 and each April 1st thereafter, the Operator shall submit an annual report to the City’s Director of the Department of Recreation and Youth Services for the previous calendar year. The Operator shall bear the entire cost of preparing and providing the annual reports. The annual report shall be prepared by the Operator’s Chief Financial Officer or a certified public accountant retained by the Operator. The annual report shall be in a format and contain such detail as is satisfactory to the City; but, at a minimum, the annual report shall include a certified annual financial statement setting forth all business transacted at the Golf Course by the Operator under the terms of this Agreement during the preceding year, a statement
as to the collection and disposition of Gross Revenues and a certified opinion as to the accuracy of Operator’s monthly reports of Gross Revenues. This requirement to submit an annual report shall survive expiration and/or early termination of this Agreement to the extent that the Operator operated the Concessions at any time during the preceding year.

D. The City reserves the right upon reasonable notice to the Operator to audit all books and records related to the Concessions at the Golf Course. In the event that the results of any such audit shows any discrepancy in the amount of Gross Revenues reported to the City by the Operator, the Operator shall immediately pay the City the difference in the PCF, and in the event of overpayment of the PCF, the City will either (1) refund the difference; or (2) allow Operator to deduct the amount of the overpayment from its next PCF payment. In the event the discrepancy in the Operator’s reporting of Gross Revenues is greater than two percent (2%), the Operator shall reimburse the City for the City’s costs in connection with the audit. The City agrees to provide to Operator a copy of any audit conducted by the City under this Subsection. In addition, Operator shall furnish to the City a copy of any audit Operator completes on its own accord at any time during the term of this Agreement.

ARTICLE VI – OPERATIONAL REQUIREMENTS

A. The Operator shall operate the Concessions at the Golf Course in a fair and businesslike manner so that the same will be a credit to the City and the Golf Course. The Operator shall bear, at its sole cost and expense, all cost and expense of operating the Concessions. The Operator shall maintain and operate the Concessions in a first-class manner. The Operator shall keep, to the satisfaction of the City, the Premises, Equipment, and all other improvements and appurtenances used in connection with the Concessions, in a safe, clean, orderly and inviting condition at all times.

B. The Operator shall, at its sole cost and expense, procure and maintain from all authorities having jurisdiction over the Operator’s operation of the Concessions at the Golf Course all certificates, permits and other authorizations that are necessary and/or required to conduct and operate the Concessions. The Operator is also responsible for timely arranging all health, food and other inspections that are necessary or required by law for the Concessions.

C. The Operator shall, at all times, have a qualified, competent and experienced on-site manager to supervise the operations and Concessions at the Golf Course and to represent and act for the Operator. The Operator shall advise the City of the identity of the manager(s) and any replacement. The manager must be available during regular business hours and authorized by the Operator to respond quickly and decisively in all matters affecting the operation of the Concessions. At all times during the manager’s absence, the Operator (or its manager) shall designate a responsible subordinate to assume the manager’s duties and responsibilities.

D. The Operator shall retain qualified and competent persons to adequately staff operations for the Concessions authorized hereunder. All of the Operator’s employees, contractors and/or agents for the Concessions shall be clean, courteous, efficient and neat in appearance. The Operator shall, at its sole expense, furnish to its personnel for the Concessions name tags and golf shirts, which must be worn by the personnel at all times during their scheduled work-hours. The Operator shall not allow any person engaged to provide services for the Concessions to use
improper, offensive language or allow such person to act in a loud, boisterous, discriminatory, offensive or otherwise improper manner or dress in an improper manner. The Operator shall maintain a close check over its personnel to insure the maintenance of a high standard of service to the public in the operation of the Concessions. The City may object to offensive behavior of Operator’s personnel and may require the Operator to take all steps necessary to remove or eliminate the cause of the City’s objection, including, if necessary, the discharge of the employee based on the Operator’s progressive disciplinary action procedures.

E. In Operator’s response to the City’s RFP, the Operator proposed operating hours for each of the Concessions at the Golf Course, which is acceptable to the City. Accordingly, the Operator will maintain the following hours of operation for the Concessions:

1. Restaurant Hours of Operation:
   a. Breakfast – 7 a.m. to 10 a.m., seven days a week, including holidays
   b. Lunch – 10 a.m. to 4 p.m., seven days a week, including holidays
   c. Dinner – 4 p.m. to 10 p.m., seven days a week, including holidays

2. Bar Hours of Operation: 7 a.m. to 11 p.m., Monday - Saturday, including holidays; Sundays 10 a.m. to 11 p.m., including holidays

3. “Hill concession” Hours of Operation: 11:00 a.m. to 7 p.m., Saturday’s, Sunday’s and holidays

4. Beverage Cart Hours of Operation: 9:30 a.m. to 7 p.m. (during regular golf season only), seven days a week, including holidays

The Operator shall post the aforementioned operating hours of the Concessions in a conspicuous manner upon the Premises (including on the door of the restaurant), and at such other locations(s) at the Golf Course as may be approved in advance by the Golf Manager. No changes to the aforementioned operating hours may be implemented by the Operator unless approved in writing by the Golf Manager. In proposing any changes to the operating hours, the Operator agrees that, for the entire golf season (being period of April 1st to September 30th), it will keep the restaurant and bar open for daily business at least thirty (30) minutes before the Golf Course is open until thirty (30) minutes after the Golf Course is closed.

F. The Operator acknowledges the City’s desire and obligation to provide the general public and the Golf Course patrons/users a high quality food and beverage concession, comparable in price and quality to similar services and food and beverage items offered at other Dayton area golf courses. Accordingly, the Operator agrees that the pricing of all food and beverage items offered through the Concessions shall be no higher than five percent (5%) above the list/stated price for similar food and beverage items offered at restaurants in the surrounding area, and specifically, restaurants at other non-City operated golf courses. In addition, all food, beverages, confections and other items sold or kept for sale or distribution by Operator through the Concessions shall be of high quality, wholesome and pure, and must conform in all respects to applicable federal, state and local laws, orders, rules and regulations.
G. The Operator, its employees, agents and servants, shall obey such rules and regulations as may from time to time be promulgated by the City pursuant to Article VII, and shall obey all federal, state and local laws, including all ordinances of the City of Dayton.

H. By execution hereof, the parties acknowledge that the Operator is in the process of obtaining the requisite State of Ohio liquor license to sell alcoholic beverages at the Golf Course from the Premises. The City agrees to assist, to the extent reasonably possible and allowed by law, the Operator in acquiring this liquor license. The Operator shall maintain the liquor license throughout the term of this Agreement, and shall comply with all required federal, state and local laws, rules, regulations and orders governing the sale and distribution of alcoholic beverages. Upon expiration and/or termination of this Agreement, the Operator, at its own expense, shall immediately take all actions and complete such paperwork as is necessary to effectuate the transfer of said liquor license to the City and/or its designee and, upon the City (or its designee’s) receipt of the completed transfer paperwork, the Operator shall be paid the sum of Two Thousand Five Hundred Dollars ($2,500.00). The Operator is prohibited from selling or otherwise transferring said liquor license to any entity without the prior written approval or direction by the City. This provision shall survive termination and/or expiration of this Agreement.

I. The Operator, at its sole cost and expense, shall contract for its own utilities, excluding natural gas and water/sewer utilities, and shall pay all utility billings promptly when due. Because the natural gas utility and water/sewer utility for the Premises are not separately metered from the remainder of the Golf Course facility, the Operator shall pay, upon receipt of an invoice from the City, a sum equal to thirty-five percent (35% from April through October and 15% from November through March) of the amount billed to the City for gas and water/sewer utilities for the Golf Course facility containing the Premises.

J. Except for real property taxes, the Operator shall pay, when due, all taxes and assessments, including but not limited to, all use, sales and tangible/personal property taxes, which may be assessed against the Premises, the Operator’s tangible and personal property on the Premises or against any activity or operation conducted by the Operator. In the event the City is required to pay any such taxes and assessments for the Operator, the Operator agrees to reimburse the City immediately upon receipt of a City invoice. It is agreed that the City is responsible for the payment of any real property tax or assessment for the Golf Course.

ARTICLE VII – OPERATOR MAINTENANCE RESPONSIBILITIES AND IMPROVEMENTS

A. All Equipment and any equipment hereinafter purchased by the City for the use and benefit of the Operator shall remain the sole and exclusive property of the City. However, the Operator shall, at its own expense, maintain and protect all Equipment from loss or damage. The Operator shall maintain at its own expense all Equipment and all of Operator’s own equipment and property for the Concessions in good operating condition so that it will not create or otherwise cause a danger or hazard. Any Equipment damaged or destroyed by the Operator, or its employees or agents, through negligence, abuse or misuse shall be promptly reported to the Golf Manager and promptly replaced or repaired by the Operator, and the ownership rights to said replacement Equipment shall be vested in the City.
B. The Operator shall arrange for adequate sanitary handling and disposal of all trash, garbage, hazardous materials and all other refuse accumulated as a result of operating the Concessions and shall pay for such disposal services if required. The Operator shall provide and use suitable receptacles for all garbage, trash and other refuse on or in connection with the Concession Premises. Piling of boxes, cartons, barrels, or other similar items, in an unsightly or unsafe manner, on or about the Concession Premises, is forbidden. The Operator is responsible for the daily pick-up and removal of litter on the Premises, including adjacent and surrounding areas (e.g., pavilions, decks) and the areas surrounding the beverage carts.

C. The Operator shall establish a regular maintenance program for the drain and grease traps on the Premises and shall pay all costs associated with the maintenance program. If the Operator fails to maintain the drain and grease traps properly, the operator shall reimburse the City all cost and expense associated with the maintenance of the water and sewer system that results from, in the opinion of the City, grease or other material deposits into the Golf Course plumbing system from the Operator’s operation of the Concessions.

D. The Operator, at its sole cost and expense, shall maintain (e.g., weeding, watering and debris removal) the landscaping surrounding the restaurant portion of the Premises and shall plant, subject to the approval of the Golf Manager, flowers/shrubbery.

E. The Operator is responsible for the general maintenance and upkeep of the Premises, including adjacent areas such as the decks/porches and all areas surrounding the beverage carts and the Hill concession. The Operator is responsible for payment for winterizing the restaurant portion of the Premises if same is closed from December through March.

F. The Operator shall provide, at its own expense, all janitorial and cleaning services and supplies as may be necessary or required for the Concessions and the operation and maintenance of the Premises. The Operator shall provide adequate control of rodents and insects and other pests in the Premises. In the event that the City determines that the Operator’s rodent, insect and pest control program is not acceptable or sufficient, the City may, after fifteen (15) days notice, seek to control such rodents, insects and pests by other means, with the Operator fully reimbursing the City for the associated expense.

G. The Operator is responsible for making minor repairs to the Equipment and the Premises. For purposes of this Agreement, a “minor repair” for Equipment is one where the cost of repair is less than fifty percent (50%) of the item/equipment replacement cost, and where the repair is necessary due to ordinary wear and tear or usage; and a “minor repair” related to the Premises is one where the cost of the repair is less than $500.00. However, the replacement cost of items/Equipment damaged or destroyed by the acts, errors or omissions of the Operator or its employees, agents or contractors shall be the Operator’s sole responsibility.

H. The Operator may, at its own expense, make necessary improvements and/or alterations to the Premises necessary and/or required for the operation of the Concessions; provided that such improvement(s) and/or alteration(s) are approved, in advance and in writing, by the City. If the City approves such improvements, it may, at its sole discretion, require the Operator to
furnish a performance bond and/or additional insurance. Within sixty (60) days after completion of any City-approved improvements and/or alterations of a structural nature, the Operator shall furnish to the City one set of reproducible Mylar Record Drawings showing the "as-constructed" structural improvement/alteration and a diskette containing the drawings in the CAD version currently used by the City. Record drawings shall be dated and stamped by the engineer or architect of record. Title to any improvement/alteration shall be surrendered to the City upon expiration or early termination of this Agreement. The Operator shall promptly remove (and restore the Premises) any improvement and/or alteration that was not approved by the City.

**ARTICLE VIII - RIGHTS AND OBLIGATIONS OF THE CITY**

A. The City has the right to, and may, adopt and enforce reasonable rules and regulations with respect to the use of the Golf Course and/or facilities thereon, which the Operator shall observe and require its employees, agents and contractors to obey.

B. The City shall have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Golf Course and in the exercise of the City's police power. Notices may be waived in an emergency or given verbally where entry does not materially affect Operator's use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hour notification.

C. It is expressly understood and agreed that the City reserves to itself the sole and exclusive right to manage, control and operate said Golf Course for the benefit of the public in such manner as the City in its discretion shall determine. Nothing contained in this Agreement shall be construed to infringe upon, or interfere with, the City's exclusive right to manage, control and/or operate the Golf Course.

D. The City will assume responsibility for the capital and structural maintenance of the Golf Course facility (of which the Concession Premises are a part), which includes, but is not limited to, maintenance and repair of sidewalks, entrance to the facility, the roof and major mechanical systems serving the facility such as HVAC. The Operator may request certain capital improvements, which may be necessary for the operation and use of the Premises. All such requests shall be in writing, stating the nature and type of improvement, the anticipated cost thereof with three (3) estimates attached, and the request shall be accompanied by a certification indicating that the Operator agrees to pay a minimum of fifty percent (50%) of the total actual cost for the capital improvement. All such requests shall be forwarded to the City's Director of the Department of Recreation and Youth Services for initial approval. Upon initial approval of the capital improvement request by the City's Director of the Department of Recreation and Youth Services, the request will be submitted for final approval in accordance with the rules, regulations and procedures of the City's Capital Improvement Process (CIP). The Operator understands that the City's initial approval of the request does not guarantee the CIP approval of the capital improvement. If the capital improvement is ultimately approved and construction undertaken, the Operator shall be responsible to remit its percentage share of the total cost for the
improvement (not less than 50% of the total actual cost for the improvement) upon request by the City.

E. The City will provide a parking area for use by the Operator's guests, invitees and patrons. This parking area will be available on a non-exclusive basis for the use of patrons for the Concessions, users of the Golf Course and/or any other persons so authorized by the City to park their vehicles in such location.

ARTICLE IX – INDEMNITY, INSURANCE AND LIABILITY

A. The Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, agents and employees from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorney's fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement, the occupancy, use and operation of the Concessions at the Golf Course, and/or the acts, errors, omissions or other wrongful conduct of the Operator or its employees, agents, contractors and representatives.

B. During the term of this Agreement, Operator shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, the following insurance:

1. General/Comprehensive Liability Insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate; and

2. Liquor Liability Insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate; and

3. Fire and Casualty Insurance, in such amount as is necessary to cover all the Operator's personal property, fixtures and improvements upon the Premises against loss or damage by fire and such hazards and risk as are normally covered by endorsements for extended coverage, and in such amount(s) necessary to cover the replacement value thereof.

The Operator shall also maintain Workers' Compensation Insurance for all its employees, in such amounts as prescribed by law.
All policies of insurance required herein, but excluding Workers’ Compensation Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that the City be notified thirty (30) days in advance of any termination or diminution of coverage. Within thirty (30) days of the execution of this Agreement, Operator shall furnish the City with copies of certificates of insurance demonstrating compliance with the insurance requirements contained herein. The Operator shall also furnish to the City, upon its request, copies of the complete policy or policies of insurance.

C. The Operator shall repair or pay for all damages to the City’s real and/or personal property (i.e. broken glass windows), caused by wrongful (i.e. break-ins) or negligent acts or omissions of the Operator, its agents, servants, employees, contractors, invitees and guests, and/or arising out of the Operator’s use or occupancy of the concession Premises.

ARTICLE X – EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

A. The Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, sexual orientation, gender identity, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, Ohio, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure of the Operator to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement.

B. The Operator, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, and (2) that the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

C. The Operator agrees to comply with all federal and state equal employment opportunity and non-discrimination laws, rules, regulations and orders.

ARTICLE XI – HOLDING OVER

In the event that the Operator holds over and remains in possession of the Premises, in whole or part, and the City allows the Operator to continue operating the Concessions after expiration of this Agreement and without any formal written renewal in accordance with Article III, such occupancy shall not operate as a renewal or extension of this Agreement, but shall only create a hold over tenancy from month-to-month, which may be terminated at any time by either party.
ARTICLE XIII - TERMINATION BY THE OPERATOR

A. In addition to the remedies available to the Operator at law or under this Agreement, the Operator may terminate this Agreement in the event or for the following reasons:

1. The issuance of an injunction, order or decree by a court of competent jurisdiction against the City preventing or restraining the use of the Golf Course as a public golf course facility, unless such injunction, order or decree is vacated or stayed within thirty (30) days from the date of issuance; or

2. The default by the City in the performance of any material covenant or promise required to be performed by it herein, and the failure of the City to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt of written notice from Operator to remedy the same; or if by reason of the nature of such default the same cannot be remedied within thirty (30) days, then the Operator shall have the right to terminate this Agreement if the City fails to commence the remediing of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remediing thereof.

B. Operator may terminate this Agreement for any reason upon giving the City ninety days (90) days advance written notice.

ARTICLE XIV - TERMINATION BY THE CITY

A. In addition to the remedies available to the City at law or under this Agreement, the City may terminate this Agreement in the event or for the following reasons:

1. If a receiver for the Operator's assets is appointed by a court of competent jurisdiction;

2. If the Operator is divested of its rights, powers and privileges under this Agreement by operation of law;

3. If the Operator defaults in the payment of the PCF or any other amount due hereunder, and said default is not cured by payment of all outstanding amounts due and owing within fifteen (15) days after the City notifies the Operator in writing of the default;

4. If the Operator defaults in the performance of any covenant or promise required to be performed by it herein, excepting the payment of the PCF or any other amounts (see 3 above), and the Operator fails to remedy such default and/or take prompt action to remedy such default within thirty (30) days after written notice to remedy same. However, if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then the City may cancel this Agreement if Operator failed to commence the remediing of the default within the thirty (30) days
following the City's written demand or having so commenced, fails thereafter to continue with diligence the remedying thereof; or

5. Violations by the Operator, its employees, agents and/or contractors of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required to operate the Concessions.

6. The City may terminate this Agreement for any reason upon giving the Operator ninety (90) days advance written notice.

B. Upon termination of this Agreement, the City may take immediate possession of the Premises and all Equipment therein without being deemed guilty of trespassing or conversion. Notwithstanding, the City will allow the Operator access to the Premises as set forth in Article II, Subsection C.

ARTICLE XV – GENERAL PROVISIONS

A. This Agreement represents the entire and integrated Agreement between the City and the Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

B. The Operator represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same, to the extent to which said terms and conditions apply to its activities as authorized and required by this instrument.

C. The relationship between the parties shall not be held out or construed as employer-employee, joint venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of, the other party, without the prior written and express authority to do so by a duly authorized representative.

D. The Operator understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City employees and not entitled to any of the emoluments of City employment. Further, the Operator shall perform all payroll functions, which includes filing Social Security payments, withholding federal, state and local taxes, and payment of Worker’s Compensation. The Operator also shall keep and submit such other reports as may be required of employees by federal, state, or local governments.

E. The parties may amend or modify this Agreement, at any time. However, no amendment or modification is effective unless it is reduced to writing that is signed by a duly authorized representative of City and Operator, approved by the City’s Director of the Department of Recreation and Youth Services and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
F. The Operator is prohibited from selling and/or assigning this Agreement to any party without obtaining the prior written consent of the City. Further, the Operator is prohibited from subletting and/or leasing the Premises in whole or part to any entity or person without the prior written consent of the City.

G. Except for PCF payments, all notices, invoices or other communications required or permitted hereunder shall be sufficient if sent by certified U.S. mail, postage prepaid, or hand delivered, and addressed as follows:

To City: City of Dayton, Ohio  
Department of Recreation & Youth Services  
101 West Third Street, P.O. Box 22  
Dayton, Ohio 45401  
Attn: Director

To Operator: V.P. & Associates, Inc.  
4800 Mad River Road  
Kettering, Ohio 45429  
Attn: Vicki Warren

or to such other address as the parties may direct, in writing.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the City and the Operator, each by a duly authorized representative, have executed this Agreement as of the Effective Date.

WITNESSED BY:

Wayne

V.P. & ASSOCIATES, INC.

By: Vicki Warren
Title: President

WITNESSED BY:

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

April 17, 2013

Min. / Bk. 1/13 Pg. 0122

Clerk of the Commission
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  
Name: V.P. & Associates, Inc.  Attn: Vicki Warren  
Address: 4800 Mad River Road  
City: Kettering  State: OH  Zip+4: 45429  
Customer #: 0001308  Address Location #: G1  
Federal ID#: 31-0994184

Revenue Information:  
Fund: 59000  Organization: 6550  Revenue: 24156  Program: 56

Contract Information:  
Contract Start Date: Upon Commission Approval  
Contract Expiration Date: 12/31/15

Billing Information:  
Rate:  Arrears X  Pre-bill  
Monthly (1st month of billing): April 2013  
Quarterly (1st month of quarter):  
Semi-annual (1st month of half):  
Annual (1st month of billing):  
Other (explain):  
Rate Change Date:  Rate Change Amount:

Description of Services (wording on invoice):

Contractor will be paying percentage concession fee (PCF) monthly based on 10% of annual gross revenue. By the 15th of each month, Contractor will submit monthly statements to Golf with PCF payment. Golf will pay-in monthly payment.

Departmental Approval: [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number: G-2373-1  
Auditor:  Date: 3-8-13

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable database and contains the terms and conditions necessary for collection.

Director of Finance: [Signature]
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name V.P. & Associates, Inc. Attn: Vicki Warren
Address 4800 Mad River Road
City Kettering State OH Zip+4 45429

Contact Information: Customer # @00001308 Address Location # 6-1

Business ID# ________________________________

Revenue Information: Fund 59000 Organization 6550 Revenue 24156 Program 56

Contract Information: Contract Start Date 4/01/2013 Contract Expiration Date 12/31/15

Billing Information: Rate: varies Arrears X Pre-bill

Monthly (1st month of billing) April

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date __________ Rate Change Amount __________

Description of Services (wording on invoice):

Contractor will be reimbursing the City for the cost of natural gas and water/sewer utilities for its contracted portion of the Community Golf Club property. The City will invoice VP 35% of the utilities between operating months of April-October. That amount will reduce to 15% between off-season months of November-March each year.

Departmental Approval ___________________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number 3-25373-2 (Haa) 3-25373-5 (W-S) Auditor __________ Date __________

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance ___________________________
April 22, 2013

TO: City Commission Office  
City Manager's Office  
Finance Department

FROM: Joe Parlette, Interim Director  
Department of Recreation and Youth Services

SUBJECT: REQUEST FOR SIGNATURE

Please sign the attached contract with V.P. & Associates, Inc. for food and beverage concessions services at Community Golf Club. This contract will commence on the effective date and expire on December 31, 2015. Authorization for execution of this contract was granted by the City Commission on April 17, 2013 by City Manager’s Report, Calendar Item C-4.

This contract has been reviewed by this office and is ready for your execution.

JDP/mlt

Attachments

________________________ signed copies released to the Finance Department.
This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

**STEP 1: Personal Information**

Social Security Number

294-58-5711

First Name: Vicki  MI: J  Last Name: Warren

Name of Current Employer

Owner V PASSOCIATES

**STEP 2: Public Employment Information**

Name of Public Employer for Which You Are Providing Personal Services

Employer Contact

First Name: Kelly  MI: M  Last Name: Pressel

Employer Code: 515847

Employer Contact Phone Number

Service Provided to Public Employer

Start Date of Service

Month: 04  Day: 01  Year: 2006

End Date of Service

Month: 12  Day: 31  Year: 2015
STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification.

This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature

Do not print or type name

Today's Date 1/26/14
REPORT AND MINUTES OF THE BOARD OF REVISION OF ASSESSMENTS
TO THE CITY COMMISSION OF THE CITY OF DAYTON

In the Matter of the Vacation of the Alley East of Brown Street from Wyoming Street to the North Property Line of City Lot #84003.

Pursuant to proper notice being given, the Board of Revision of Assessments reports that it convened its meeting on January 20, 2021 @ 11:00 a.m. on Zoom for the purpose of considering the above matter.

Attended by
John Musto
Brian Zamostny
Chris Lipson
Joe Weinel
Patricia Jones

AGENDA ITEMS: One item was on the agenda. There were no parties in attendance.

The Board of Revision of Assessments meeting was convened by Mr. John Musto on January 20, 2021 @ 11:00 a.m. on Zoom. Mr. John Musto agreed to chair the meeting.

ITEM # 1: Resolution No. 6552-20 In the Matter of the Vacation of the Alley East of Brown Street From Wyoming Street to the North Property Line of City Lot #84003.

Service was made to three property owners: Mr. Thomas Schwade, RE NVC Dayton II, LLC, 4242 Tuller Rd., Dublin, Ohio 43017; Archbishop of Cincinnati, 100 E. Eighth Street, Cincinnati, Ohio 45202; Brown at Stewart Investments, 1008 Marshall Avenue, Cincinnati, Ohio 45225.

Discussion followed as to the reason for the vacation request. Mr. John Musto stated the conditions established by the City Plan Board meeting on September 10, 2019 as follows:

1. DP&L shall retain an easement over, under, and through the vacated area for its existing electric facilities. With written consent from DP&L these facilities may be relocated or abandoned at the expense of the applicant.

2. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing eight-inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.
Mr. Lipson made a motion to accept the vacation with the conditions from the City Plan Board meeting on September 10, 2019. Mr. Zamostny seconded and the vacation passed unanimously.

With no other business to come before the Board, Mr. Lipson made a motion to close the meeting and Mr. Zamostny seconded. All present said “aye” and the motion carried. The meeting was adjourned.

Respectfully submitted,

Patricia N. Jones, Secretary
to the Board of Revision of Assessments

cc: Board Members
    Assessment File
    Joe Weinel – Ordinances

BOARD OF REVISION OF ASSESSMENTS

Senior Engineer I, Public Works

Chief Counsel, Department of Law

APPROVED BY THE CITY COMMISSION

City Manager
AN ORDINANCE

To Vacate the Alley East of Brown Street from Wyoming Street to the North Property Line of City Lot #84003.

WHEREAS, The City Commission did on the 2nd day of December, 2020, by Resolution No. 6552-20, declare its intention to vacate the alley east of Brown Street from Wyoming Street to the north property line of City Lot #84003; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that the alley east of Brown Street from Wyoming Street to the north property line of City Lot #84003; vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of the alley east of Brown Street from Wyoming Street to the north property line of City Lot #84003; described herein will enable the abutting property owner to develop this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That the alley east of Brown Street from Wyoming Street to the north property line of City Lot #84003; being more particularly bounded and described in as follows:

Being all of the 16.5 foot alley east of the Brown Street from 50 foot Wyoming Street to the north property line of City Lot #84003

is hereby vacated. The vacation shall be subject to the following conditions:

A. DP&L shall retain an easement over, under, and through the vacated area for its existing aerial electric facilities. With written consent from DP&L these facilities may be relocated or abandoned at the expense of the applicant.

B. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing eight-inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.
Passed by the Commission................................................................., 2021

Signed by the Mayor............................................................................., 2021

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
February 23, 2021

TO: Shelley Dickstein  
   City Manager

FROM: Joseph Weinel, Chief Engineer  
       Division of Civil Engineering

SUBJECT: The Vacation of the Alley East of Brown Street from Wyoming Street to the North Property Line of City Lot #84003

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21493 requesting the vacation was received from RE NVC Dayton II LLC on September 25, 2020. Resolution No. 6552-20 declaring the Commission’s intention to vacate was adopted on December 2, 2020. The Board of Revision of Assessments recommended the vacation on January 20, 2021. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact me at extension 4218.

JRW

Attachments

cc: Mr. Parlette
    Ms. Lofton
    Mr. Stovall
    Department of Planning
    Department of Law
    Clerk of Commission
    Secretary / Board of Revision of Assessments