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:

POLICE
A1. Brite Computers/Upstate Wholesale Supply (NetMotion mobility software maintenance and support renewal)

$18,440.00
1. (Cont’d):

**PROCUREMENT, MANAGEMENT AND BUDGET**

**B1.** USI Midwest LLC - PO211139 - (one-year employment practices liability insurance policy)  
30,250.00

**B2.** USI Midwest LLC – PO211141 – (property/casualty insurance policy)  
625,169.00

**B3.** USI Midwest LLC – PO211142 – (automotive physical damage insurance policy)  
120,406.00

**PUBLIC WORKS**

**C1.** Pickrel Brothers, Inc. (plumbing and related supplies as needed through 12/31/21)  
25,000.00

-Depts. of Police, Procurement, Management and Budget and Public Works.

**Total:** 819,305.00

C. Revenue to the City:

2. **Prior to Tee Time LLC – Service Agreement** – (to increase spending authority for golf professional services and use of space at Community Golf Club through 12/31/21)  
$104,500.00  
(Thru 12/31/21)  
(Paid to the City)

IV. LEGISLATION:

Resolution – Second Reading

3. **No. 6607-21** Declaring the Intention of the Commission to Vacate Jackson Boulevard, Milwaukee Avenue, Windsor Street, Leeland Street, Florida Avenue, St. Clair Avenue, Island Park Avenue, Boden Street and associated alleys within the grounds of Carillion Historical Park.
VI. MISCELLANEOUS:

ORDINANCE NO. 31918-21

RESOLUTION NO. 6608-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 993-21
From 2730 – PMB/Procurement
Supplier, Vendor, Company, Individual
Name See Below
Address See Below

Date September 22, 2021
Expense Type Purchase Order
Total Amount $819,305.00

2021 Purchase Orders

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</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

Description

POLICE

(A1) P0211138 – BRITE COMPUTERS/UPSTATE WHOLESALE SUPPLY, VICTOR, NY

- NetMotion mobility software maintenance and support renewal.
- These services are required to provide reliable data communications for the Mobile Data Computers (MDCs) in emergency vehicles.
- Brite Computers/Upstate Wholesale Supply is recommended based upon proven past performance to ensure consistent quality, compatibility, and operational continuity; therefore, this purchase was negotiated.
- The Departments of Fire and Police recommend approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6210-1166-71</td>
<td>$13,440.00</td>
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<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6340-1166-71</td>
<td>$5,040.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Clerk
Date

Updated 06/2016
PRODUCTION, MANAGEMENT AND BUDGET - PROCUREMENT

(B1) **P0211139 – USI MIDWEST LLC, MIAMI TOWNSHIP, OH**
- One-year employment practices liability insurance policy.
- This policy is required to insure the City against liability risks such as wrongful termination, discrimination and sexual harassment.
- Six (6) possible providers were solicited and two (2) quotes were received.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-9980-1181-99</td>
<td>$30,250.00</td>
</tr>
</tbody>
</table>

(B2) **P0211141 – USI MIDWEST LLC, MIAMI TOWNSHIP, OH**
- Property/casualty insurance policy.
- This policy is required to insure City-owned property against fire and extended perils.
- Six (6) possible providers were solicited and two (2) quotes were received.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-9980-1181-99</td>
<td>$625,169.00</td>
</tr>
</tbody>
</table>

(B3) **P0211142 – USI MIDWEST LLC, MIAMI TOWNSHIP, OH**
- Automobile physical damage insurance policy.
- This policy is required to insure City-owned automobiles.
- Six (6) possible providers were solicited and two (2) quotes were received.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
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<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-9980-1181-99</td>
<td>$120,406.00</td>
</tr>
</tbody>
</table>
PUBLIC WORKS – PROPERTY MANAGEMENT

(C1) P0210125 – PICKREL BROTHERS, INC., DAYTON, OH
• Plumbing and related supplies as needed through 12/31/2021.
• These goods are required to replenish inventory for maintenance and repairs.
• Rates are in accordance with the City of Dayton’s existing price agreement per IFB 21006N with pricing through 12/31/2021.
• Pickrel Brothers, Inc. qualifies as a Dayton local entity.
• This amendment increases the previously authorized amount of $70,000.00 by $25,000.00 for a total not to exceed $95,000.00 and therefore requires City Commission approval.
• The Department of Public Works recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Plumbing Shop</td>
<td>66000-6480-1301-54</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of this order.
City Manager’s Report

From: 6550 - REC/Sports
Supplier, Vendor, Company, Individual: Prior to Tee Time LLC
Address: 5555 Germantown Pike
Dayton, Ohio 45418

Date: September 22, 2021
Expense Type: Service Agreement
Total Amount: $104,500.00 thru 12/31/2021

<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 and Recreation Fund</td>
<td>13000-6550-1158-56</td>
<td>$104,500.00</td>
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<tr>
<td></td>
<td>13000-6550-24111-56</td>
<td>$104,500.00 Revenue</td>
</tr>
</tbody>
</table>

Inclues Revenue to the City: Yes
Affirmative Action Program: Yes

Description
Request to Increase Spending Authority

The Department of Recreation, Division of Sports requests to increase the spending authority for the service agreement with Prior to Tee Time LLC for Golf Professional Services and Use of Space at Community Golf Club. The requested amount of $104,500.00 increases spending authority from $315,400.00 to $419,900.00.

The City Commission approved spending authority of $315,400.00 on December 16, 2020. Due to increases in play at Community Golf Course, the percentage-based revenue from proshop sales (100%), lessons (100%), driving range (90%) and cart rentals (20%) is projected to exceed the approved amount. An additional $104,500.00 is needed to cover the amount due to Prior to Tee Time LLC through December 31, 2021.

The Law Department has reviewed this agreement and determined that a contract amendment is not required per the percentage-based terms of the original agreement.

A Certificate of Revenue in the amount of $338,500.00 is attached in order to receive revenue from percentage-based revenue for the term of the contract to include the increase amount of $104,500.00 from $234,000.00.

A Certificate of Funds in the amount of $419,900.00 is attached in order to pay for golf professional services, golf shop personnel and percentage-based revenue to include the increase amount of $104,500.00 from $315,400.00

Signatures/Approval

Approved by City Commission

Clerk

Date

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

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/01/21</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/21</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$419,900.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$315,400.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$104,500.00</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT211829</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$104,500.00</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$0</td>
<td></td>
</tr>
</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

---

Amount: $104,500.00

Fund Code: 13000 - 6550 - 1158 - 56 - XXXX - XXXX

Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX

---

Attach additional pages for more FOAPALs

Vendor Name: Prior to Tee Time
Vendor Address: 5555 Germantown Pike Dayton OH 45418
Street City State Zipcode + 4
Federal ID: 262020217
Commodity Code: 96199
Purpose: Request to increase the second sequence of this encumbrance due to increased demand at Community Golf Club. The contract remains unchanged for 2021.

Contact Person: Kelly Pressel x3383
RYS/Golf Department/Division 9/2/2021 Date
Originating Department Director's Signature: E-SIGNED by Robin Williams on 2021-09-02 13:30:31 EST September 02, 2021

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]
Date: 9/14/2021

CF Prepared by: [Signature]
Date: 9/14/21
CF/CT Number: CT21-1829

Finance Department
October 18, 2011
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Prior to Tee Time
Address 5555 Germantown Pike
City Dayton State OH Zip+4 45418 - 
Customer # 262020217 Address Location # 
Federal ID# 262020217

Revenue Information: Fund 59000 Organization 6550 Revenue 24111 Program 56

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

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

Description of Services (wording on invoice):

Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department’s pay-in process. Total estimated revenue for the contractual period is $338,500.00.

Departmental Approval E-SIGNED by Robin Williams on 2021-09-02 13:30:28 EST

TO BE COMPLETED BY FINANCE

Revenue Contract Number 3-0017 Auditor Latinea Jones Date 9/14/2021

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
September 8, 2021

TO:       City Commission Office  
          City Manager’s Office  
          Finance Department  
FROM:    Robin Williams, Director  
         Department of Recreation  
          R.W.  

SUBJECT: Request for Signature – Increase to encumbrance CT211829  

Please sign the attached CMR to increase the Prior to Tee Time LLC encumbrance for Golf Professional Services. The demand for golf at Community Golf Club has exceeded projections and therefore the amount to be paid through the end of 2021 to the golf professional per contract has increased. The current agreement will remain unchanged and will expire on December 31, 2021.

ENCUMBRANCE: CT211829  
Vendor: Prior to Tee Time LLC  
Original FOAPAL: 13000-6550-1158-56 seq #1  
Please increase by $104,500.00  

If you require additional information, please contact Tay Rakestraw at 1734.  

RW/tr  

Attachments
FIRST RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION AGREEMENT

This FIRST RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE GOLF
PROFESSIONAL SERVICES AND USE OF SPACE AGREEMENT ("Renewal and Amendment") is
entered into this 22nd day of December, 2028, between the City of Dayton, Ohio, a
municipal corporation in and of the State of Ohio, ("City") and Prior to Tee Time, LLC, 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 Golf
Professional Services and Use of Space ("Agreement") on October 26, 2017; and,

WHEREAS, the parties desire to amend the Agreement to provide for an increase in staffing needs at
Community Golf Course; 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 VII – Financial Matters and Reports, subsection F., of the Agreement shall be deleted in its
   entirety and replaced with the following:

   The City will make available to Contractor a stipend of Five Thousand Two Hundred Fifty Dollars
   and Zero Cents ($5,250.00) per month for Golf Shop personnel costs.

2. Pursuant to Article III of the Agreement, both the City and the Operator mutually agree to renew
   the terms of this Agreement for an additional one (1) year term. This renewal period shall begin
   on January 1, 2021, and shall terminate on December 31, 2021, unless terminated pursuant to the
   Agreement.

3. Except as modified by this Renewal and Amendment 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

[Signature]
City Manager

PRIOR TO TEE TIME, LLC, an Ohio limited liability company

[Signature]
Its: AUTH. REP.
Title

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

December 14, 2020

Min. / Bk. Pg.

[Signature]
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

11/6/2020

John Musto for
City Attorney

Signed by: Musto, John
AGREEMENT FOR GOLF PROFESSIONAL SERVICES
AND
USE OF SPACE AT COMMUNITY GOLF COURSE

This AGREEMENT FOR GOLF PROFESSIONAL SERVICES AT COMMUNITY GOLF COURSE ("Agreement") is entered into this 26<sup>th</sup> day of December, 2014, between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as the "City") and Prior to Tee Time, LLC, an Ohio Limited Liability Company (hereinafter referred to as “Contractor”).

WITNESSETH THAT:

WHEREAS, the City owns and operates the improved real property known, referred to and operated as Community Golf Course ("Golf Course"), which is located in the City of Kettering, County of Montgomery and State of Ohio;

WHEREAS, the City seeks an experienced and qualified contractor to provide management and operational services for the daily operations at the Golf Course; and

WHEREAS, Contractor represented to the City that it is engaged in the business of providing golf related management and operation services, and is willing to provide such services to the City at the Golf Course on and subject to the terms and conditions of this Agreement.

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

ARTICLE I - PREMISES

A. Contractor is authorized to occupy and use, for the purposes stated in Article II, approximately 2,000 square feet of retail floor space designated by the City’s Golf Division Manager of the Department of Recreation and Youth Services (the “Golf Division Manager”) at the Golf Course clubhouse facility (hereinafter referred to as the “Premises”).

B. Contractor shall not erect, install, or maintain on the Premises or the Golf Course or the exterior of any improvement at the Golf Course, any billboards or advertising signs, except those which are approved in advance by the Golf Division Manager. Notwithstanding, Contractor is permitted to maintain on the Premises identifying signage, with the size and type of sign(s) subject to the Golf Division Manager’s advance approval. Handwritten communications, advertising signs, and billboards are strictly prohibited.

C. Contractor shall have the right to use all improvements, fixtures and other tangible personal property located and/or situated upon the Premises (hereinafter collectively referred to as the "Personalty"). However, the City makes no representation or warranty as to such Personalty, its fitness for a particular purpose or merchantability or condition. By execution hereof, Contractor represents that it has inspected the Premises and the Personalty, and accepts same on an “as-is” basis.
D. Contractor shall maintain the Premises in a neat, clean, and presentable condition at all times and shall ensure that the Golf Pro Shop windows, inside and outside, are clean at all times.

**ARTICLE II – USE OF PREMISES**

A. Contractor shall have the sole and exclusive right to use and occupy the Premises to operate a "Golf Pro Shop", and to use said Premises for such other purposes as approved in writing by the Golf Division Manager.

B. Contractor shall not use or permit the Premises or Golf Course to be used for any improper, immoral, unlawful, or illegal business purposes, personal storage or for lodging.

C. Contractor shall actively use the Premises for the uses and purposes permitted hereunder, and shall not, at any time, cease operating the Golf Pro Shop upon the Premises or providing the work and services for the Golf Course required hereunder without the prior written consent of the City.

D. Not later than ten (10) consecutive days from the date of termination or expiration of this Agreement, Contractor shall:

1. remove any items, which are exclusively owned by Contractor, and located upon the Premises; and
2. restore the Premises to its original condition, ordinary wear and tear excepted.

In the event Contractor fails to remove any items exclusively owned by the Contractor within this 10-day period, any items, exclusively owned by the Contractor remaining on the Premises shall become the sole and exclusive property of the City.

E. The Contractor has the right to purchase all equipment and inventory of the Golf Shop and Driving Range currently owned by the City. Contractor must submit payment within fifteen 15 business days of receiving bill of sale for all equipment and inventory purchased. Equipment and inventory may include but is not limited to: driving range markers, bag stands, mats, range balls, signage, ball stackers, pull carts, range ball picker, range ball picker cart, ball washers, grip tools and other items.

**ARTICLE III – TERM**

This Agreement shall begin on January 1, 2018, and it shall expire on December 31, 2020, unless terminated earlier in accordance with Article X. The City shall have the right, but not the obligation, to renew this agreement for up to three (3) consecutive one (1) year periods; provided, however, that any such renewal shall be reduced to writing, making specific reference to this Agreement, and shall be executed by a duly authorized representative for each party, and if required or applicable, approved by the Commission of the City of Dayton. In the event Contractor shall hold over and remain in possession of the Premises herein described after the expiration of this Agreement, such period of holding over shall be considered a month-to-month tenancy, which may be terminated, without notice, at any time by the City.
ARTICLE IV – GENERAL RIGHTS AND OBLIGATIONS OF CONTRACTOR

A. Contractor represents and agrees that Ms. Jana Dalton, its member, is and shall remain during the entire term hereof a Class A member in good standing of the Professional Golfers' Association of America ("PGA"). In the event Ms. Dalton does not maintain her PGA professional status during the term hereof, the City may immediately terminate this Agreement.

B. Contractor shall, at its sole cost and expense, procure from all authorities having jurisdiction over the operations of the Contractor at and from the Premises, all licenses, certificates, permits or other authorizations, which may be lawfully required for the conduct of its operations and/or the Golf Pro Shop.

C. Contractor shall conduct its business and the Golf Pro Shop operations at the Golf Course in a fair and businesslike manner so that it will be a credit to the City and to the Golf Course. The City will establish hours of operation for the Golf Pro Shop operation.

D. Contractor and its employees, agents, and servants, shall enforce, comply with, and obey such rules and regulations for the operation and use of the Golf Course, as may from time to time be promulgated by City, and shall obey all federal, state, and local laws, including all ordinances of the City of Dayton and the City’s Division of Golf Policy Manual (hereinafter this policy manual shall be referred to as the “Golf Policy Manual”). If the City elects to update or amend the Golf Policy Manual, it will provide an opportunity for the Contractor to comment and/or make recommendations.

E. Contractor shall repair or pay for all damage to City and its property, caused by the intentional, wrongful and/or negligent acts or omissions of Contractor, its agents, servants, employees and contractors, arising out of the use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

F. Contractor shall pay when due all federal, state and local taxes or assessments that may be levied against its personal, real and/or leasehold property situated at the Golf Course; provided, however, that Contractor shall have the right to protest or contest by legal proceeding or in such other manner as it may deem suitable, the validity or amount of any imposition which it is obligated to pay.

G. Contractor shall require Ms. Dalton and, in her absence, a qualified assistant or a responsible adult, to be present in the Golf Pro Shop at all times so that the sales and services, which are herein required, will be available at all times during the scheduled hours of operation and use of the Golf Course and its facilities. During the months of April through October, Ms. Dalton shall not be absent for any two consecutive day period without first notifying and receiving the approval of the City. Vacations may only be taken between November 1st and March 31st of each contract year.

H. Contractor is responsible for stocking and maintaining all inventory for the Golf Pro Shop merchandise. At a minimum, Contractor must stock a reasonable amount of golf balls, clubs, gloves and other golf related merchandise and clothing. Within thirty (30) days from the date of execution of this Agreement, Contractor shall enter all merchandise and equipment Contractor will stock, maintain, and sell at the Golf Pro Shop within the designated point of
sale system. Throughout the duration of this contract, the designated point of sale system will be used to manage all merchandise and equipment. Contractor is solely responsible for payment, to the proper taxing authority, of all sales taxes on merchandise sold at the Golf Pro Shop.

I. Contractor is responsible for complying with all federal, state, and local employment and labor laws, codes, directives, orders, and rules and regulations. Notwithstanding termination or expiration of this Agreement, Contractor shall remain responsible for timely completion and filing of tax documentation and for furnishing all employees, agents and contractors with all tax information and/or documentation (i.e., W-2 or 1099 forms), as required by law. In the event the City is required to pay any unemployment compensation contributions for persons who were employed by Contractor, or any other expenses normally assumed and paid by an employer, but by operation of law are imposed on the City, Contractor shall reimburse the City for any payments so made. Contractor shall reimburse the City within fifteen (15) days after City sends an invoice for payment.

J. Contractor shall maintain accurate books of accounts in accordance with Generally Accepted Accounting Principles ("GAAP") for all aspects of the operation of the Golf Pro Shop, revenues collected on behalf of the City of Dayton, and all other fees and charges collected at the Golf Course. At any time during normal business hours, and as often as the City may deem necessary, Contractor shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine and make excerpts and transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, revenues collected, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require Contractor to provide, at Contractor’s own cost and by an independent Certified Public Accounting ("CPA") firm, a full audit of this Agreement and Contractor’s operations at the Golf Course.

**ARTICLE V – GOLF MANAGEMENT SERVICES**

A. Contractor will perform the following golf management services at the Golf Course:

1. Contractor shall cooperate with all City employees, agents and contractors in the administration and operation of the Golf Course, and assist in assuring proper conduct of all users of the facility, maintaining it in a clean, neat, and sanitary condition. Contractor shall enforce the City’s “No-Smoking” policy in and about the Premises at all times.

2. Contractor shall, each day at the times designated by the City for the operation and use of the Golf Course, open locker rooms, and common area rest rooms for public use, and at the end of the day, Contractor shall be responsible for securing and locking said areas including course access gates.

3. Contractor is subject to and shall comply with all orders and directions issued by the Golf Division Manager in the operation, maintenance and improvement of the Golf Course and facilities thereon.
4. Contractor shall employ a sufficient number of employees, agents and/or contractors to render the golf services specified herein.

a. Because such persons will be interacting with the public, Contractor shall insure that all personnel retained shall provide prompt and courteous treatment of the public using the Golf Course and its facilities, including annual fee players and/or guests.

b. All such employees must adhere to all policies and procedures set forth by the City of Dayton and the Division of Golf.

c. All such employees, contractors and/or agents shall be friendly, clean, courteous, efficient, and neat in appearances.

d. Contractor shall not employ any person(s) who use improper language or act in a loud or boisterous, discriminatory, offensive or otherwise improper manner in providing services at the Golf Course or the Golf Pro Shop.

e. Contractor agrees to terminate the services of any person whose conduct the City believes is detrimental to the best interest of the City or the operation of the Golf Course.

f. Contractor agrees to furnish the Golf Division Manager, with a list of the names and addresses of all employees a minimum of one (1) day before employment and shall update said list as necessary.

g. Contractor shall give employees their own unique security alarm code for access to secured facilities prior to their first day of work. It is the responsibility of the Contractor to maintain users and access with the designated alarm company. Upon request, Contractor shall submit to the City a list of approved users that have access to all secured facilities. Sharing access or security codes is strictly forbidden and any breach in security will be the responsibility of the Contractor.

h. The City will issue unique user information for access to the designated point of sale system. Sharing access or security codes is strictly forbidden and any breach in security will be the responsibility of the Contractor.

5. Contractor, and its employees and agents, shall collect for and on behalf of the City ALL golf-related fees and charges for the Golf Course, which includes, but is not limited to, greens fees, range fees, locker rentals, annual pass fees, league fees, golf cart fees, lesson fees and all other fees and charges for the use of the Golf Course and its facilities and/or equipment prescribed by the City. The City reserves the sole and exclusive right to establish all such fees, charges, and costs for use of the Golf Course and its facilities and equipment. The Contractor reserves the sole and exclusive right to establish all fees associated with merchandise, lessons (with exception to scope of service agreement with other PGA teaching professionals) and driving range.

6. Contractor will act as an ambassador of the City of Dayton, promoting the City of Dayton and use of the Golf Course in all aspects of the Golf Pro Shop business and golf management services. This shall include, but not be limited to, meeting and greeting customers, securing leagues and outings, providing golf and etiquette tips, and generally promoting and representing the Golf Course in a favorable light.
7. Contractor shall have the right to sponsor and promote golf tournaments, special events and other outings held at the Golf Course, provided that such tournaments, events or outings are first approved by the Golf Manager. Upon approval by the Golf Manager, Contractor shall be responsible for the scheduling, management, and collection of all revenues from such tournaments, special events and other outings. Contractor shall provide to the Golf Manager on the first day of each month, a complete schedule of tournaments and outings to be held on the course for the upcoming month and completed agreements from the prior month with number of participants, date of outing, and other information as required by the Golf Manager. Contractor will follow the City’s fee schedule and will get variances from the schedule by approval of the Golf Manager only. All fees related to outings, tournaments, and other events, shall be paid and entered into the City’s cash register system by the day of the event unless communicated and approved by the Golf Division Manager in advance. Any outings, tournaments, and other events that may require an invoice for payment shall be invoiced through the City’s point-of-sale system.

8. Contractor shall employ all the starters and rangers necessary for the Golf Course operations. Preference in hiring shall go to City of Dayton residents. Contractor shall consult with the City or such other City-designated contractor(s) prior to hiring persons for the starter and/or ranger positions. It is further agreed that all starters and rangers hired must meet the requirements set forth in the Golf Policy Manual. All starters and rangers shall receive training before or immediately following their first scheduled date of work, with such training the responsibility of the Contractor. Contractor is responsible for all Work for Play and ProShop staff uniforms.

9. Contractor shall schedule the starters and rangers accordingly to ensure proper coverage of the golf course, and shall furnish a copy of the schedule of work for approval by the Golf Division Manager. In the event Contractor fails to meet the City’s scheduling requirements and needs for starters and rangers, the City shall invoice Contractor for the cost for services not rendered to the City. Such amounts will be calculated and invoiced by the City and paid by Contractor no later than the fifteenth day of the following month.

10. Contractor will insure, through the starters and rangers that all users of the Golf Course are given a register receipt to demonstrate payment of the charges and fees to use the Golf Course, including any persons allowed discounted or free golf under the “Special Play Privilege Policy” contained in the Golf Policy Manual. In the event the starters and rangers or other staff fail to verify charges and golfers play without paying, all fees for that round will be charged to the Contractor and entered into the designated point of sale resulting in a shortage of funds that the Contractor is responsible for reimbursing to the City.

11. By execution of this Agreement, Contractor represents that it received a copy of the Golf Policy Manual and is familiar with its contents and will observe and enforce same.

12. Contractor shall, at its sole expense, provide golf shirts and nametags for all employees, starters, rangers, agents, contractors, and volunteers providing any of the
golf services specified in this Agreement. Contractor will require that all such persons wear the shirts and name tags at all times when they are providing such services at the Golf Course.

13. Contractor will pay the costs for long distance telephone, cable/internet services and alarm service for the Golf Pro Shop and Premises.

B. Contractor shall manage and operate the City’s golf cart concession at the Golf Course. The work and services to be provided by Contractor related to the golf cart concession include, but are not necessarily limited to, the following:

1. Contractor is responsible for providing the gasoline, and checking oil routinely for all gas golf carts supplied by the City. If the City procures electric carts for use in the golf cart concession, Contractor shall, on a daily basis, insure that all electric carts are fully charged. Unless the parties make other arrangements at the time the City provides electric carts for use at the Golf Course, the City will be responsible for the replacement of electric cart batteries.

2. Charging and collecting (by using the cash registers and, as applicable, the credit card processing equipment provided by the City) the fees and charges prescribed by the City for the rental of golf carts. In no event shall Contractor charge more or less than the rate, fee or charge prescribed by the City, unless a different fee or charge is approved in advance by the Golf Manager.

3. Fueling the golf carts as necessary to ensure carts will operate as needed. Contractor is responsible for all costs associated with supplying fuel, fuel tank maintenance, repairs and inspections.

4. Washing the entire golf fleet daily, unless weather conditions do not permit. In the event Contractor fails to comply with this requirement, the City may, but is not obligated to provide such washing services, with the cost thereof billed to and paid by Contractor with a 25% surcharge.

5. Conducting daily inspections of the entire golf cart fleet. Any damage or accidents must be reported on an Incident Report Form, which shall be submitted to the City’s Division of Golf administrative offices within twenty four (24) hours after the accident occurred or damage noticed.

6. Performance of all routine maintenance on the golf cart fleet. As used herein, “routine maintenance” includes, but is not limited to, adding gas and oil, cleaning and inspecting the engines and the replacement of straps and tires, as may be necessary. Contractor is responsible for providing replacement tires for all golf carts. However, Contractor is not responsible for winter routine maintenance of the golf cart fleet. Contractor agrees that no more than ten percent (10%) of the golf cart fleet may be “out of service” at any one time due to routine maintenance activities to be performed by Contractor. The City shall have the right to inspect the entire golf cart fleet, during normal business hours, to verify compliance with this provision.
7. Insuring that the "Cart Rental Agreement Form" which form will be provided by the City, is fully completed prior to each golf cart transaction, including usage when the golf cart is provided at no cost. The completed form for the day's transactions shall be given to the City on a daily basis. In the event a golf cart is provided at no cost or charge, Contractor shall provide a detailed explanation on the golf cart rental form; and if the City determines that a fee or charge should have been assessed, Contractor will pay the City an amount equal to 80% of the fee or charge that should have been collected and Contractor shall forego receipt of its Concession Fee (as this term is defined in Article VII, Subsection G).

8. Insuring a sufficient number of golf carts is available for tournaments, special events or other outings. If there is an insufficient number, Contractor shall notify the Golf Manager within five (5) days to arrange rental of additional golf carts that are necessary for such tournament, event, or outing. The revenue collected for the additional golf cart rentals will be distributed per the agreed upon golf cart percentages set forth in this Agreement.

9. Inventoring the cart fleet daily, at minimum during the close of business. Contractor must use the inventory sheet provided by the City.

10. In the event a golf cart becomes missing from the premises, the Contractor must notify the Golf Division Manager immediately. In the event that the cart is damaged or needs replaced due to the negligence of the Contractor or its agents, it is the responsibility of the Contractor to reimburse all cost associated with retrieval, repair or replacement of the cart(s). The City will invoice the Contractor for all associated fees and the Contractor must reimburse the City within fifteen (15) business days.

11. Insuring that all golf cart keys are paired with the appropriate golf cart and have a golf cart key tag associated with each key. Contractor is responsible for all cost associated with the replacement of keys and key tags.

C. Contractor shall manage and operate the City's driving range at the Golf Course. The work and services to be provided by Contractor related to the driving range include, but are not necessarily limited to, the following:

1. Charging and collecting (by using the cash registers and, as applicable, the credit card processing equipment provided by the City) the fees and charges for range balls and/or annual range passes.

2. Contractor shall determine the fees and charges for range balls and/or annual range passes. All fees and charges must be approved in advance by the Golf Division Manager.

3. Providing sufficient number of range balls, range baskets, signage, yardage markers, bag stands, and other supplies deemed necessary in the operation of the driving range.

4. Providing necessary staff to pick range balls on the range, clean range balls and deliver to the Golf ProShop for rental.
5. The City may enter into an Agreement for use of the driving range for outside PGA teaching professionals. Written approval from the City and the Contractor will be done in advance of the teaching professional starting services.

D. Contractor shall insure that the “STRAIGHT 90 DEGREE” rule and all other rules and regulations for the game of golf (including those set forth in the Golf Policy Manual) are enforced at all times.

E. Contractor shall take an active role in the promotion and management of the City’s Amateur Tournaments, Hall of Fame Induction Ceremony, junior golf programs, and other special events that may be held from time to time at Community Golf Course. Contractor shall provide, at no cost to the City, instruction, range usage and all range balls needed by the participants in the City’s Junior Golf Program.

ARTICLE VI – RIGHTS AND OBLIGATIONS OF CITY

A. City shall have the right to and shall adopt, enforce, and amend reasonable rule(s) and regulation(s) regarding the use and operation of the Golf Course, facilities, and equipment, including the Golf Policy Manual.

B. The City shall establish and approve Golf Pro Shop operation hours.

C. The Golf Division Manager and other City designees and representatives shall have, at any and all times, the full and unrestricted right to enter the Premises for the purposes of inspecting the Premises and of 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 in the exercise of the City’s police power.

D. City warrants to Contractor quiet enjoyment of the rights and privileges granted hereunder during the term of this Agreement, upon Contractor’s full and faithful performance of all terms, obligations, promises and covenants contained herein.

E. The City will maintain the Golf Course in a playable condition, insofar as weather and finances of the City permit.

F. The City reserves to itself the sole and exclusive right to manage, control, and operate the Golf Course for the benefit of the public in such manner as the City, in its discretion, shall determine advisable. Nothing contained in the Agreement shall be construed to infringe upon or interfere with this exclusive right of management, control, and operation of the Golf Course by the City in any manner whatsoever. For example, the City may authorize other PGA professionals, which have an agreement with the City, to provide golf lessons or instruction to the public at the Golf Course even though Contractor’s PGA professional will also be performing golf lessons and instruction at the Golf Course.

G. The City will provide and maintain for Contractor’s use all cash registers for all transactions at the Golf Course, including the collection of all fees, charges, and costs specified in this Agreement (i.e., golf cart concession fees, greens fees, locker rentals, merchandise sales, range fees, pass fees). The City will also provide the necessary equipment for acceptance of credit cards (Visa and MasterCard), but Contractor shall reimburse the City for all merchant
credit card transaction fees for credit transactions involving Contractor’s sales of golf merchandise, golf club rentals, golf club repair, golf lessons, and range ball charges (for purposes of this Subsection only, referred to as “Contractor Revenues”). With each invoice permitted under Article VII, Subsection J, Contractor shall deduct the merchant credit card transaction fees from the payment due Contractor and shall include in the Concession Report a detailed statement as to the credit card transactions involving Contractor Revenues. The City agrees to assume full responsibility for payment of the merchant credit card transaction fees for golf cart rentals, notwithstanding Contractor’s entitlement to the Concession Fee.

H. Whenever there are updates or upgrades to the City’s “Point of Sale” system, Contractor will receive training and overviews from the City and shall then be responsible for training and providing overviews to Golf Pro Shop staff. The City will not cover the costs of this training for Golf Pro Shop staff.

I. The City agrees to retain or make available a qualified technician to make repairs, including minor repairs, to the golf cart fleet. However, the City shall only be responsible to pay the costs of repairs to the golf cart fleet, which are not caused by Contractor’s failure to provide routine maintenance on the golf cart fleet as specified in Article V, Subsection B(6).

ARTICLE VII – FINANCIAL MATTERS AND REPORTS

A. Contractor and its employees, agents, and contractors shall use the cash registers/point of sale system provided by the City for all transactions at the Golf Course and Golf Pro Shop, including, but not limited to, collection of greens fees, golf club rentals, range ball charges, locker rentals, annual privilege fees, league fees, golf cart fees, golf lessons, golf merchandise sales and all other miscellaneous golf-related charges and fees. All such transactions must be contemporaneously entered on the cash registers and, as applicable, the credit card processing equipment at the time of sale and collection of funds.

B. Contractor shall balance the registers and credit card equipment each night. In the event of an overage (that cannot be reconciled), such funds shall be deposited as provided in Subsection D, and become property of the City. In the event of a shortage (that cannot be reconciled), Contractor shall be responsible for providing, from its own funds, an amount equal to the shortage; but such amount will be returned to Contractor if the Contractor can demonstrate to the satisfaction of the City that an inadvertent or other justifiable error occurred causing such shortage (i.e., funds were not correctly counted before deposit, register error).

C. It is Contractor’s responsibility for assuring that the beginning daily balance for all cash registers is at least One Hundred Dollars ($100).

D. Contractor shall deposit in a City-designated bank account, all daily Gross Receipts from the management and operation of the Golf Course, within a 24-hour period, excluding holidays and weekend days when designated financial institution is closed; and shall be responsible for the safekeeping, storage, and transportation of said Gross Receipts until they are deposited in the City-designated bank account. Contractor shall make deposits of monies and Gross Receipts for holiday and weekends on the next business day when the financial institution is open for business. All daily deposit receipts for Gross Receipts shall be
provided to the City’s Division of Golf Administration office the next business day after deposit and the deposit receipt must be legible and must be bank validated. For purposes of this Agreement, “Gross Receipts” means all revenues derived from the management and operation of the Golf Course, whether by cash, check or credit card, including, but not limited to: greens fees, golf club rentals, locker rentals, annual privilege fees, league fees, Golf Cart Revenues, golf merchandise sales at the Golf Pro Shop, range ball charges, cash register overages, and all other fees and charges for the use of the Golf Course and its facilities and/or equipment, including any sales taxes or other taxes relating to sales or services provided.

E. The City agrees to pay Contractor a “Golf Management Fee” of One Thousand and Two Hundred Dollars ($1,200) per month for the golf management services to be provided pursuant to this agreement. In addition, the City agrees to pay Contractor a “Performance Goal Fee” of One Thousand Dollars ($1,000.00) per quarter. Such payment is subject to the Contractor meeting or exceeding complete quarterly performance objectives set forth as follows. In the event only a % of the goals are completed, such payment will be prorated based on the percentage completed. These Performance Goals may be modified or adjusted annually; however any such modifications must be reduced to writing and mutually agreed upon:

1. By the end of March each year, Contractor must have:

   a. Revise Community Golf Shop Procedure Manual which outlines operational expectation for employees. Manual should include Division of Golf Operations Manual where applicable. Manual should be reviewed and Approved by Golf Manager prior to staff trainings.

   b. Conduct pre-season staff training for all staff (Proshop, Starter, Ranger) to include Procedure Manual and any changes for the upcoming season. Sign-in sheets and meeting agenda from said training must be submitted to the Golf Division Manager by March 31.

   c. Effectively communicated with all prior year league presidents and outing organizers, including appreciation for prior year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of said communication must be provided to the Golf manager by March 31 of each year.

   d. Effectively communicated with the Men’s and Women’s Associations of Community Golf Course to ensure that any scheduling needs are met and that any questions and/or concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by March 31 of each year.

   e. Be innovative and create new programming not limited to traditional golf. Plan at minimum one new program or marketing initiative for the upcoming year. Detailed plan must be submitted and approved by the Golf Division Manager by March 31. Marketing collateral to be used for said activity must be readily available to the public by May 1st of each season.
f. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.

g. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

h. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

2. **By the end of June each year, Contractor must have:**

   a. Worked with the Dayton Golf Commission and fellow City of Dayton Golf Professionals to ensure that the annual Golf Commission tournaments have been effectively planned and executed or are ready for execution.

   b. Implement at minimum planned new program or marketing initiative per season as approved by the Golf Division Manager. Marketing collateral to be used for said activity must be readily available to the public by May 1st of each season.

   c. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.

   d. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

   e. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

3. **By the end of September each year, Contractor must have:**

   a. Effectively communicated with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of said communication must be provided to the Golf manager by September 30 of each year.

   b. Executed the new program and marketing efforts or other initiatives specified to the golf manager in the first and second quarter.

   c. Effectively and actively supported the City of Dayton’s Junior Golf program by providing course times to the program, assisting with program lessons, player development, and positively communicating and advertising the program to guests and potential customers.
d. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.

e. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

f. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

4. By the end of December each year, Contractor must:

   a. Submit your annual accomplishments as it pertains to the operation, programming and management of Community Golf Course.

   b. Submit a detailed plan for any and all aesthetic or capital improvements to the Golf Shop for the upcoming year. Plans must be submitted in writing by December 31 of each year.

   c. Effectively communicate with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of communication must be provided to the Golf manager by December 31 of each year.

   d. Effectively communicate with the Men’s and Women’s Associations of Community Golf Course to ensure that any scheduling needs have been met and that any questions and/or concerns from the current year have been addressed and any concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by December 31 of each year.

   e. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.

   f. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

   g. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

F. The City will make available to Contractor a stipend of Four Thousand Two Hundred and Fifty Dollars ($4,250) per month for Golf Shop personnel costs.

G. The City will pay Contractor a “Concession Fee” of twenty percent (20%) of the Golf Cart Revenues for all work and services provided by Contractor for the golf cart concession. As used herein “Golf Cart Revenues” shall mean all monies collected or charged, whether by cash or credit, for the rental of the golf carts at the Golf Course.
H. The City will retain a “Maintenance Fee” of ten percent (10%) of Driving Range Revenues for all work and services provided by the City for the driving range. As used herein “Driving Range Revenues” shall mean all monies collected or charged, whether by cash or credit for the rental of driving range balls at the Golf Course. In exchange for the Maintenance fee, the City will mow the driving range, seed and ensure the range remains in as good of condition as excessive use, weather and budget permit. Contractor, at its sole cost and expense, shall make and maintain all improvements to the golf course driving range.

I. On the 1st day of each month during the term of this Agreement, Contractor shall submit to the City an invoice for payment of the Golf Management Fee and request for disbursement of the monthly installment amount for Golf Pro Shop personnel costs. Upon request by the City, Contractor shall furnish supporting documentation and records to substantiate the information contained in said report. The City shall use good faith efforts to pay such invoice on or before the 15th day of the month.

J. On the 1st and 16th day of each month (or the next business day that is not a Saturday, Sunday, or City observed holiday) during the term of this Agreement, Contractor shall review an invoice prepared by the City for payment of the Concession Fee and release of the funds related to golf merchandise sales, golf lessons, golf club rentals and range ball charges. Contractor shall sign a sworn or verified “Concession Report”, in a format acceptable to the City, detailing, at a minimum for the immediately preceding period, the total amount of Golf Cart Revenues and golf merchandise sales (which amount shall include payment of all sales taxes and other taxes charged, as payment of such taxes is the responsibility of Contractor), golf club rentals, golf lessons, and range ball charges and the total amount of credit transactions for which Contractor is responsible for the payment of the associated merchant credit card acceptance fee as required in Article VI, Subsection G. Unless disputed or the Concession Report is incomplete, the City will use good faith efforts to pay the invoice within fifteen (15) business days from the City’s receipt of the invoice.

K. Quarterly, Contractor shall submit to the Golf Division Manager a detailed income statement, in compliance with GAAP and in such format acceptable to the City, together with such additional information or documentation as the City may require. If as a result of such statement a discrepancy is noted, Contractor shall take such corrective action as the City may require.

L. The City’s financial obligations under this Agreement are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available.

M. City has the right to withhold payment to Contractor of the Golf Management Fee; Golf Shop Personnel Costs; Concession Fee; and, Driving Range Revenues, as described in Subsections (E), (F), (G), and (H) of this Article VII, in the event that Contractor is under investigation and/or has been placed on administrative leave during the pendency of any such investigation, for possible misconduct in connection with the duties and responsibilities of Contractor under this Agreement.
ARTICLE VIII – INSURANCE AND INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees against any and all claims for injury or damage to persons or property in any way connected with or arising out of Contractor’s occupancy or use of the demised premises, the performance or non-performance of this Agreement and the acts, errors and omission of Contractor or its employees, agents, and/or contractors.

B. During the term hereof, Contractor shall procure and maintain, at Contractor’s sole cost and expense, with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, Comprehensive General 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 specifically covering all personal injuries, property damage and all losses and damages occurring on the Premises and/or resulting from Contractor’s activities at the Golf Course. Contractor’s insurance shall also include coverage for damaged doors and glass breakage and any structural damage related thereto.

C. Contractor shall also maintain Workers’ Compensation Insurance for all employees, in such amounts as prescribed by Ohio law.

D. All policies of insurance required herein, but excluding Workers’ Compensation Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that City shall be notified thirty (30) days in advance of any termination or diminution of coverage. Within thirty (30) days of the execution of this Agreement, Contractor shall furnish the Golf Division Manager with a complete copy of the certificate(s) of insurance demonstrating compliance with the insurance requirements contained herein.

E. Contractor shall furnish a performance and fidelity bond in the amount of Twenty Five Thousand Dollars ($25,000) to indemnify the City against loss of funds collected by Contractor on behalf of City and its agents or employees, in accordance with the terms of this Agreement and to be held by the City as security for the performance of Contractor’s obligations under this Agreement.

ARTICLE IX – NON-DISCRIMINATION

A. Contractor 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.

B. 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 Contractor to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement.
C. Contractor agrees that it will not discriminate by segregation or otherwise, against any person or persons because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap in furnishing or by refusing to furnish to such person or persons the use of the Golf Course facility, including any and all services, privileges, and activities provided thereat.

D. In the event of a finding of a breach of the above nondiscrimination covenant, the City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and facilities thereon and the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. Notwithstanding the foregoing sentence, it is specifically agreed that nothing herein contained shall prevent Contractor from exhausting all administrative and/or judicial remedies available to Contractor in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

ARTICLE X – TERMINATION

A. This Agreement may be terminated by the City upon giving written notice of termination to Contractor at least thirty (30) days prior to the effective date of such termination. The City may immediately terminate this Agreement, without notice, in the event of any unethical conduct by Contractor or violation or alleged violation of federal, state, or local law, rule, regulation, or order, but excluding any violation or alleged violation of the Golf Policy Manual.

B. This Agreement may be terminated by the City in the event Contractor defaults in the performance of any duty, obligation or responsibility hereunder, including any violation or alleged violation of the Golf Policy Manual, but only if Contractor fails to cure the default to the satisfaction of the City or fails to submit a mutually acceptable plan to cure said default within fifteen (15) days from the City’s written notice to the Contractor explaining the default.

C. Contractor may terminate this Agreement in the event the City defaults in the performance of its duties, responsibilities or obligations hereunder, but only if the City fails to cure or undertake reasonable actions to cure the default within thirty (30) days from Contractor’s written notice to the City explaining such default.

D. In the event this Agreement is terminated, the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. On the effective date of termination, the City shall take immediate possession of the Premises, without being deemed guilty of trespassing, but will allow the Contractor to access the Premises for the period and specific purpose set forth in Article II, Subsection D.

ARTICLE XI – GENERAL PROVISIONS

A. Where this Agreement speaks of approval and consent by the City or the Golf Division Manager, such approval and consent will not be unreasonably withheld.

B. This Agreement represents the entire and integrated agreement between City and Contractor. 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. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

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

D. Contractor shall meet with the City and its designees at such reasonable times designated by the City to review and discuss performance of this Agreement. Contractor shall allow the City to conduct inspections or monitoring, and shall cooperate with the City in all respects concerning the review and monitoring of Contractor’s performance pursuant to this Agreement.

E. Any written notice or other communication 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 herein. Such written communication or notice shall be addressed to:

   Contractor: Prior to Tee Time, LLC
               c/o Jana Dalton
               5555 Germantown Pike
               Dayton, Ohio 45418

   City: The City of Dayton, Ohio
          Department of Recreation & Youth Services
          Attn: Golf Division Manager
          3383 Chuck Wagner Lane
          Dayton, OH 45414

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

F. Contractor shall not assign any rights or duties under this Agreement without the prior written consent to the City. Unless otherwise stated in the City’s written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement. Notwithstanding the foregoing, all promises, covenants, stipulations, and agreements set forth in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

G. Contractor represents that it has carefully reviewed the terms and conditions of this Agreement, 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 Agreement.

H. By executing this Agreement, Contractor acknowledges and agrees that it will be providing services to the City as an “independent contractor”. As an independent contractor for the
City. Contractor shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Subsection. Contractor 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.

Contractor understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement, including starters and rangers, are not City employees and not entitled to any of the emoluments of City employment. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all local, state, and federal taxes. Contractor understands and agrees that neither he, nor any of the persons hired to perform the duties and responsibilities under this Agreement are "public employees" for the purpose of membership in the Ohio Public Employees Retirement System ("OPERS").

I. The City may amend this Agreement, provided no such amendment shall be effective unless it is reduced to writing, executed by each party and, if required, approved by the Commission of the City of Dayton, Ohio.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

PRIOR TO TEE TIME, LLC
an Ohio Limited Liability Company

By:  

Print:  

Its:  

THE CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

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

, 2017

Min. Bk.  Pg.  

Clerk of the Commission
City Manager's Report

From: 6550 - RYS/Golf
Supplier, Vendor, Company, Individual
Name: Prior to Tee Time LLC
Address: 5555 Germantown Pike
Dayton, Ohio 45418

Date: October 18, 2017
Expense Type: Service Agreement
Total Amount: $808,200.00 (thru 12/31/20)
Rev: $600,000.00

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>Golf Operating</td>
<td>59000-6550-1158-56 59000-6510-24111-56</td>
<td>$808,200.00</td>
</tr>
<tr>
<td></td>
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<td>$600,000.00</td>
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</tbody>
</table>

Includes Revenue to the City: Yes

Affirmative Action Program: Yes

Description

Service Agreement
Golf Professional Services and Use of Space at Community Golf Course

Approval is requested for an agreement to commence on January 1, 2018 through December 31, 2020 for Golf Professional Services and Use of Space at Community Golf Course. The total contract shall not exceed $808,200.00 which is comprised of the following:

1. **Golf Professional Services and golf shop personnel - $208,200.00**
   The contractor shall be paid $1,200.00 monthly and for golf professional services ($14,400.00 annually), up to $1,000.00 per quarter for meeting Performance Goals (up to $4,000.00 annually) and $4,250.00 monthly for golf shop personnel ($51,000.00 annually) over the term of the contract. Golf professional services and costs for starters and rangers shall not exceed $69,400.00 annually.

2. **Revenue from Pro Shop sales, lessons, driving range and cart concessions - $600,000.00**
   The contractor deposits all daily gross receipts from both City and contractor-generated revenue. Under this section of the contract, the contractor is reimbursed for 100% of sales and fees related to the pro shop merchandise and lessons, 60% of the driving range and 20% of cart rentals. The contractor submits bi-monthly invoices to the City for the aforementioned sales and fees. The City then issues a check to the contractor for that revenue. The revenue estimate per year is $200,000.00.

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

A Certificate of Revenue for the contract in the amount of $600,000.00 is attached in order to receive revenue from pro shop sales, lessons, driving range and cart concessions.

A Certificate of Funds in the amount of $269,400.00 in order to pay for golf professional services, golf shop personnel and reimbursed revenue from pro shop sales, lessons, driving range and cart concessions.

Signatures/Approval

Approved by City Commission

[Signature]
Clerk
Date: October 18, 2017

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/01/18</td>
<td>Required Documentation</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/20</td>
<td>Initial City Manager's Report</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$808,200.00</td>
<td>Initial Certificate of Funds</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$269,400.00</td>
<td>Initial Agreement/Contract</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$538,800.00</td>
<td>Copy of City Manager's Report</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$</td>
<td>Copy of Original Certificate of Funds</td>
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<tr>
<td>Decrease Encumbrance</td>
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<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
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<table>
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<tr>
<th>Amount: $269,400.00</th>
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<tbody>
<tr>
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<tr>
<td>Fund Org Acct Prog Act Loc</td>
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<td>Amount:</td>
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</tr>
<tr>
<td>Fund Org Acct Prog Act Loc</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALS

Vendor Name: Prior to Tee Time
Vendor Address: 5555 Germantown Pike Dayton OH 45418
Federal ID: 282020217
Commodity Code: 96199
Purpose: Golf Professional payments per contract at Community Golf Course for FY18.

Contact Person: Kelly Pressel
RYS/Golf
Originating Department Director's Signature: Kelly Pressel
Department/Division 9/25/2017 Date

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: Melissa Fayett
Date 9-9-17
Prepared by
Date 9/14/19 7:22 CM/ACT Number

Finance Department

October 18, 201
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Prior to Tee Time
Address:  5555 Germantown Pike
City: Dayton  State: OH  Zip+4: 45418 -
Customer #: 262020217  Address Location #
Federal ID #: 262020217

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

Contract Information:
Contract Start Date: 1/1/18  Contract Expiration Date: 12/31/20

Billing Information:
Rate: Will Vary  Arrears: X  Pre-bill: 
Monthly (1st month of billing) January 2018
Quarterly (1st month of quarter)   
Semi-annual (1st month of half)   
Annual (1st month of billing)   
Other (explain): BI-Monthly Invoices
Rate Change Date: NA  Rate Change Amount: NA

Description of Services (wording on invoice):
Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department's pay-in process. Total estimated revenue for the contractual period is $600,000 ($200,000 annually).

Departmental Approval: Kelly Presel for RW 9/25/17

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 3-0217-1  Auditor: VeraBrite  Date: 10/2/17

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: 

BACK
A RESOLUTION

Declaring the Intention of the Commission to Vacate
Jackson Boulevard, Milwaukee Avenue, Windsor Street,
Leeland Street, Florida Avenue, St. Clair Avenue, Island
Park Avenue, Boden Street and associated alleys within the
grounds of Carillion Historical Park.

WHEREAS, The vacation of the Jackson Boulevard, Milwaukee Avenue,
Windsor Street, Leeland Street, Florida Avenue, St. Clair Avenue, Island Park Avenue,
Boden Street) and associated alleys within the grounds of Carillion Historical Park as
described herein will enable the abutting property owners to develop this property; and

WHEREAS. The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the intention of the Commission is hereby declared to vacate the
Jackson Boulevard, Milwaukee Avenue, Windsor Street, Leeland Street, Florida Avenue,
St. Clair Avenue, Island Park Avenue, Boden Street more particularly bounded and
described in as follows:

Being all of the Jackson Blvd (60' ROW), Milwaukee Ave (50' ROW),
Windsor St (50' ROW), Leeland St (50' ROW), Florida Ave (50' ROW), St.
Clair Ave (50' ROW), Island Park Ave (60' ROW), Boden St (50' ROW) and
associated alleys within the grounds of Carillion Historical Park

Adopted by the Commission ............................................., 2021

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

Mayor, City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
September 1, 2021

TO: Shelley Dickstein  
City Manager

FROM: Joseph Weinl, Chief Engineer  
Division of Civil Engineering

SUBJECT: The Vacation of Jackson Boulevard, Milwaukee Avenue, Windsor Street, Leeland Street, Florida Avenue, St. Clair Avenue, Island Park Avenue, Boden Street and associated alleys within the grounds of Carillon Historical Park

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21590 requesting the vacation was received from Dayton History Inc. on August 19, 2021. The vacation will clean up the property that is no longer used as public right of way.

If you have any additional questions, please contact me at 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
July 21, 2021

Coolidge Wall
c/o Shannon Costello
33 W First Street
Dayton, OH 45402

Re: PLN2021-00285 – Public Way Vacation: Carillon Park

Meeting Date: July 13, 2021 Decision: Approved as Submitted

Case Description: A request to vacate Jackson Blvd (60' ROW), Milwaukee Ave (50' ROW), Windsor St (50' ROW), Leeland St (50' ROW), Florida Ave (50' ROW), St. Clair Ave (50' ROW), Island Park Ave (60' ROW), Boden St (50' ROW) and associated alleys within the grounds of Carillion Historical Park and north along the Great Miami River.

The City Plan Board found the proposed vacation met the criteria cited in R.C.G.O. Section 150.445(B) and was therefore approved as submitted.

The next step toward the completion of the vacation is to pursue the request through the petition process. Please contact Joe Weinel, Chief Engineer, at (937) 333-4218 or Joe.Weinel@daytonohio.gov to obtain the petition. If you have any questions, he will be your new contact for the remainder of the vacation process.

Sincerely,

Tony Kroeger, Secretary
City Plan Board

c: Decision Memorandum Distribution List
Second Alley East of Corwin Street from Xenia Avenue to Noel Court

CHECK OF PETITION

Jackson Blvd (60' ROW), Milwaukee Ave (50' ROW), Windsor St (50' ROW), Leeland St (50' ROW), Florida Ave (50' ROW), St. Clair Ave (50' ROW), Island Park Ave (60' ROW), Boden St (50' ROW) and associated alleys within the grounds of Carillon Historical Park

Checked 8/26/2021 by Joseph Weinle

<table>
<thead>
<tr>
<th>Name of Owner</th>
<th>B.P.I.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education and Musical Arts Inc.</td>
<td>107-2-1, 3, 4, 7, 8</td>
</tr>
</tbody>
</table>