

To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: June 23, 2016
Initiated By: Tracey Gee, Director of Recreation Services
Re: Resolution 39-16 – Partnership with Mesh Fitness

Background

Resolution 39-16 authorizes the City Manager to enter into an agreement with Mesh Fitness for shared recreation services.

With growing community needs for indoor recreation space and additional programs, staff is exploring some innovative partnership ideas with private sector fitness businesses that could yield new program opportunities, increase available space for fitness and relieve some of the congestion at the Dublin Community Recreation Center. Until recently, there has been little to no interest to staff inquiries from private sector fitness businesses. The hope is that this will be the inaugural partnership of this type and that many more will follow with other private sector fitness entities, thus expanding available services to residents.

As a regular practice, Recreation Services staff reach out to community stakeholders, private sector contractors and local businesses to develop partnerships that expand City programming and service delivery for residents. Some examples of these more traditional types of partnerships include local restaurants for food and beverage experiences, various fitness contractors, canoe/kayak adventures, youth athletic programs and the Dublin City Schools Community Education programs.

The City strategy behind exploring this particular partnership involves:

1. Increasing fitness amenities available to residents.
2. Increasing service provision without incurring capital and perpetuating operating costs.
3. Increase utilization of DCRC programs and services.
4. Reduce disruption to DCRC member activities during annual shutdown periods.
5. Partnering with Mesh in the same way we do with the Dublin City Schools and their community education programs to strategically coordinate program planning, avoid duplication of service and leverage shared expertise and resources.

The details of the partnership opportunities discussed with Mesh are outlined in the Service Agreement that has been provided with the resolution.

Staff will continue to have open dialogue with all interested private sector fitness entities. It is staff's anticipation that a successful partnership with Mesh could call attention to the benefits of shared use between the City and private sector fitness facilities and open up future opportunities to expand City services in a cost effective manner.

Recommendation

Staff recommends Council approval of Resolution 39-16. Please contact Tracey Gee at 410-4561 with any questions.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. 39-16

Passed _____, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MESH FITNESS FOR SHARED RECREATION SERVICES

WHEREAS, the City of Dublin (the "City") desires to strategically enhance the recreational programs and services and to avoid duplication of efforts; and

WHEREAS, the City desires to engage Mesh Fitness to perform the services as more fully described in the attached Exhibit A (the "Services"); and

WHEREAS, Mesh Fitness desires to perform the Services and desires to be so engaged; and

WHEREAS, the City desires to execute an agreement in a form substantially similar to the attached Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Dublin, _____ of the elected members concurring, that:

Section 1. The City Manager is hereby authorized to execute an agreement in a substantially similar form to the attached Exhibit A with Mesh Fitness for the said Services.

Section 2. This Resolution is effective upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____, 2016.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and entered into and effective on this 27th day of June, 2016 ("Effective Date") by and between the **City of Dublin**, Ohio ("Dublin"), an Ohio Municipal Corporation, with offices located at 5200 Emerald Parkway, Dublin, Ohio 43017 and **Mesh Fitness** ("Service Provider"), with an office and principal place of business located at **6680 Riverside Drive, Dublin, OH 43017**.

Recitals

WHEREAS, Dublin desires to engage Service Provider to perform the services as more fully described in the attached Exhibit A (the "Services"); and

WHEREAS, Services Provider desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

Provisions

I. Performance of the Services. Service Provider shall:

- A. Perform the Services as set forth in Exhibit A.
- B. If Service Provider is an *individual*, complete, sign and return the Ohio Public Employees Retirement System ("OPERS") Independent Contractor Acknowledgement form. See Exhibit B.
- C. Give prompt notice to Dublin should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.
- D. Remit to Dublin after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials. Provider shall be entitled to retain copies for Provider's files.

II. Obligations of Dublin. Dublin shall:

- A. Assist the Service Provider by placing at its disposal all available information pertinent to the Services for the project.
- B. Use its best efforts to secure release of other data applicable to the project held by others.
- C. Make all necessary provisions to enter upon public and private property as required to perform the Services.

D. Give prompt notice to the Service Provider should Dublin observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

III. Term and Termination. The Agreement shall commence on **June 27, 2016** and shall terminate on **June 27, 2017**. Dublin may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Dublin prior to its natural expiration, Service Provider shall be paid the amounts for work actually performed in accordance with this Agreement to the date of this early termination.

IV. Payment.

Service Provider shall not be monetarily compensated for services provided pursuant to this Agreement.

V. Relationship of the Parties. The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Dublin. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Dublin of a partnership, association, or joint venture. Further, the parties acknowledge that Service Provider is not eligible for workers' compensation or unemployment compensation; is not eligible for employee fringe benefits such as vacation or sick leave; does not appear on Dublin's payroll; is required to provide his or her own supplies and equipment; and is not controlled or supervised by Dublin personnel as to the manner of work.

VI. Indemnification.

A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Service Provider agrees to indemnify and save Dublin, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from the negligent acts, errors or omissions by the Service Provider or its employees.

B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless Dublin, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Service Provider, any subconsultant(s) of the Service Provider, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

VII. Insurance.

- A. The Service Provider shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Service Provider may be legally negligent. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- D. The Service Provider shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).
- E. Dublin shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.
- F. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified. Certificates showing that the Service Provider is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Dublin prior to the start of work on the project and before Dublin is obligated to make any payments to the Service Provider for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Dublin is an "Additional Insured".

VIII. Employee Documentation

- A. Service Provider guarantees that the individuals employed by the Service working on this project are authorized to work in the United States. The Service Provider will upon demand provide Dublin with appropriate documentation (Form 1-9) for any Service Provider employee performing services for Dublin.

- B. The Service Provider agrees to indemnify Dublin in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes.

- A. Service Provider has the following identification number for income tax purposes:
_____.
- B. Service Provider is subject to and responsible for all applicable federal, state, and local taxes.
- C. Dublin represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request. Service Provider hereby further agrees to withhold all municipal income taxes due or payable under the provisions of Chapter 35 and/or 38 of the Codified Ordinances of Dublin, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.
- D. The Service Provider shall receive Internal Revenue Service form 1099 from Dublin for income tax reporting purposes.

- X. **Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

- XI. **Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

XII. Discrimination.

- A. No discrimination for reason of race, color, national origin, religion, sex, genetic information, pregnancy, age, ancestry, military status, sexual orientation, gender identity, marital status, veteran's status, or disability shall be permitted or authorized by Dublin and/or Service Provider in connection with the Services.
- B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of Service Provider.

- XIII. **Governing Law/Venue.** Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees,

agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Franklin County, Ohio.

- XIV. Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.
- XV. Paragraph Headings.** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[signatures appear on following page]

BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE BEEN INFORMED THAT THE CITY OF DUBLIN, OHIO HAS CLASSIFIED YOU AS AN INDEPENDENT CONTRACTOR AND THAT YOU HAVE BEEN ADVISED THAT CONTRIBUTIONS TO OPERS WILL NOT BE MADE ON YOUR BEHALF FOR THESE SERVICES.

FURTHER, BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT THE CITY OF DUBLIN, OHIO HAS IN NO WAY LIMITED OR RESTRICTED YOUR RIGHT TO PROVIDE THE AGREED-TO SERVICES TO THE GENERAL PUBLIC AND THAT YOU REGULARLY PROVIDE SUCH SERVICES TO THE GENERAL PUBLIC.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the **27th** day of **June**, **2016**.

CITY OF DUBLIN, OHIO

BY: _____
Dana L. McDaniel, City Manager

BY: _____
Department Director

SERVICE PROVIDER

BY: _____
ITS: _____

Approved as to Form:

Law Director

CERTIFICATION OF FUNDS

I hereby certify that the funds required to meet the City's obligation, payment, or expenditure under this Agreement have been lawfully appropriated or authorized for such purpose and are free from any obligation now outstanding.

Angel L. Mumma, Director of Finance

Date

EXHIBIT A

Scope of Services

1. Description of Understanding:

In an effort to strategically enhance the programs and services provided to Dublin residents and to avoid duplication of efforts, Dublin Recreation Services and Mesh Fitness wish to establish Scope of Services to outline their partnership efforts.

Both entities have community service oriented philosophies and wish to maximize their positive impact to the Dublin community particularly with regard to the the new Bridge Street District / Bridge Park development.

2. Mesh Fitness' partnership contributions include:

- a) Donating \$15 of each sign up to a mutually agreed upon Dublin charitable organization. Charitable donations renew annually when the member renews.
- b) Provide an add-on membership option for DCRC members where enrollment fees are waived or donated to local Dublin charitable organization.
- c) Work with Events Administration to partner on 1 to 2 annual events that include charitable donations.
- d) Incorporate DCRC Fitness Assessment Services (metacheck, bod pod, cardio coach) into their available member services.
- e) Collaboratively plan outdoor park programming with Dublin Recreation Services to avoid duplication of services and cross-promote available options.
- f) Provide space in the Mesh Fitness facility to cross promote Dublin Recreation Services programming.
- g) Promote City of Dublin, Recreation Services partnership along with other partners in Mesh lobby.
- h) Provide a limited number of daily passes to the DCRC which will be made available to members as a workout option during the DCRC annual shutdown period. Also work collaboratively with Recreation Services to develop special outdoor programs available to DCRC members during the annual shutdown period.
- i) Work with Recreation Services and Parks Operations when creating signage to link Mesh's outdoor zone to the parks.
- j) Provide access to lockers and showers to DCRC members who are visiting Bridge Park.

3. City of Dublin, Recreation Services' partnership contributions include:

- a) Providing a table location at the DCRC for Mesh to begin taking pre-opening reservations.
- b) Work with Mesh to create and operate an add-on service program that would give DCRC members access to Mesh Fitness in Bridge Park (all services).
- c) Provide a full page in the 2016 Fall Brochure to outline this partnership and available programs and services.
- d) Provide access for Mesh personal trainers to the DCRC personal trainer sanctioning process so that they can train clients at both locations.
- e) Issue an annually renewing park permit to allow Mesh Fitness to offer paid programming in Bridge Park.
- f) Collaboratively plan outdoor park programming with Mesh Fitness to avoid duplication of services and cross promote available options.
- g) Provide space in the DCRC to cross promote Mesh Fitness program offerings.

4. Implementation Timeline:

The goal is to initiate the pre-sale services for July, partner on some limited programming options for this summer, including during July is Parks and Recreation Month and then continue to pursue some of the other programming partnerships for the Fall 2016 brochure.

5. Project Team Members:

Mesh Fitness:

Matt Davis, Ryan Dell, Caity Dell, Ryan Fogelman

City of Dublin:

Matt Earman, Tracey Gee, Kate Mattison, Erin Duffee, Kirk Fisher

EXHIBIT B (ONLY IF INDIVIDUAL)



**INDEPENDENT CONTRACTOR/WORKER
ACKNOWLEDGMENT**

Ohio Public Employees Retirement System
277 East Town Street, Columbus, Ohio 43215-4642

Employer Outreach: 1-888-400-0965
www.opers.org

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

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First Name

MI

Last Name

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Name of Current Employer

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STEP 2: Public Employer Information

Name of Public Employer for Which You Are Providing Personal Services

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Employer Contact

First Name

MI

Last Name

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Employer Code

Employer Contact Phone Number

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Service Provided to Public Employer

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Start Date of Service

End Date of Service

Month Day Year

Month Day Year

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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. If entering into a contract to provide services as an independent contractor to the same employer from which you retired, or to any employer if less than two months after the retirement allowance commences, the pension portion of your benefit will be forfeited during the period of the contract. The annuity portion of your benefit will be suspended and will be paid in a lump sum upon termination of the contract.

This acknowledgement 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 you have 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 _____ Today's Date ____/____/____
Do not print or type name