



Office of the City Manager
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Memo

To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: July 1, 2016
Initiated By: Tracey Gee, Director of Recreation Services
Re: **Resolution 43-16 – Authorizing the City Manager to Enter Into an Agreement with The Club at Corazon for Shared Recreation Services**

Background

Resolution 43-16 authorizes the City Manager to enter into an agreement with The Club at Corazon for shared recreation services.

As you will recall from the memo to City Council dated June 9, 2016, staff is exploring some innovative partnerships with private sector fitness businesses that could yield new program opportunities for residents, increase available space for fitness and relieve some of the congestion at the Dublin Community Recreation Center (DCRC.)

One such fruitful partnership is developing between the City and The Club at Corazon. Representatives of Corazon contacted the City to offer its pool facilities at no cost to DCRC members as one of the many options being provided during the upcoming DCRC pool renovation and closure (mid-July through mid-September 2016.)

In exchange for this access, the City will provide funds to offset additional operating costs (pool chemical treatments and staffing) that Corazon would incur due to anticipated higher attendance. This arrangement benefits DCRC members by offering another option during the closure and benefits The Club at Corazon with increased visibility while providing a service to the community.

The hope is that this will be one of many partnerships of this type with The Club at Corazon and other private sector fitness entities, thus expanding available services to residents.

The City strategy behind exploring these particular partnerships involves:

1. Increase fitness amenities available to residents.
2. Increase 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.

While the details of the partnership with Corazon are continuing to develop as staff works to resolve outstanding terms, the final agreement will be substantially similar to the attached Exhibit A.

Recommendation

Staff recommends approval of Resolution 43-16, Authorizing the City Manager to Enter into an Agreement with The Club at Corazon for Shared Recreation Services. Please contact Tracey Gee at 410-4561 with any questions.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. 43-16 Passed _____, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE CLUB AT CORAZON FOR SHARED RECREATION SERVICES

WHEREAS, the City of Dublin (the "City") will be shutting down its Recreation Center pools from July 17, 2016-September 18, 2016 for maintenance purposes; and

WHEREAS, The Club at Corazon ("Corazon") has offered to permit Dublin Recreation Center users to use its pools during the period the Recreation Center pools will be closed; and

WHEREAS, to reflect this arrangement, the City and Corazon desire 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, Franklin, Delaware and Union Counties, State of Ohio, _____ 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 Corazon.

Section 2. This Resolution shall be effective immediately 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 ___ day of July, 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 **The Club at Corazon** ("Service Provider"), with an office and principal place of business located at **7155 Corazon Drive, Dublin, OH 43016**.

Recitals

WHEREAS, Corazon has offered to provide access to its swimming pools for Recreation Center members during the time the Dublin Recreation Center pools will be closed for maintenance in exchange for Dublin paying the increased costs of chlorine for the pools due to the additional pool users as well as reimburse Corazon for up to ___ additional lifeguards to monitor the pools during such period; and

WHEREAS, Dublin desires to offer the Corazon pools as an alternative during the Recreation Center's pool shut down; and

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. Keep all of its pools open to Dublin's Recreation Center users from July 17, 2016 – September 18, 2016 and permit such individuals to use the Corazon pools at no charge during this time period. DCRC members must show their identification cards to gain entry to the Service Provider's pools.
- 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 **July ____, 2016** and shall terminate on **September 18, 2016**. 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.

Dublin shall pay Service Provider _____, which reflects the cost of chlorine to treat the Corazon pools during the term of the Agreement.

Dublin shall also reimburse Service Provider for up to ___ additional lifeguards to monitor the pools during the term of this Agreement. Such reimbursement shall not exceed _____. Service Provider shall provide invoices documenting the lifeguard costs to Dublin's satisfaction prior to reimbursement.

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. **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. 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.
- B. 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.
- C. 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.
- D. 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 ____ day of **July, 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

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