

ORDINANCE NO. 7044

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE 2017 AMENDED AND RESTATED MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT BY AND BETWEEN MIAMI TOWNSHIP AND THE CITY OF MIAMISBURG TO ADD PROPERTY TO THE MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT, AND APPROVING ACTIONS ANCILLARY THERETO AND DECLARING AN EMERGENCY.

WHEREAS, The City of Miamisburg, Ohio (the “City”) and Miami Township, Montgomery County, Ohio (“Miami Township”) (together, the “Contracting Parties”) entered into the 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of December 19, 2017 (the “JEDD Contract”) in accordance with Ohio Revised Code Section 715.72 to provide for the continued operation of the Miami Crossing Joint Economic Development District (the “District”) for the benefit of their residents and residents of the State;

WHEREAS, The JEDD Contract provides that the legislative authorities of the Contracting Parties may amend the JEDD Contract to add to or remove from the District any area that was not originally included in the District in accordance with Section 715.72(L) of the Revised Code;

WHEREAS, The Contracting Parties now desire to amend the JEDD Contract to both add to and remove certain areas to the District pursuant to the terms of a Second Amendment to 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract (the “Second Amendment”), and

WHEREAS, The City Council has determined that it is in the best interests of the citizens of the City for the City to approve and enter into the Second Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Council hereby finds and determines: (i) that the Council held a public hearing concerning the Second Amendment at 6:00 p.m. on November 7, 2023, in accordance with Section 715.72(L) of the Revised Code; (ii) that 30 days’ public notice of the time and place of that public hearing was provided in the *Dayton Daily News*, a newspaper of general circulation in the City; (iii) that during the 30-day period prior to that public hearing, a copy of the Second Amendment, a description of the area to be added to the District, and a map in sufficient detail to denote the specific boundaries of the area and to indicate any zoning restrictions applicable to the area, were on file for public examination in the office of the Clerk of Council; (iv) that public comment and recommendations on the proposed Second Amendment were allowed pursuant to the public hearing; (v) that the Second Amendment is on file with the Clerk of Council; and (vi) that the Council is in receipt of a petition signed

by a majority of the owners of property located within the area to be added to the District, and a petition signed by a majority of the owners of businesses, if any, located within the area to be added to in the District.

Section 2.

The City Manager is authorized to execute the Second Amendment and to take such actions, or to cause such actions to be taken, on behalf of Council, including signing agreements or other instruments contemplated by the Second Amendment or this Ordinance, including without limitation the Second Amendment as on file with the Clerk of Council, or deemed necessary or appropriate by Council, in order to accomplish the purposes of this Ordinance and the Second Amendment.

Section 3.

That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 4.

This Ordinance hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety, and welfare of the City, and therefore this Ordinance shall be in full force and effect immediately upon its adoption.

Passed: November 7, 2023

Attested Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle Collins, Mayor

I hereby certify that the above is a true and correct copy of Ordinance No. 7044 adopted by the Council of the City of Miamisburg, Ohio, on November 7, 2023.

Date: 11/8/2023

Kim Combs
Kim Combs, Clerk of Council

**SECOND AMENDMENT TO 2017 AMENDED AND RESTATED MIAMI CROSSING
JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT**

This **SECOND AMENDMENT TO 2017 AMENDED AND RESTATED MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT** (this "**Second Amendment**") is made and entered into as of the ____ day of _____, 2023, by and between the Township of Miami in the County of Montgomery, Ohio ("**Miami Township**") and the City of Miamisburg, Ohio ("**Miamisburg**") under the following circumstances:

A. Miami Township and Miamisburg (the "**Contracting Parties**") are the parties to that certain 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of December 19, 2017, as subsequently amended by that certain First Amendment to 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of April 16, 2019 (together, the "**JEDD Contract**"), which governs the Miami Crossing Joint Economic Development District (the "**JEDD**");

B. The JEDD Contract provides that the legislative authorities of the Contracting Parties may amend the JEDD Contract to add to or remove land from the JEDD in accordance with Section 715.72(L) of the Revised Code;

C. The Contracting Parties now desire to amend the JEDD Contract to both add to and remove land from the JEDD; and

D. The legislative authority of each of the Contracting Parties has authorized and directed its respective Contracting Party to make and enter into this Second Amendment by and through its respective officers in accordance with Resolution No. _____ adopted by the Board of Trustees of Miami Township on _____, 2023; and Ordinance No. 7044, passed by the City Council of Miamisburg on November 7, 2023.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Second Amendment, the Contracting Parties agree and bind themselves, their agents, employees and successors, as follows:

1. **Addition to JEDD.** The real property set forth on Exhibit A attached hereto is hereby included within the JEDD, effective as of the date this Second Amendment is executed by the last of the Contracting Parties after approval by all of the legislative authorities of the Contracting Parties in accordance with Section 715.72(L) of the Revised Code (the "**Property Addition**").

2. **Removal from JEDD.** The real property set forth on Exhibit B attached hereto is hereby removed from the JEDD, effective as of the date this Second Amendment is executed by the last of the Contracting Parties after approval by all of the legislative authorities of the Contracting Parties in accordance with Section 715.72(L) of the Revised Code (the "**Property Removal**").

3. **No Change in Allocation; Mixed-Use Development.** Notwithstanding the provisions contained in Section 6.E. of the JEDD Contract, the Contracting Parties hereby agree that the Contracting Party Percentages outlined in the JEDD Contract will not change as a result of the Property Addition or Property Removal contained in this Second Amendment. For purposes of Section 5.B. of the JEDD Contract, the Property Addition is not considered a Mixed Use Development as of the effective date of this Second Amendment.

4. **Ratification of the JEDD Contract.** Except as set forth in this Second Amendment, the JEDD Contract remains in full force and effect and is hereby ratified in its entirety.

5. **Miscellaneous.** This Second Amendment shall be construed under the laws of the State of Ohio. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and together shall constitute a single instrument. The capitalized terms used in this Second Amendment but not otherwise defined herein shall have the meanings assigned to them in the JEDD Contract.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, Miami Township and Miamisburg have caused this Second Amendment to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

**TOWNSHIP OF MIAMI
MONTGOMERY COUNTY, OHIO**

Township Administrator

CITY OF MIAMISBURG, OHIO

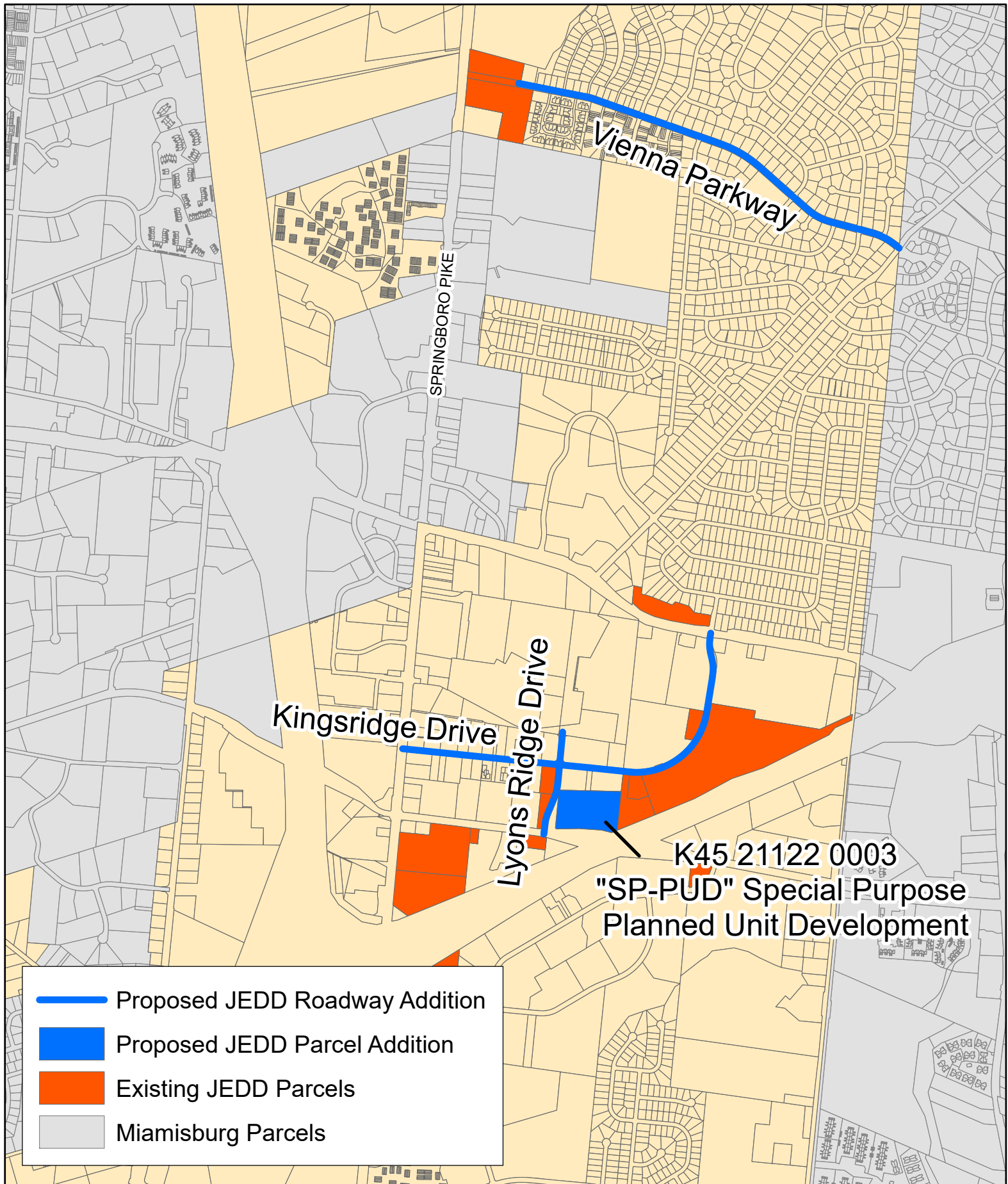
City Manager



MIAMI TOWNSHIP

Miami Crossing JEDD

EXHIBIT A

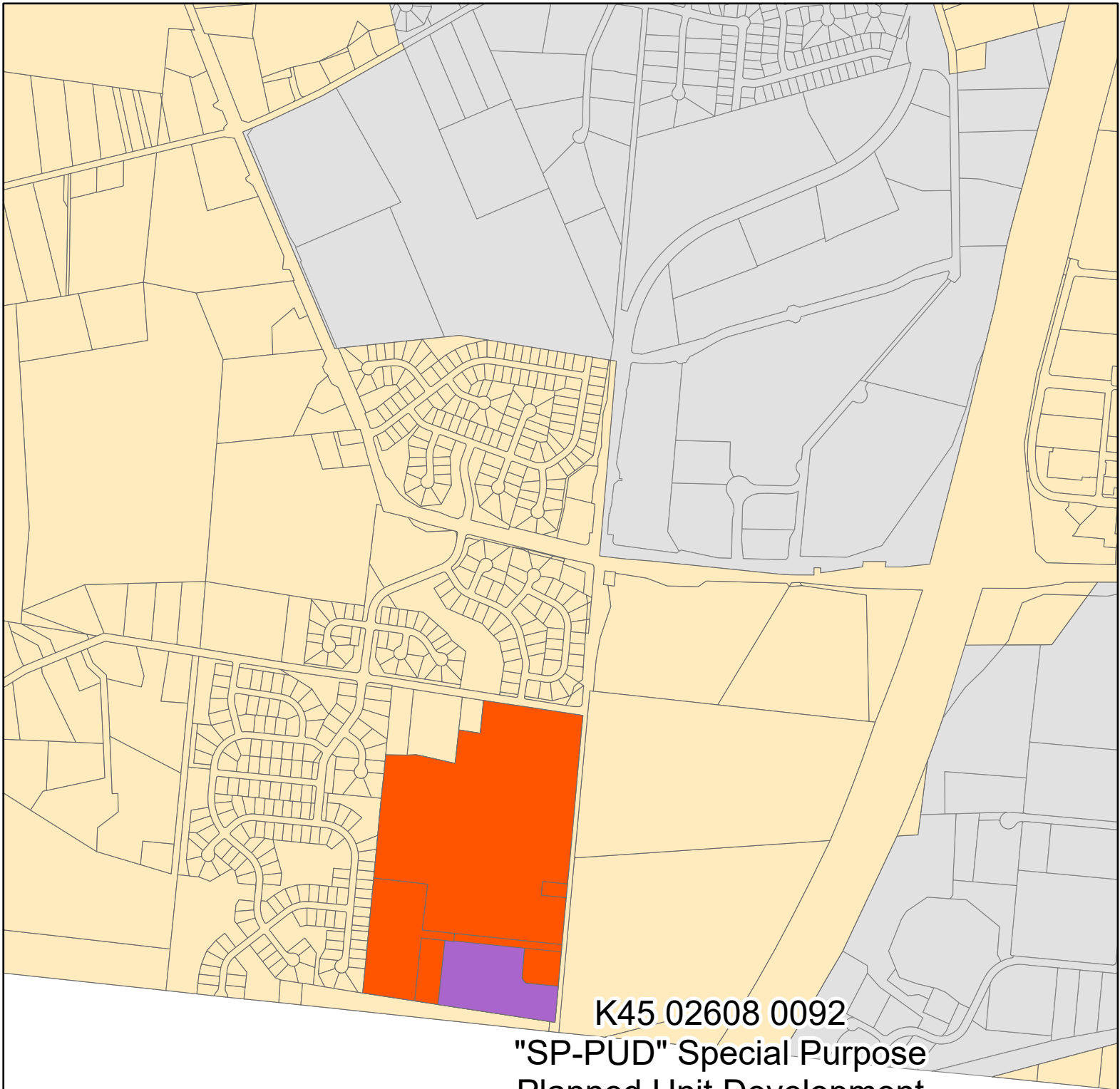




MIAMI TOWNSHIP

Miami Crossing JEDD

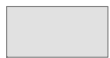
EXHIBIT B



Proposed JEDD Parcel Removal



Existing JEDD Parcels



Miamisburg Parcels

ORDINANCE NO. 7045

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH HAMPTON GOLF, INC. FOR THE MANAGEMENT SERVICES OF PIPESTONE GOLF COURSE AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg has utilized a professional golf management firm to maintain and operate Pipestone Golf Course since its opening, and

WHEREAS Hampton Golf, Inc. has successfully managed the course during the entirety of its prior Management Agreement, and

WHEREAS the City of Miamisburg wishes to enter into an agreement with Hampton Golf, Inc. for a period of five years, and at the City's discretion, extend the agreement for additional terms, not to exceed a total of five years.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Professional Services Agreement with Hampton Golf, Inc. for the purposes of operational and maintenance management of Pipestone Golf Course, attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to ensure no gap in service exists, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

PIPESTONE GOLF COURSE MANAGEMENT

THIS MANAGEMENT AGREEMENT (hereinafter, this "Agreement") made this _____ day of _____, 2023 (the "Effective Date"), by and between the CITY of Miamisburg, Montgomery County, Ohio, a municipal corporation (hereinafter "CITY") and Hampton Golf, Inc., a Florida corporation (hereinafter "CONTRACTOR").

The Parties to this Agreement have previously executed a Management Agreement dated December 17, 2014. This Agreement supersedes the previously executed Agreement upon execution by both parties.

WITNESSETH:

WHEREAS, CITY is the owner of PipeStone Golf Course that includes an 18-hole municipal golf course, a driving range, maintenance facility, a golf clubhouse with pro shop and restaurant and all properties and amenities known as PipeStone Golf Course (hereinafter referred to as "PipeStone") located adjacent to the residential community of Pipestone (the "Community") in the City of Miamisburg, Ohio, and

WHEREAS, CITY desires to utilize the services of CONTRACTOR for the overall management, maintenance, and operation of Pipestone, and

WHEREAS, CONTRACTOR represents that it has the necessary experience and qualifications to manage, operate and maintain PipeStone Golf Course in accordance with the standards and expectations of the City of Miamisburg.

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

ARTICLE 1.

DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth on Exhibit A, attached hereto and incorporated herein.

ARTICLE 2.

TERM

2.1. Term. The term of this Agreement shall begin on January 1, 2024 (the "Commencement Date") and shall continue until December 31, 2028 (the "Initial Term"), unless further extended in accordance with Section 2.2 below or terminated according to the provisions hereof.

2.2. Extended Term. This Agreement may be extended for a total of five (5) years by mutual agreement by the parties hereto, provided, however, said extensions may be in one-year increments, or multiple years so long as the total renewals do not exceed five (5) years (the "Extended Term(s)"). CONTRACTOR shall provide unconditional written notice to CITY at least nine (9) months, but not more than twelve (12) months, prior to the expiration of each incremental year of the Extended Term(s) if it desires CITY to consider an extension of the Extended Term(s). Failure to give said notice within the required time period shall be deemed an election by CONTRACTOR not to extend the Extended Term(s). CITY shall respond to CONTRACTOR within ninety (90) days if said extension shall be granted or not, in CITY's sole discretion. The Extended Term(s) shall commence upon the expiration of the Initial Term or the applicable Extended Term and shall be subject to all the same terms and conditions as are contained in this Agreement, except that there shall be no further extension options. The Initial Term and the Extended Term(s) are hereafter known collectively as the "Term."

ARTICLE 3.

APPOINTMENT OF CONTRACTOR

3.1. Management of PipeStone. CITY hereby retains, engages, and appoints CONTRACTOR as CITY's agent to exclusively supervise, manage, direct, and operate Pipestone on behalf of and for the account of CITY during the Term, and CONTRACTOR hereby accepts said appointment upon and subject to the terms and conditions hereof. CITY hereby delegates to CONTRACTOR, subject to (i) the Budgets, (ii) CITY's approval rights specifically described in this Agreement, (iii) the Business Plan, (iv) the Operations Manual, and (v) the other terms and conditions set forth herein, the discretion and authority to implement and recommend reasonable revisions to operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing recommendations, and other policies, rules, and regulations affecting Pipestone or the operation thereof, and to perform any act on behalf of CITY deemed by CONTRACTOR to be necessary or desirable for the operation and maintenance of Pipestone.

3.2. Goal of Agreement. It is the intent and goal of CITY that PipeStone be operated in a professional, efficient and productive manner that shall provide for the highest quality of experience for guests of Pipestone as found in the comparable high market municipally owned

golf courses in the region, to achieve the desired results of the Business Plan, and to achieve or exceed the goals described in the Budgets.

3.3. Compliance. CONTRACTOR shall abide by all applicable laws, ordinances, and rules and regulations as may from time to time be promulgated by the United States, State of Ohio, or CITY.

3.4. Use of the Property. This Agreement does not constitute a lease and the right of possession of Pipestone shall at all times remain with CITY. CITY hereby grants to CONTRACTOR the exclusive management of Pipestone during the Term for the purposes set forth herein. CONTRACTOR shall, upon the expiration or prior proper termination of the Term, vacate and surrender PipeStone to CITY.

ARTICLE 4.

CONTRACTOR SERVICES

4.1. Pipestone Operations. During the Term, CONTRACTOR shall use commercially reasonable efforts to perform any act that is necessary to operate and manage Pipestone, subject to the Budgets, the Operations Manual, and other terms and conditions set forth herein, on behalf of and for the account, and at the sole cost and expense of CITY, including, but not limited to, the following:

4.1.1. Business Plan. Within thirty (30) days of the Effective Date, and then as requested throughout the Term, CONTRACTOR shall submit to CITY a proposed business plan for PipeStone ("Business Plan") as part of the CITY's annual budget process. Once approved by the CITY's Parks and Recreation Director ("Director"), the Business Plan is subject to changes by CITY until the Budgets are approved by the City Council. In the event of disapproval of any Business Plan (or any portion thereof), CONTRACTOR shall continue operating PipeStone pursuant to the terms of this Agreement and the prior Business Plan (if one exists) until such time as CITY and CONTRACTOR agree upon a replacement Business Plan. CONTRACTOR shall not be deemed to have made any guarantee or warranty in connection with the results of the operations or performance set forth in the Business Plan since the parties acknowledge that the Business Plan is intended to set forth objectives and goals based upon CONTRACTOR's judgment and the facts and circumstances known by CONTRACTOR at the time of preparation.

4.1.1.1. Contents of the Business Plan. The Business Plan shall include, but is not limited to, the following sections.

4.1.1.1.1. Financial. This section of the Business Plan shall include a statement of Gross Revenues and Operating Expenses with actual

numbers for the previous fiscal year, estimates for current fiscal year (both compared to prior year approved Budgets) and projections for the next year of the Term, and five-year, long-term financial planning for the following items:

a. Gross Revenues & Rounds Summary. As determined by Contractor, Gross Revenues shall be separated, by at least green fees, driving range, cart rental, lessons, club repair/rental, merchandise, outing/tournament, food and beverage, and non-golf events. Contractor shall also include the number of rounds played/projected and categorized by weekday/weekend/holiday, time of day, rate, leagues, and outings/tournaments;

b. Annual Operations Budget. Contractor shall include the Annual Operations Budget showing Operating Expenses, and shall be categorized in a manner that is compliant with CITY's budget line structure;

c. Statement of Gross Revenues and Operating Expenses. CONTRACTOR shall include a statement of Gross Revenues and Operating Expenses for the previous fiscal year, current fiscal year and projected for the next year of the Term, and long-term financial plan. Notwithstanding the foregoing, this portion of the Business Plan shall also include CITY's administrative expenditures, debt service, contributions to reserves based on the current Pipestone long-range financial plan and Management Fees.

4.1.1.1.2. Course Maintenance Plan. CONTRACTOR shall include a report of maintenance activities undertaken during the current year of the Term as well as projections for the next year of the Term, in accordance with the Budgets;

4.1.1.1.3. Annual Staffing Plan. CONTRACTOR shall outline the number of employees, positions and compensation for the previous fiscal year, current fiscal year, next year of the Term, and a five-year, long-term staffing plan;

4.1.1.1.4. Marketing and Promotion Plan. CONTRACTOR shall include a report of marketing and promotional activities undertaken during the current fiscal year of the Term as well as projections for the remaining years of the Term, in accordance with the Budgets. This plan shall include a regional market assessment and results of any customer feedback programs held by CONTRACTOR;

4.1.1.1.5. Capital Expenses. CONTRACTOR shall include for the previous fiscal year, current fiscal year, and budget for proposed Capital Expenses, as well as a proposed five (5) year capital investment plan. CONTRACTOR shall recommend replacement or acquisition of golf course equipment, including but not limited to, maintenance, golf carts, restaurant equipment, operations software and hardware, and other necessary equipment or tools; and facility upgrades or modifications, Such recommendations shall include written justification, cost estimates and except as otherwise provided herein are subject to approval by CITY.

4.1.1.1.6. Fees and Dues. CONTRACTOR shall include a list of current fees and dues (if any) being charged at PipeStone, and any proposed changes for the next year of the Term, including all promotions and specials.

4.1.1.2. Approval of the Business Plan. The Director shall, once the Business Plan is submitted by CONTRACTOR and approved by the Director, make a recommendation to the City Manager.

4.1.1.3. Compliance. CONTRACTOR shall comply with the applicable Business Plan. Any changes to the Business Plan must be approved by the Director.

4.1.1.4. Quarterly Review of Business Plan. The Director and CONTRACTOR's Regional Manager, as designated by CONTRACTOR, shall meet, at least quarterly, and discuss the operating and financial results of Pipestone. The parties shall agree upon any amendments or revisions to the Business Plan, and to take into consideration certain variables or events that did not exist or could not be anticipated by CONTRACTOR or CITY at the time the Business Plan was prepared. Any amendments or revisions to the Business Plan shall require approval of the Director, who in his/her sole and absolute discretion, may require further approval by the City Manager and/or City Council.

4.1.1.4.1. Information Requests. During the Term, the CITY may reasonably request information or reports from CONTRACTOR regarding the operation of Pipestone. CONTRACTOR shall establish a reasonable timeline to produce such information. If such information is not provided within established reasonable time frames by the parties hereto, CITY shall invoke the Liquidated Damages penalty per Section 4.1.4.1.

4.1.2. Pipestone Club and Property. CONTRACTOR shall have the exclusive authority and responsibility for the administration, operation, and management of Pipestone, including, without limitation, course maintenance, food and beverage provision, merchandise service, and financial reporting. At all times during the Term, CITY shall

have the right to inspect during all hours and upon reasonable notice, inventory, petty cash (if any), receipts of the golf course and all facilities therein.

4.1.2.1. Operations Manual. At the onset of this Agreement, the CITY and CONTRACTOR shall work to develop, update or confirm a manual consisting of expectations, standards, policies and procedures for the operations and maintenance of Pipestone ("Operations Manual") based on CITY's expectations and in accordance with first class standards of service equal to or better than comparable municipally owned golf courses in the region. The Operations Manual shall be updated as necessary in order to be current with certain changes to policy, procedures and operating standards of CITY and industry best practices.

4.1.2.2. Quality Standards. The parties acknowledge that Pipestone is a public property which the CITY has a responsibility to ensure is used in a manner which effectively serves the public. Accordingly, the CITY has a greater interest than most owners in ensuring the quality of the maintenance and operation of PipeStone. At all times during the Term, CONTRACTOR shall maintain and operate all aspects of Pipestone, including all services offered in connection therewith, in a manner equal to or better than comparable municipally owned golf courses in the region, and Contractor shall furnish and maintain a standard of service at equal or better than the class of similar businesses in CITY and in adjacent communities during the Term. CONTRACTOR shall keep all fixtures, furnishings, and equipment at Pipestone clean, neat, safe, and sanitary, in good order and in a manner equal to or better than comparable municipally owned golf courses in the region. Furthermore, CONTRACTOR shall maintain and operate PipeStone in accordance with the highest commercial standards of cleanliness and shall keep all facilities clean and free from rubbish. The parties hereto acknowledge cost effective; quality services are of the utmost importance to CITY.

4.1.2.3. Customer Service. CONTRACTOR shall insure customer issues or concerns (including issues with residents of the Community) are resolved and documented when necessary. CITY has the right to view customer complaint documentation at any time upon reasonable notice, and where necessary, to act as an arbitrator in situations where an unresolved complaint or issue arises and the decision of CITY, with respect to the customer complaint or issue, shall be final. (Said determination, by CITY must be reasonable and in good faith.)

4.1.2.3.1. Residential Complaints. CONTRACTOR shall inform Director of any complaints from residents in the Community within twenty-four (24) hours of receiving complaint.

4.1.2.4. Grounds. CONTRACTOR shall establish, implement and monitor safe, and reasonable programs for mowing, top dressing, watering, seeding,

fertilization, aerification, disease infection, weed control and application of fungicides, herbicides, and insecticides for tees, fairways, greens, rough, range and other turf, trees and landscaped areas located at Pipestone, including the public entrance frontage of Pipestone and at CITY owned properties adjacent to Pipestone as detailed in the Operations Manual and illustrated with a map (as provided by CITY). The implementation of such standards shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.5. Aquatic. CONTRACTOR shall establish, implement, and monitor safe and reasonable programs for all lakes, ponds and streams within Pipestone and the Community through the application of appropriate aquatic vegetative controls. Responsibilities include water quality, weed and algae control, mowing, turf management, animal control, bank stabilization and restoration, debris removal from pond area including storm water drains which all assist in maintaining pond water quality. CONTRACTOR may utilize vendors to perform duties, as necessary. Implementation of such standards shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.6. Preventative Maintenance. CONTRACTOR shall establish and administer a preventive maintenance program for all golf maintenance equipment, golf carts, restaurant equipment, computer hardware and other equipment under its care that insures it remains in good operating condition for its useful life, provided, however, CITY acknowledges that said preventative maintenance program cannot guarantee such equipment remains in good operating condition for its useful life, and therefore, CONTRACTOR shall not be responsible for any equipment maintenance or performance issues that may arise during the Term or thereafter. Such maintenance shall be performed no less frequently than manufacturer recommendations by CONTRACTOR or by approved contracted vendors. Preventative maintenance and repairs shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.7. Environment Remediation. If CONTRACTOR becomes aware of the presence of any Hazardous Material in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under PipeStone, or if CONTRACTOR or CITY become subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up PipeStone, CONTRACTOR shall, at CITY's sole expense and approval, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of PipeStone; provided that such remediation activities shall be at CONTRACTOR's expense if such activities are

required as a direct consequence of Hazardous Material being present in, on or under PipeStone as a result of negligent actions undertaken by CONTRACTOR. Notwithstanding the foregoing, CITY has not performed and has no actual knowledge of any excavation, dumping or burial of any Hazardous Material or debris of any nature whatsoever on Pipestone or the surrounding areas. CITY indemnifies, defends, and holds CONTRACTOR harmless from all liabilities and obligations arising from presence of Hazardous Material prior to the Effective Date, if any,

4.1.2.8. Notification to CITY of Defect or Illegal Activity. CONTRACTOR shall immediately notify CITY upon discovering a possible workmanship or material defect in any structure or improvement on Pipestone or upon discovery of any unauthorized dumping, disposal or illegal use or activity on PipeStone.

4.1.3. Repairs. CONTRACTOR shall, at the sole expense of CITY, make, or cause to be made, all necessary and proper repairs in and to PipeStone in order to keep and maintain the same in good repair, working order and condition (normal wear and tear excepted), and outfitted and equipped for the proper operation thereof.

4.1.4. Inspections. Each quarter during the Term, the Director and CONTRACTOR's Regional Manager or designee shall inspect Pipestone for purposes of CONTRACTOR's compliance with the terms of this Agreement and the Operations Manual. Such inspections may be scheduled or unscheduled, so long as they do not interfere with normal operations of Pipestone. CITY agrees that the Director shall act reasonably and in good faith in making the determination whether CONTRACTOR'S compliance with this Agreement and the Operations Manual have been satisfied. The Director and/or the Regional Manager or designee shall prepare a detailed list of all areas that the Director considers in need of correction, improvement, or repair ("Corrective Action Item(s)"). This list shall include the steps CONTRACTOR intends to take to correct, improve or repair the Corrective Action Items and a reasonable time schedule for doing so.

4.1.4.1. Liquidated Damages. Except as provided below, if a particular Corrective Action Item has not been corrected, improved or repaired by the date indicated as set forth in Section 4.1.4., then CONTRACTOR shall pay as liquidated damages to CITY the amount of One Thousand Dollars (\$1,000) per month, or prorated for partial months based on a 30-day month, for each such uncorrected Corrective Action Item. These liquidated damages shall not apply to: (a) any outstanding Corrective Action Item that CONTRACTOR is diligently and timely correcting in accordance with the time schedule prepared in Section 4.1.4., and (b) any Corrective Action Item that CONTRACTOR is unable to correct, improve or repair because of the occurrence of a circumstances as agreed by CITY.

The parties hereto agree that the \$1,000 per month, prorated for partial month as needed, are charges referenced above which constitute a reasonable approximation of the actual damages that CITY would suffer due to a failure by CONTRACTOR to adhere to the required performance level, considering all of the circumstances existing as of the Commencement Date, including the relationship of the charges to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

4.1.5. Employees. CONTRACTOR shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and incentive programs. CONTRACTOR shall hire, promote, train, discharge, and supervise all employees performing services in and about PipeStone. All of the employees of Pipestone shall be employees of CONTRACTOR. It is understood that periodically independent service providers may be utilized to perform operation, maintenance, and administrative services with prior approval by CITY.

4.1.5.1. Key Personnel. CONTRACTOR shall hire Key Personnel for the management and operations of PipeStone. CITY shall approve, said approval not to be unreasonably withheld, any Key Personnel before hire. Prior to making a recommendation to CITY to hire a Key Personnel, CONTRACTOR shall present to CITY the compensation and incentive package for said Key Personnel, and prior to offering the position to said Key Personnel and as part of the hiring process, said Key Personnel must be approved by CITY, which such approval shall not be unreasonably withheld. Any modifications to a Key Personnel's compensation or incentive package shall be approved by the CITY prior to offering such package and shall be included in the annual Budget process. CONTRACTOR agrees to ensure Key Personnel will not be relocated to other CONTRACTOR properties without direct approval of CITY and that such relocation request shall not occur during peak season. Contact information (name, cell phone number and e-mail address) for all Key Personnel shall be provided, in writing, to CITY and shall be current at all times. For purposes of this Agreement, the term "Key Personnel" shall be defined as any individual holding a management or leadership position at PipeStone at any time during the Term, including without limitation, General Manager, Head Superintendent, Assistant Superintendent, Head Golf Professional, Food and Beverage Manager, Pro Shop Manager or Sales/Marketing Director.

4.1.5.1.1. Relocation Expenses. Upon approval from the CITY, CONTRACTOR may negotiate relocation expenses in the hiring of the General Manager of Pipestone. Such expenses shall be limited to Five

Thousand Dollars (\$5,000.00) per calendar year, unless otherwise approved by CITY in advance.

4.1.5.2. Replacement and Retention. CONTRACTOR shall work in cooperation with CITY concerning performance of CONTRACTOR's employees at Pipestone. CONTRACTOR will consult with CITY concerning CONTRACTOR's termination of employees at Pipestone. At the written request of the CITY, CONTRACTOR shall replace any Key Personnel or employee at Pipestone who, in the opinion of the CITY, is not performing satisfactorily, provided, however, CITY's decision to replace such Key Personnel or employee at Pipestone must be reasonable and shall not expose CONTRACTOR to any liability associated therewith.

4.1.5.2.1. Severance. In the event the CONTRACTOR terminates the employment of an employee at PipeStone, CONTRACTOR may, in CONTRACTOR' s sole discretion, offer a severance package to said employee, provided, however, CITY shall have no obligation for payment of such severance package unless CITY otherwise agrees to do so.

4.1.5.3. Employee Privileges. CONTRACTOR may provide discounts on food at a rate as approved by the CITY for Pipestone employees during their working hours and may allow them to play golf at Pipestone facilities in compliance with the CITY's Fee Ordinances.

4.1.5.4. Volunteers. CONTRACTOR has the responsibility for recruiting, selecting, training, scheduling, supervising, evaluating and dismissing volunteers in accordance with CITY volunteer program. Written guidelines and requirements regarding the CITY volunteer program shall be provided by CITY and in compliance with wage and hour regulations. CITY and CONTRACTOR shall provide liability coverage for volunteers utilized at Pipestone. CONTRACTOR shall provide the CITY Volunteer Coordinator with a total of hours worked by each volunteer within ten (10) business days from the last day of each month.

4.1.5.5. Professional Certifications. CONTRACTOR shall ensure all employees at Pipestone are qualified to perform his/her assigned responsibilities.

4.1.5.5.1. Head Golf Professional. CONTRACTOR shall assign a full- time, "PGA Class A Professional" to PipeStone as part of its on-site management team at PipeStone.

4.1.5.5.2. Head Superintendent. CONTRACTOR shall assign a full-time, Golf Course Superintendent who has a GCSAA "Class A" membership to PipeStone as part of its on-site management team at Pipestone.

4.1.5.5.3. Chemical Application. CONTRACTOR shall require all employees at PipeStone who work with or apply fungicides, herbicides, and insecticides to maintain a current certification and operator's license as required by the Ohio Department of Agriculture and shall comply with all EPA and OSHA safety standards in its maintenance operations.

4.1.5.6. Chain of Command. CONTRACTOR agrees to provide written notice to CITY regarding its chain of command for implementation of this Agreement and any subsequent changes therein, as the same may apply. Notice shall be given to CITY within thirty (30) days of any change to CONTRACTOR's chain of command. CITY shall abide by the same if there is a change of any official or department responsible for the operation of PipeStone.

4.1.5.7. Employee Safety. CONTRACTOR shall comply with all safety regulations of Federal, State, and local governmental agencies, including without limitation any requirements imposed by OSHA and regulations promulgated with respect thereto, and applicable Federal occupational, health and safety laws and regulations. CONTRACTOR shall take all reasonable actions to protect the safety of all employees and customers of PipeStone.

4.1.5.7.1. Workplace Environment. CONTRACTOR shall comply with CITY workplace policies and guidelines for Drug-Free Workplace, Workplace Harassment, Sexual Harassment, Smoke-Free Workplace and any additional policies and guidelines currently in place, added or modified during the Term. CITY will provide CONTRACTOR copies of such policies and guidelines prior to the Effective Date.

4.1.5.8. Payroll. CONTRACTOR (or through a third-party contractual relationship) shall establish, administer, and maintain appropriate payroll documentation for employees at PipeStone, the same complying with those reasonable requirements of CITY. Subject to the Budgets, CONTRACTOR agrees to provide reasonable wage and benefit packages to the employees of PipeStone consistent with comparable facilities so as to provide a properly compensated staff for carrying out the functions provided for hereunder. All expenses related to employees of PipeStone, including without limitation, payroll expenses and burden, wages, benefits, vacation pay, processing fees, and taxes, shall be funded by the operation of PipeStone or by CITY in the event of a deficit. The Budgets shall reflect such expenses being incurred and shall be funded in advance by CITY at least one (1) payroll period at a time. Furthermore, CONTRACTOR shall draw from PipeStone's operating account for the payment of personnel salaries, wages, associated benefits, and employment taxes related to PipeStone. CONTRACTOR shall notify CITY each month during the Term of any deficits required to be funded

by CITY, and CITY shall provide such amounts to CONTRACTOR within five (5) business days after receipt of such notification,

4.1.5.9. Employment Taxes. CONTRACTOR shall be responsible for the filing of any tax returns including, but not limited to, personal income taxes with specific emphasis on municipal tax liability and other taxes related directly to the operation of PipeStone not herein assumed by CITY.

4.1.6. Marketing/Promotions. CONTRACTOR shall develop ongoing marketing and advertising programs for Pipestone and define a schedule of marketing and advertising activities. CONTRACTOR shall indicate in its marketing material that Pipestone is owned by CITY and operated by CONTRACTOR. All names, logos and designs of PipeStone shall be the exclusive property of CITY, and CONTRACTOR shall acquire no rights to such names, logos, and designs under this Agreement, except as provided for herein. Notwithstanding the foregoing, CONTRACTOR may: (i) use the name, logo, and other marks and designs of Pipestone in connection with the operation of PipeStone; (ii) combine Pipestone and Pipestone's likeness with other golf club facilities managed and/or owned by CONTRACTOR in marketing and promotion efforts and use; and (iii) use its name and likeness in conjunction with Pipestone, and is authorized to use the name and mark "Managed by Hampton Golf." All Pipestone green fees, cart rental fees, and special promotions must be approved by CITY as stated in the Pipestone Fee Ordinance or approved by the Director and enforced by the employees of Pipestone.

4.1.6.1. Approval of Promotions, Advertisements and Publications. CONTRACTOR shall create promotions, advertisements, and publications to build business at PipeStone. CONTRACTOR shall use its best efforts to obtain the Director's prior verbal or written approval of advertisements and documents, which approval shall not be unreasonably withheld. If CONTRACTOR uses such best efforts but does not receive a response from the Director within two (2) business days, CONTRACTOR may proceed without the Director's approval. CONTRACTOR and the Director may also agree upon general parameters within which advertisements may be released without Director's approval.

4.1.7. Leases and Contracts. CONTRACTOR shall negotiate, consummate, enter into, and perform, on behalf of and in the name of CITY and as approved by CITY, such agreements as CONTRACTOR may deem necessary or advisable for the management and operation of Pipestone, including without limitation, furnishing of all food, beverages, utilities, concessions, operating supplies, equipment, payroll and staff services, and other materials and services as CONTRACTOR determines are needed from time to time for the management and operation of the Pipestone, provided, however, CITY shall remain liable for the performance of said agreements. CONTRACTOR shall follow CITY procedures for entering and processing agreements.

4.1.8. Licenses, Permits, and Accreditations. CONTRACTOR shall apply for, obtain, and maintain, on behalf of and in CITY's name (or, if otherwise required by applicable law, in CONTRACTOR's name) all licenses, permits, and accreditations required in connection with the management and operation of Pipestone. CITY will reasonably cooperate with CONTRACTOR in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

4.1.8.1. Liquor Laws. CONTRACTOR shall conduct necessary training of employees at PipeStone to insure full knowledge of State of Ohio liquor laws as they apply to the operation of PipeStone. Training shall be documented, and CITY shall, on an annual basis, be provided a copy of the training materials and a list of employees at PipeStone who are trained to serve liquor.

4.1.9. Legal Action. CONTRACTOR may not institute any legal action by or on behalf of CITY without the prior written consent of CITY.

4.1.10. Food and Beverage. CONTRACTOR will develop food and beverage operating concepts (including operational plans, menus, wine lists, food and beverage control systems and prices) to be presented for approval by CITY.

4.1.11. Emergency Expenditures. In the event, at any time during the Term, a condition should exist in, on, or about PipeStone of an emergency nature which, in CONTRACTOR's sole and absolute discretion, requires immediate action to preserve and protect the Property, to better assure Pipestone's continued operation, or to protect CITY's customers, residents, guests, or employees, CONTRACTOR is authorized to take all steps and to make all reasonable expenditures necessary to repair and collect any such condition, whether or not provisions have been made in the applicable Budgets for any such expenditures. CITY shall be notified of the need for and estimated amount of any such emergency expenditures as soon as reasonably practical.

4.1.12. Compliance with Law; Expenditures Required for Compliance with Laws. CONTRACTOR shall (i) comply with all laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively "Laws") in respect of the use, operation, maintenance, repair and restoration of Pipestone, whether or not compliance therewith shall interfere with the use and enjoyment of PipeStone; and (ii), except for those specifically deemed the obligation of CITY, to procure, maintain and comply with all licenses and other authorizations required for any use of PipeStone then being made, and for the proper erection, installation, operation and maintenance of PipeStone or any part thereof. In the event, at any time during the Term, repairs, additions, changes, or collections to PipeStone of any nature shall be required by reason of any Laws, and as authorized by CITY, CONTRACTOR may take all reasonable steps and to make, on behalf of CITY, all reasonable expenditures necessary to repair and collect any such repairs, additions,

changes, or collections whether or not provisions have been made in the applicable Budgets for any such expenditures.

4.1.13. Purchases by CONTRACTOR. In connection with any purchases made by CONTRACTOR for the account of CITY, it is understood that CONTRACTOR may utilize its group buying techniques involving other affiliated businesses and golf clubs as long as the cost thereof shall be competitive with that which would be charged by non-affiliated third party vendors in an arms-length transaction, and in such event, CONTRACTOR may receive and retain a fee, rebate, refund or other compensation from vendors and service providers in exchange for CONTRACTOR's volume purchases. Notwithstanding the foregoing, any fees, rebates, refunds, or other compensation received by CONTRACTOR applicable to the direct purchases for PipeStone shall belong solely to CITY and shall be paid to CITY.

4.1.14. Purchase Orders. It is understood and agreed upon by CITY and CONTRACTOR that all expenditures made by CONTRACTOR for PipeStone shall be initiated by CITY's purchase order process and submitted to the Director to process through CITY's Finance Department for encumbering and approval by the CITY's Finance Director and CITY's Manager (or his designee) prior to the actual purchase of any goods or services.

4.1.14.1. Invoices. CONTRACTOR shall submit all invoices for payment to CITY Finance Department with proper approval and funding source. CONTRACTOR shall be prompt in payment to keep CITY in good standing with vendors. In the event late fees are incurred, the CITY will deduct such fees from the Management Fee, unless CONTRACTOR experiences extenuating circumstances or the cause of said late fees were due to any action or inaction of CITY.

4.1.15. CONTRACTOR shall operate Pipestone within the Budgets and subject to the expense limits established in the Budgets for categories assigned to "Maintenance, Pro Shop, Food and Beverage, Carts, Range, and Capital Improvements." CONTRACTOR agrees that if it appears that a category expense shall be exceeded, CONTRACTOR shall notify CITY, in writing, of this potential overage of the Budgets and explanation of the cause. CONTRACTOR and CITY shall work in cooperation to solve the potential overage of the Budgets.

4.1.16. CONTRACTOR shall, at the expense of CITY, be responsible for the completion or coordination with City Staff for the completion of all Capital Improvements related to the operation of Pipestone as approved by CITY in the Annual Operating Budget and Capital Budget. In the course of its operating and managing of PipeStone under this Agreement, CONTRACTOR shall have the authority to negotiate and contract with third parties on behalf of CITY provided such negotiations and contracts are contemplated by and in accordance with the Annual Operating Budget and Capital Budget approved by

CITY. All Operating Expenses and Capital Expenses related to the operation of Pipestone shall be invoiced directly to CITY, and CITY agrees to pay such invoices in a timely manner. It is understood that for any request by CONTRACTOR for a single purchase/purpose of Fifty Thousand Dollars (\$50,000.00) and higher for items pursuant to this Agreement, CONTRACTOR shall advise CITY, and the public bidding procedures of CITY shall be followed to procure such item or items.

4.1.17. CONTRACTOR agrees that with respect to all purchasing procedures and suppliers and purveyors utilized that there shall be no conflict of interest or self-dealing with respect to the PipeStone operations except as otherwise approved herein.

4.1.18. CONTRACTOR and CITY agree that there shall be an inventory taken, together by both parties, of all equipment, materials, products and merchandise of PipeStone prior to the Commencement Date and that on the Commencement Date, CITY and CONTRACTOR shall execute a document of inventory and CONTRACTOR shall accept the same with understanding that all property on Pipestone is that of the CITY and shall remain so and shall remain the responsibility of CONTRACTOR while said property is in its possession during the Term, Furthermore, CONTRACTOR shall participate in and cooperate with CITY's year-end inventory of supplies and materials.

4.1.19. CONTRACTOR shall follow CITY's Fixed Asset Process, as prescribed by CITY Finance Department. As provided by CITY, CONTRACTOR shall prepare appropriate fixed asset forms to accompany CITY purchase orders to purchase CITY-defined capital items, In addition, to CITY's Fixed Asset Process, CONTRACTOR shall, in conjunction with CITY's Finance Department, track all deletions and transfers of CITY-defined fixed assets,

4.2. Financial Management and Budgets. During the Term, CONTRACTOR is responsible for preparing all operating budgets, cash flow budgets, other budget projections and forecasts, as well as the day-to-day financial affairs of PipeStone.

4.2.1. Budgets. All budgets, as hereinafter set forth (collectively, the "Budgets"), shall be prepared with the advice and counsel of CITY, based on what CONTRACTOR believes to be reasonable assumptions and projections, and delivered to CITY for its review and written approval as part of the Business Plan. All Budgets shall be presented in detail as reasonably defined by CITY.

4.2.1.1. Annual Operations Budget. In accordance with the Business Plan, CONTRACTOR shall submit to CITY a budget setting forth the projected income and the projected costs associated with the operation of Pipestone for the next fiscal year for CITY's review and approval for the upcoming calendar year or part thereof within the Term (the "Annual Operations Budget").

4.2.1.2. Capital Expense Budget. In accordance with the Business Plan, CONTRACTOR shall submit for CITY's review and written approval, a budget setting forth the projected costs of proposed Capital Improvements (including equipment purchases and leases) to the Property for the upcoming calendar year and following four years or part thereof within the Term (the "Capital Expense Budget"). Capital Expense Budget shall include an equipment replacement schedule for all PipeStone equipment.

4.2.2. CITY's Review and Approval of Budgets. The Budgets shall be for CITY's review and written approval, subject to the terms of this Agreement. CITY shall give its written comments within sixty (60) days after receiving the Budgets from CONTRACTOR; approval of the Budgets will be subject to the CITY's annual budget process and timeline. In the event of disapproval of any Budgets, CONTRACTOR shall continue operating Pipestone pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenue or (ii) other matters beyond the control of CONTRACTOR, until such time as CITY and CONTRACTOR agree upon the appropriate replacement Budgets. The City Council shall review and provide final approval of all proposed Budgets.

4.2.3. Unanticipated Expenditures and Reallocation of Funds. CITY agrees that the Budgets are intended to be reasonable estimates, and, accordingly, CONTRACTOR shall be entitled from time to time to revise the Budgets to cover any expenditures that were unanticipated at the time of preparation of the Budgets but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, CONTRACTOR shall be required to obtain CITY's prior written approval of any expenditures which would result in the total expenditures exceeding the total annual budget appropriation for operating PipeStone. CITY acknowledges that CONTRACTOR has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenue or Operating Expenses to be generated or incurred from the operation of PipeStone.

4.2.4. Accounting Records and Reporting. CONTRACTOR shall, during the Term, maintain accounting records in a format consistent (in all material respects) with generally accepted accounting practices. CONTRACTOR may utilize CITY's point of sale and other software, as provided by CITY, such as Golf Trac through Vermont Systems for revenue transactions and tee time reservations.

4.2.4.1. CONTRACTOR shall prepare and deliver to CITY the next business day a summary of the daily receipts and point-of-sale detail documents. CONTRACTOR shall prepare reports in accord with the established CITY procedures with respect to financial accounting. All funds received by

CONTRACTOR shall be deposited to the appropriate CITY depository account on a daily basis.

4.2.4.2. CONTRACTOR shall maintain good and accurate records of cash receipts on which all fees charged are entered. Such formats of records shall be mutually developed and/or modified by the CITY Finance Department and CONTRACTOR.

4.2.4.3. CONTRACTOR agrees to comply with the depository accounting functions as required by CITY according to CITY depository and accounting requirements and shall familiarize itself and become amenable to any other state/or federal requirements directly related to the operation of Pipestone which CONTRACTOR is notified by CITY to which it must conform.

4.2.4.4. CONTRACTOR shall deposit in a bank so designated by CITY all Gross Revenue from the Pipestone operation within a 24-hour period; and shall be responsible for the safekeeping, storage, and transportation of said Gross Revenue until they are delivered to the bank. CONTRACTOR will also prepare a CITY-issued daily pay-in that indicates each daily deposit and shall deliver the same to CITY on a daily basis.

4.2.4.5. CONTRACTOR agrees to reasonably comply with and cooperate in the annual audit of Pipestone operation when called upon to do so by CITY. CONTRACTOR will also reasonably cooperate with CITY in event of unscheduled audits of cash drawers and inventory review conducted by CITY.

4.2.4.6. CONTRACTOR shall provide Director the monthly outing/event schedules via a virtual shared calendar, including any pertinent information regarding the outing/event and identify the employee that will oversee the function.

4.2.4.7. Monthly Reporting. During the Term, CONTRACTOR shall submit to CITY, within fourteen (14) business days after the close of each calendar month, a financial report showing in reasonably accurate detail the financial and operational activities of Pipestone for the preceding calendar month and the calendar year to date, which shall include (i) cash management and forecasting; (ii) variance reports; and (iii) budget forecasting and reporting; provided, that CITY shall continue to allow access by CONTRACTOR to the financial information for the operation of Pipestone needed in order to complete and provide such financial reports in a timely manner. Financial reports shall be provided by CITY to CONTRACTOR's Regional Manager on a minimum of a monthly basis. CONTRACTOR shall have access to CITY reports upon request and during CITY's normal business day.

4.2.4.8. Records. CONTRACTOR shall maintain a complete set of books and records, in a form and manner approved by the CITY, showing all revenue collected and all expenditures made in collection with the operation of Pipestone, along with such supporting data and documents as prescribed by the CITY. Such books and records shall be kept in such a manner as to make them easily reconcilable with the reports and forms to be submitted to the CITY by CONTRACTOR. The CITY shall have the right at any time to examine the records, books, data, and documents kept by CONTRACTOR regarding the operation and maintenance of Pipestone. CONTRACTOR shall provide its annual audited financial statement, if once exists, to the CITY by September 15th of each year during the Term.

4.2.5. Internal Control. CONTRACTOR agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects PipeStone, such controls to be consistent with generally accepted accounting practices utilized by CITY. In addition, CONTRACTOR shall agree to implement any reasonable internal control recommendation that may develop from future audits if determined by CITY to be in CITY's best interest.

4.2.6. Inspection. At any time during the Term and for ninety (90) days after the termination of the Term, CITY shall have the right, after three (3) days prior written notice to CONTRACTOR, to inspect the books, records, invoices, deposits, canceled checks, or other financial data or transactions of PipeStone at reasonable times and during normal business hours. Such right shall not extend to any inspection of records at CONTRACTOR corporate offices.

4.3. Other Duties and Prerogatives. CONTRACTOR shall use commercially reasonable effort to perform any act that is necessary to operate and manage PipeStone during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, CONTRACTOR shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of Pipestone. CONTRACTOR shall not be obligated to advance any of its own funds to or for the account of CITY or to incur any liability unless CITY shall have furnished CONTRACTOR with funds necessary for the full discharge thereof. However, if for any reason CONTRACTOR shall have advanced funds in payment of any reasonable expense in connection with the maintenance and operation of the Pipestone, CITY shall immediately reimburse CONTRACTOR on demand for the full amount of such payments,

4.3.1. Deficit Funding. CONTRACTOR shall not have any responsibility for satisfying any expense, debt, or monetary obligation of CITY with respect to PipeStone except for the revenue and income of Pipestone. CONTRACTOR shall not be obligated to advance or otherwise use any monies of CONTRACTOR to satisfy CITY's or Pipestone's

expenses, debts, or monetary obligations. CITY shall be solely and exclusively responsible for all costs and expenses required to operate Pipestone.

4.4. Public Records. Records and information generated as a result of CONTRACTOR'S operation of PipeStone, including financial reports, audits, management reviews, and the like, may be subject to public inspection and/or reproduction as public records. Both parties recognize and acknowledge that CITY is subject to the Ohio Public Records Act and that records submitted to it, or generated pursuant to a contract with the CITY, are generally subject to disclosure.

4.4.1. Trade Secrets. Any trade secrets contained in documents provided to the CITY should be clearly marked "TRADE SECRET" should CONTRACTOR wish to protect the trade secrets. The CITY will also reasonably attempt to provide notice to CONTRACTOR should a public records request be made for CONTRACTOR'S records that contain trade secret material, so that CONTRACTOR can raise its objections to the release of such records.

ARTICLE 5.

RESPONSIBILITIES OF CITY

5.1. Expenditures/Certificates of Occupancy. CITY shall, at its sole cost and expense, obtain and/or maintain all certificates of occupancy or other permits required for CONTRACTOR's occupancy of Pipestone. CITY acknowledges that it is solely responsible for all Operating Expenses, Capital Expenses, and other costs and expenses associated with the operation of PipeStone and required for or on behalf of PipeStone provided that such Operating Expenses and Capital Expenses are made in accordance with the terms of this Agreement.

5.2. Inspections. CITY, along with the General Manager of Pipestone when requested, shall inspect the condition of the golf course, pro shop, restaurant, maintenance buildings, equipment, grounds, as it deems necessary. Results of the inspection documentation shall be provided to CONTRACTOR by CITY.

5.3. Financial Information. CITY shall make available to CONTRACTOR access to all financial data related to PipeStone, including without limitation, Golf Trac for daily sales and tee sheets, transaction and revenue history, expense details and summaries, in order for CONTRACTOR's fiscal reporting and management.

ARTICLE 6.

FEEs, EXPENSES AND RECEIPTS

6.1. Management Fee and Compensation. CITY shall pay compensation to CONTRACTOR as follows:

6.1.1. Management Fee. Four percent (4%) of Gross Revenue per month ("Management Fee"), payable within fourteen (14) business days from end of the preceding month for the management of Pipestone in accordance with the terms set forth hereinabove. CITY will deliver to CONTRACTOR, at the time of each such distribution, a written report indicating the basis for CITY's payment of the Management Fee. A late fee of two percent (2%) of Management Fee will be charged to CITY if payment is not received by CONTRACTOR within twenty (20) business days of the end of the preceding month, unless delayed due to reconciliation of deposits is delayed by CONTRACTOR staff. Should the CONTRACTOR achieve its annual financial performance goals, outlined in Exhibit B, the CITY shall compensate CONTRACTOR 0.5% of Gross Revenue for the year. This annual incentive will be paid within the first fourteen (14) days in February for the prior year.

6.1.2. Corporate Travel. CITY shall reimburse CONTRACTOR for travel expenses for visits to PipeStone for management oversight, planning, inspection of operations and/or to perform other reasonable tasks for the operation of Pipestone. Expenses will be actual expenses with detailed documentation provided. Travel expenses shall not exceed one thousand dollars (\$1,000) per month or twelve thousand dollars (\$12,000) annually, The one thousand dollars (\$1,000) per month amount may be modified by CITY and such modifications shall not increase the twelve thousand dollars (\$12,000) annual reimbursement limit.

6.1.3. Reimbursable Expenses. From time to time during the Term, certain miscellaneous expenses, as detailed in the Budget or pre-approved by Director, such as postage, office supplies and other hard costs incurred by CONTRACTOR in its management and operation of Pipestone (collectively, "Reimbursable Expenses"), will occur that are impossible to predict at the time of execution of this Agreement, and as a result, CITY shall reimburse CONTRACTOR for the Reimbursable Expenses, provided, however, CONTRACTOR shall provide CITY a monthly report evidencing the Reimbursable Expenses with supporting itemized invoices attached.

6.2. Revenue.

6.2.1. Fees. CITY hereby reserves the right to establish the fee schedule for greens, driving range, golf cart rental, lesson, outing, tournament, membership, and all other golf-related fees for Pipestone which shall be in compliance with CITY's Fee Ordinance. The CITY's Fee Ordinance establishes the top level for any and all fees. No changes in the maximum fees may be made by CONTRACTOR without City Council's approval, in its sole and absolute discretion. CONTRACTOR and Director may establish a fee schedule within CITY's Fee Ordinance and regional golf market rates. From time to time, CONTRACTOR may discount fees as a promotion to build business, provided that CONTRACTOR shall use its best efforts to obtain the Director's prior verbal or written

approval, which approval shall not be unreasonably withheld. If CONTRACTOR uses such best efforts but does not receive a response from the Director within twenty-four (24) hours, CONTRACTOR may proceed to offer the discount without the Director's approval. CONTRACTOR and the Director may also agree upon general parameters within which discounts may be offered without Director's approval.

6.2.2. Golf Lessons. CONTRACTOR shall be responsible for developing a golf lesson program for PipeStone ("Golf Lesson Program") that meets the expectations and approval of CITY. CITY will assist CONTRACTOR in promoting the Golf Lesson Program through development and distribution of promotional materials in CITY publications at CITY-owned facilities. All income generated from the Golf Lesson Program shall be recorded as daily income through the pro shop cash register and submitted as part of CITY's pay-in process. The General Manager of Pipestone shall maintain supporting documentation on-site that verifies lesson rosters, receipts of payment, and daily reports, and may be reviewed by CITY upon request. CONTRACTOR shall be responsible for the reporting of taxes as a result of golf professionals teaching lessons at PipeStone, and for filing of any tax returns, including but not limited to personal income taxes.

6.3. Expenses. All Operating Expenses shall be the sole responsibility of CITY.

6.4. Bank Deposits. CITY shall maintain during the Term banking arrangements with a bank in the Miamisburg area for the deposit of receipts, maintenance of accounts and such other banking activities necessary for the operation of PipeStone in accordance with the established practices of CITY's dealing with municipal funds.

6.5. Sales Tax Reporting. CITY shall file based on State and CITY established timelines, any and all sales tax reports as a result of sales made at PipeStone. Such information will be reflected in CITY's financial report. CONTRACTOR shall be required to provide sales tax information on its financial reports that are submitted to CITY. CONTRACTOR shall be responsible for any inaccuracies contained herein.

ARTICLE 7.

CITY'S COVENANTS AND REPRESENTATIONS

7.1. CITY makes the following covenants and representations to CONTRACTOR, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

7.1.1. Corporate Status. CITY is a municipal corporation duly organized, validly existing, and in good standing under the laws of Ohio, with full corporate power and authority to enter into this Agreement.

7.1.2. Authorization. The making, execution, delivery, and performance of this Agreement by CITY has been duly authorized and approved by requisite corporate action, and this Agreement has been duly executed and delivered by CITY and constitutes a valid and binding obligation of CITY, enforceable in accordance with its terms.

7.1.3. Effect of Agreement. Neither the execution and delivery of this Agreement by CITY nor CITY's performance of any obligation hereunder (a) will constitute a violation of any law, ruling, regulation, or order to which CITY is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which CITY is a party or is otherwise bound or (ii) to which Pipestone or any part thereof is subject.

7.1.4. Documentation. If necessary to carry out the intent of this Agreement, CITY agrees to execute and provide to CONTRACTOR, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which CONTRACTOR may reasonably request in connection with the operation of Pipestone.

ARTICLE 8.

CONTRACTOR COVENANTS AND REPRESENTATIONS

8.1. CONTRACTOR makes the following covenants and representations to CITY, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

8.1.1. Corporate Status. CONTRACTOR is a corporation duly organized, validly existing, and in good standing under the laws of Florida, and authorized to transact business in State of Ohio with full corporate power to enter into this Agreement and execute all documents required hereunder.

8.1.2. Authorization. The making, execution, delivery, and performance of this Agreement by CONTRACTOR has been duly authorized and approved by requisite corporate action, and this Agreement has been duly executed and delivered by CONTRACTOR and constitutes a valid and binding obligation of CONTRACTOR, enforceable in accordance with its terms.

8.1.3. Effect of Agreement. Neither the execution and delivery of this Agreement by CONTRACTOR nor CONTRACTOR's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which CONTRACTOR is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which CONTRACTOR is a party or is otherwise bound.

ARTICLE 9.

INSURANCE

9.1. CITY's Insurance Required. On the Commencement Date and continuing throughout the Term, CITY shall procure and maintain, at CITY's sole cost insurance on Pipestone and operation thereof, liquor liability insurance and general liability insurance of \$1,000,000 in the aggregate and shall name CONTRACTOR as an additional insured. CITY shall provide its insurance pursuant to its agreement through Miami Valley Risk Management Association (MVRMA), and the parties herein agree to be bound by the terms and conditions of CITY's agreement with said MVRMA with respect to insurance interests.

9.2. Upon written request by CONTRACTOR, CITY shall deliver to CONTRACTOR certificates of insurance and/or certificates of coverage with respect to all policies so procured, including existing, additional, and renewal policies. All policies of insurance shall, have attached thereto an endorsement that such policy shall not be canceled or materially changed without prior written notice to both CITY and CONTRACTOR

9.3. On the Commencement Date and continuing throughout the Term, CONTRACTOR shall procure and maintain, at CONTRACTOR's sole cost, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of work hereunder and the results of that work by CONTRACTOR, its agents, representatives, employees, and subcontractors. Coverage shall conform to the following specifications:

9.3.1. Commercial General Liability (CGL) with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence.

9.3.2. Liquor Liability insurance policy or a Liquor Liability endorsement to the General Liability policy, on an occurrence basis, with \$5,000,000 per occurrence /aggregate limits to cover the restaurant and bar operations of Pipestone.

9.3.3. Automobile Liability: with limit no less than \$1,000,000 per accident for bodily injury and property damage.

9.3.4. Workers' Compensation: as required by the State of Ohio, with Statutory Limits; and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

9.3.5. Subject to insurance regulations that may restrict the naming of certain "additional insureds." CONTRACTOR shall name CITY, its elected and appointed officials, and all of its employees, agents, and volunteers thereof as Additional Insureds on all liability policies required above, except Workers Compensation. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar

protection available to the Additional Insureds whether such coverage is primary, contributing, or excess.

9.3.6. CONTRACTOR may satisfy the minimum liability limits required in this Section for Commercial General Liability, Liquor Liability or Automobile Liability under an Umbrella or Excess Liability policy and/or CONTRACTOR's "hired and non-owned" automobile policy. CONTRACTOR agrees to endorse the CITY as an Additional Insured on the Umbrella or Excess policy unless the Certificate of Insurance states the Umbrella or Excess policy provides coverage on a "Follow Form" basis.

9.3.7. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII, unless otherwise acceptable to the CITY.

9.3.8. The CITY reserves the right to reasonably modify these requirements based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9.3.9. CONTRACTOR shall secure and maintain during the Term, at CONTRACTOR's sole cost, insurance protection against the loss of such receipts by reason of burglary, larceny, embezzlement, robbery, or other causes, including employee dishonesty, with limit not less than \$250,000 per occurrence.

9.3.10. All CONTRACTOR's insurance policies required herein shall contain a clause against cancellation without thirty (30) days advanced written notice to CITY. Further, if the CONTRACTOR receives a non-renewal or cancellation notice from an insurance carrier providing coverage required herein, or receives notice that coverage no longer complies with the requirements herein, CONTRACTOR agrees to notify the CITY by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written explanation of how coverage is no longer in compliance. CONTRACTOR shall cease operations of Pipestone on the occurrence of any such non-renewal, cancellation, or material change and shall not resume operations until insurance is in force that complies with these requirements.

9.3.11. CONTRACTOR shall provide CITY with Certificates of Insurance evidencing coverages required herein before the Commencement Date, and updated Certificates of Insurance no less than annually. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any reasonable time.

9.4 CONTRACTOR is NOT responsible in any way for the amount owed, coverage requirements or payment regarding Property Insurance. As the property and all structures, equipment and items within are Owned by the CITY, the CITY shall maintain all records, payments and liability coverage in this regard.

ARTICLE 10.

DAMAGE AND CONDEMNATION

10.1. Substantial Destruction. In the event Pipestone is damaged or destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, plus any additional period caused by Unavoidable Delay, either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Tenn shall cease and come to an end as of the date of such damage or destruction as though such date were the date originally fixed for the expiration of the Term, and neither party shall have any obligation to the other arising out of or in any way connected with the provisions of this Agreement, other than the payment of any monetary sums owed for periods prior to the date of termination. Should a terminable event occur, the CITY shall reasonably compensate CONTRACTOR for services rendered during said time period.

10.2. Partial Destruction. In the event Pipestone or any portion thereof, is damaged or destroyed by fire or other casualty and such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, plus any period caused by Unavoidable Delay, CITY shall have the obligation to repair the damage to PipeStone as nearly as practicable to the condition the same were in prior to such damage, CITY shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

10.3. Substantial Condemnation. In the event (i) all or substantially all of Pipestone is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, (ii) a substantial portion of Pipestone is so taken, but the result is that it is unreasonable to continue to operate Pipestone for the purposes contemplated by this Agreement, or (iii) an arms-length third party sale of PipeStone takes place and is successfully completed in lieu of (i) or (ii) preceding, then either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the conclusion of the condemnation proceedings.

10.4. Partial Condemnation. In the event a portion of PipeStone shall be taken by any of the events described in Section 10.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate Pipestone for the purposes contemplated by this Agreement, this Agreement shall not terminate, It is further agreed that any portion of any award, damages or other compensation paid to CITY on account of such partial taking, condemnation, or sale as is necessary to render PipeStone equivalent to its condition prior to such event shall be used for such purpose.

ARTICLE 11.

INDEMNIFICATION

11.1. Release; Indemnification. CONTRACTOR hereby agrees to indemnify and hold CITY, its officers, employees, agents and volunteers, harmless from and against any and all liability, cost, damage or expense (including reasonable attorneys' fees) arising from or related to the acts or omissions of CONTRACTOR, its agents, servants or employees, in the execution, performance, or failure to adequately perform CONTRACTOR's obligations pursuant to this Agreement, unless CITY has knowingly or willfully violated the law or CITY's actions or omissions constitute willful misconduct, gross negligence or recklessness. Notwithstanding anything else contained herein, CITY acknowledges that CONTRACTOR shall not be responsible for any damage to property under its care custody and control, except such damage caused by the negligence of CONTRACTOR, and that CITY shall ensure that all such damage is covered by appropriate insurance coverage.

11.2. Survival. The obligations contained in this Article 11 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 12.

RIGHT TO CURE

12.1. Performance. If, after the expiration of any permitted grace period or notice and cure period, a party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other party. Notwithstanding the above, in the case of an emergency, either party may, after notice to the other party, so reasonably perform in the other party's stead prior to the expiration of any applicable grace period; provided, however, the other party shall not be deemed in default under this Agreement.

12.2. Reimbursement. If, pursuant to this Article, either party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such party, with all interest, cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

ARTICLE 13.

EVENTS OF DEFAULT

13.1. The occurrence of any one or more of the following events which is not cured in any applicable grace period shall constitute a default under this Agreement (hereinafter referred to as an "Event of Default"):

13.1.1. Failure to Pay Sums Due. Either party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of three (3) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

13.1.2. Failure to Comply. Either party's failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

13.1.3. Bankruptcy. If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing.

13.1.4. Reorganization, Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE 14.

REMEDIES

14.1 CITY's Remedies. Upon the occurrence of an Event of Default by CONTRACTOR, CITY may:

14.1.1. Seek specific performance of CONTRACTOR obligations or injunctive relief, as applicable;

14.1.2. Demand payment of all amounts due CITY under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorneys' fees of CITY arising due to CONTRACTOR Event of Default;

14.1.3. Proceed to remedy the Event of Default, and in connection with such remedy, CITY may pay all expenses and employ counsel. All sums so expended or obligations incurred by CITY in connection therewith shall be paid by CONTRACTOR to CITY, upon demand by CITY, and on failure of such reimbursement, CITY may, at CITY's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to CONTRACTOR from CITY under the terms of this Agreement;

14.1.4. Terminate this Agreement by written notice of termination to CONTRACTOR. Upon proper termination of this Agreement and CONTRACTOR shall surrender possession of PipeStone to CITY and transfer all contracts, licenses, unearned accounts receivable, furniture, fixtures, and equipment to CITY and assist in an orderly transfer of the operation to another management entity or CITY;

14.1.5. No remedy granted to CITY is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law, in equity, or by statute. No delay or omission by CITY to exercise any right accruing upon an Event of Default shall impair CITY's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

14.2. CONTRACTOR Remedies. Upon the occurrence of an Event of Default by CITY, CONTRACTOR may:

14.2.1. Seek specific performance of CITY's obligations or injunctive relief, as applicable;

14.2.2. Demand payment of all amounts due CONTRACTOR under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorneys' fees of CONTRACTOR due to CITY's Event of Default;

14.2.3. Proceed to remedy the Event of Default, and in connection with such remedy, CONTRACTOR may pay all expenses and employ counsel. All sums so expended or obligations incurred by CONTRACTOR in connection therewith shall be paid by CITY to CONTRACTOR, upon demand by CONTRACTOR, and on failure of such

reimbursement, CONTRACTOR may, at CONTRACTOR option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to CITY from CONTRACTOR under the terms of this Agreement;

14.2.4. Terminate this Agreement by CONTRACTOR written notice of termination to CITY.

14.2.5. No remedy granted to CONTRACTOR is intended to be exclusive of any other

remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law, in equity, or by statute. No delay or omission by CONTRACTOR to exercise any right accruing upon an Event of Default shall impair CONTRACTOR exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

ARTICLE 15.

TERMINATION

15.1. Events of Termination. This Agreement shall terminate on the occurrence of any of the events set forth below:

15.1.1. An Event of Default by CONTRACTOR, and CITY sends to CONTRACTOR a notice of termination for cause; (after expiration of the applicable cure period);

15.1.2. An Event of Default by CITY, and CONTRACTOR sends to CITY a notice of termination for cause (after expiration of the applicable cure period);

15.1.3. Both parties agree in writing to terminate this Agreement; or

15.1.4. Upon the expiration or termination of this Agreement according to its terms.

15.2. Payment of Sums Owed. Upon termination, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination.

ARTICLE 16.

CONTRACT ENDING TRANSITION PROCEDURES

16.1. Contract Ending Transition Period. The "Contract Ending Transition Period" shall mean: (i) the six (6) month period immediately prior to expiration of the Term; (ii) the period from the date CITY or CONTRACTOR gives notice of default under Section 15.1. until the date of termination;

16.1.1. Contract Ending Transition Procedures. During the Contract Ending Transition Period:

16.1.1.1. CONTRACTOR shall cooperate in all manner as required and demanded by the CITY in the transfer of any and all licenses, including but not limited to state liquor licenses, necessary for the operation of the golf operations.

16.1.1.2. CONTRACTOR shall allow CITY and others to interview and discuss employment opportunities with CONTRACTOR's on-site employees.

16.1.1.3. CONTRACTOR shall not transfer any Key Personnel without the consent of Director, said approval not to be unreasonably withheld.

16.1.1.4. CONTRACTOR and CITY shall refrain from coercing, threatening, or harassing any employee who expresses interest in being employed by CITY, CONTRACTOR or other party after the Agreement has expired, or has been terminated or cancelled.

16.1.1.5. CONTRACTOR and CITY shall cooperate in good faith on post-contract support services, data management, inventory control, transfer of employees at Pipestone and other issues necessary and appropriate to ensure smooth transition of operating responsibilities from one party to another. Nothing in this paragraph shall be construed to require CITY or CONTRACTOR to hire additional personnel or spend additional money.

16.1.1.6. CONTRACTOR shall deliver to CITY all books and records related to the operation of Pipestone.

16.1.1.7. CONTRACTOR shall deliver to CITY all records and information related to tournaments, outings and other events booked at Pipestone for the Contract Transition Period or any time thereafter.

16.1.1.8. CONTRACTOR shall deliver to CITY current copies of all contracts, permits and licenses affecting the operation of PipeStone, including without limitation, equipment at Pipestone.

16.1.1.9. All real and personal property that is currently located at Pipestone, together with any real or personal property purchased or leased in accordance with the Budgets or otherwise with CITY funds is and shall remain the property of CITY. CONTRACTOR shall transfer possession of Pipestone, facilities, furnishings and equipment, supplies, software, databases, books, records, and materials purchased, prepared, or maintained under this Agreement to the new operator or CITY, as CITY shall direct. If CITY determines that Pipestone, any facilities, furnishings and equipment or other item is not in an acceptable condition accounting for normal wear and tear and Budget(s) constraints, if any,

CONTRACTOR shall have the burden of demonstrating that the item was properly maintained or that the item is useable and in good condition. CONTRACTOR shall reimburse CITY for the cost of repair or replacement of any item that is not in usable and good condition, normal wear and tear and Budget(s) constraints expected. CONTRACTOR shall surrender PipeStone in broom-clean condition.

16.1.1.10. CONTRACTOR shall transfer all keys, convey all alarm codes, and vacate PipeStone.

16.1.1.11. CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings, and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of CITY. CONTRACTOR shall regularly provide such documents to CITY upon CITY's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to CITY forthwith.

ARTICLE 17

NOTICES

17.1. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, postage prepaid, or (iii) sent by email, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other, All notices personally delivered shall be deemed received on the date of delivery, All notices forwarded by mail shall be deemed received on a date seven (7) days (excluding Sundays and legal holidays when the U.S. mail is not delivered) immediately following date of deposit in the U.S. mail. Provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt. All email notices shall be deemed received on the date sent for general correspondence, email correspondence for official notifications the received receipt notification shall be deemed indication of receipt.

If to CITY: City of Miamisburg 10 North First Street

Miamisburg, Ohio 45342

Attention: Ryan Davis, Parks & Recreation Director

Ryan.Davis@cityofmiamisburg.com

With a copy to:

City of Miamisburg 10 North First Street

Miamisburg, Ohio 45342

Attention: Mr. Keith D. Johnson, City Manager

Keith.Johnson@cityofmiamisburg.com

and

City of Miamisburg 10 North First Street

Miamisburg, Ohio 45342

Attention: Mr. Philip Callahan, Law Director Coolahanlaw@yahoo.com

If to CONTRACTOR:

Hampton Golf, Inc.

7845 Baymeadows Way

Jacksonville, Florida 32256

Attn: Mr, MG Oreder Morender54@gmail.com

With a copy to:

Hampton Golf, Inc.

7845 Baymeadows Way

Jacksonville, Florida 32256

Attn: Mr. Silva Gazarova, J.D.

SGazarova@Hampton.golf

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice to

either CITY or CONTRACTOR shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either CITY or CONTRACTOR.

ARTICLE 18.

MISCELLANEOUS

18.1. Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein; provided, however, in the event that at the time of the execution of this Agreement any of the Exhibits to be attached are incomplete, the parties shall use their best efforts to complete such Exhibits at the earliest possible date. To the extent this Agreement may be rendered unenforceable by the lack of completion of any of the Exhibits, such defect shall be cured as such incomplete Exhibits are made complete in accordance with this Section, except to the extent that such Exhibits are deemed and stipulated by the parties to be complete on the execution of this Agreement by the parties hereto. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and initialed by the parties.

18.2. Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

18.3. Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

18.4. No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of CITY and CONTRACTOR.

18.5. Restrictions as to Other Clubs. CONTRACTOR agrees that it shall not lease, manage, operate, or otherwise commit any of its personnel to any golf facilities within twenty-five (25) miles of the PipeStone, unless approved and authorized by CITY in writing.

18.6. Assignment; Successors and Assigns. This Agreement may not be assigned by either party hereto without the express written consent of the other party, except that CONTRACTOR may assign this Agreement to any of its affiliates.

18.6.1. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and assigns, where permitted herein.

18.7. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

18.8. Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith and shall continue in full force and effect.

18.9 Approvals. Any consent or approval referred to herein (by whatever words used) of either party shall not be unreasonably withheld or delayed, and neither party shall seek or obtain any payment in connection therewith as a condition therefor. Such consent must be obtained in writing.

18.9.1. For the purposes of the Agreement, (in all cases except where specifically stated otherwise herein) the consent, approval or decision of City Manager and Director may be treated by CONTRACTOR as the consent, approval or decision of CITY, unless approval is required by City Council under the charter, resolutions or ordinances of CITY, wherein City Manager and/or Director must gain authority to execute such documents from such legislative body.

18.10. Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of Ohio. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

18.11. Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

18.12. Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

18.13. Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments. Furthermore, in promoting, operating, managing, and maintaining PipeStone, CONTRACTOR may purchase goods, supplies and services from and through any of its affiliates, so long as the price and terms thereof are equal to or less than the prices and terms of goods and services of equal quality available to non-affiliates.

18.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement.

18.15. Time. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty or obligation under this Agreement shall not be considered an extension of time for the performance of any other duty or obligation under this Agreement.

18.16. Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions similar to those enumerated in this Section beyond the reasonable control of the party obligated to perform. If either party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then, upon written notice to the other, within ten (10) days of such event, such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent occasioned by such event. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

18.17. No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

18.18. Certain Services Excluded. Notwithstanding anything else contained in this Agreement to the contrary, CONTRACTOR's services are limited to those specifically noted in the Agreement and do not include, amongst others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax-related assistance or advice, legal advice or services, expert witness services, cost report preparation, data processing or information services, or feasibility studies. CONTRACTOR's services will not constitute an audit, review or compilation or any other type of financial statement reporting, or consulting engagement subject to the rules of the American Institute of Certified Public Accountants or other similar bodies. CONTRACTOR will not be expressing any professional opinions on and makes no representations or warranties in conjunction with this engagement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

HAMPTON GOLF, INC.,

a Florida corporation

By: _____

Its: _____

CITY OF MIAMISBURG,

a municipal corporation

By: _____

Its: _____

ORDINANCE NO. 7046

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE A RAPIDVIEW IBAK CAMERA THROUGH SOURCEWELL COOPERATIVE PURCHASING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code (O.R.C.) Section 9.48 authorizes the City to enter into cooperative purchasing agreements with one or more other states, groups of states, the federal government, other purchasing consortia, institutes of higher education, or any political subdivision of this state described in division (B) (2) of Section 9.48 of the O.R.C. for the purpose of purchasing services or supplies; and

WHEREAS, Sourcewell, formerly NPJA, is a Non-profit Cooperative Purchasing Consortium that can expand the purchasing base for the City and thereby create leverage and economies of scale that the City cannot create independently; and

WHEREAS, Sourcewell has entered into a Professional Services Agreement with RapidView LLC to provide sewer inspection and rehabilitation systems equipment to members of Sourcewell; and

WHEREAS, the replacement of the existing mainline camera is budgeted in the 2023 Sewer Capital Improvement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to execute a contract to purchase an IBAK mainline camera with lateral launch from RapidView LLC through Sourcewell at a total cost not to exceed \$340,000.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public utilities, therefore, this measure shall take effect and be in force from and after its passage.

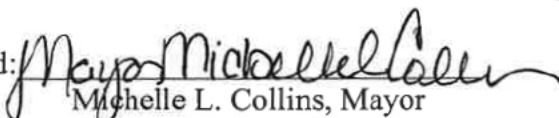
Passed: November 7, 2023

Attested:



Kim Combs, Clerk of Council

Approved:


Michelle L. Collins, Mayor

ORDINANCE NO. 7047

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE SNOW REMOVAL EQUIPMENT THROUGH NPP GOV COOPERATIVE PURCHASING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code (O.R.C.) Section 9.48 authorizes the City to enter into cooperative purchasing agreements with one or more other states, groups of states, the federal government, other purchasing consortia, institutes of higher education, or any political subdivision of this state described in division (B) (2) of Section 9.48 of the O.R.C. for the purpose of purchasing services or supplies; and

WHEREAS, NPPGov, National Purchasing Partners Government, is a National Cooperative Procurement Organization that can expand the purchasing base for the City and thereby create leverage and economies of scale that the City cannot create independently; and

WHEREAS, NPPGov has entered into a Professional Services Agreement with Henderson Products Inc. to provide snow removal equipment to members of NPPGov; and

WHEREAS, the replacement of the equipment is budgeted in the 2023 Capital Improvement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to execute a contract to purchase snow removal equipment from Henderson Products through NPPGov at a total cost not to exceed \$111,600.00.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public streets, therefore, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7048

AN ORDINANCE TO ACCEPT CERTAIN REAL PROPERTY LOCATED ON HOLLYHILL DRIVE FOR THE PURPOSE OF MAINTAINING PUBLIC UTILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, Floyd Chrisman, Advance Adventure Investments, Inc. is the owner of certain real property located on Holly Hill Drive in Miamisburg; and

WHEREAS, the owner desires to donate said property to the City of Miamisburg for the purpose of maintaining public utilities; and

WHEREAS, the City of Miamisburg has agreed to accept the properties.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

City Council hereby accepts parcels 5 and 6 as identified in the Exhibit A, attached hereto and made a part hereof.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public utilities therefore, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

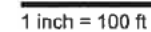
Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Mayor Michelle Collins
Michelle L. Collins, Mayor



ORDINANCE NO. 7049

AN ORDINANCE APPROVING PROJECT CONSENT LEGISLATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR PLACING EPOXY WEARING SURFACE ON BRIDGE DECKS INCLUDING SFN 5706483 ON INTERSTATE ROUTE 75 AT MILE MARKER 3.726 IN THE CITY OF MIAMISBURG, AND DECLARING AN EMERGENCY.

PRELIMINARY CONSENT LEGISLATION

Rev. 6/26/00

**PID No. 114955
MOT - 70/75-11.30/3.73L**

The following is an Ordinance enacted by the City of Miamisburg, Montgomery County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the stated described project.

SECTION I – Project Description

WHEREAS, the State has determined the need for the described project:

This project will place epoxy wearing surface on bridge decks including SFN 5706483 on Interstate Route 75 at mile marker 3.726 in the City of Miamisburg

NOW THEREFORE, be it ordained by the City of Miamisburg of Montgomery County, Ohio.
LPA

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III – Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the above described project as follows:

The State shall assume and bear 100% of all of the costs of the improvement.

The LPA agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees that all right-of-way required for the described project will be made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – Maintenance

Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

SECTION VI – Authority to Sign

I, Keith Johnson, City Manager, of said City of Miamisburg, is hereby empowered on behalf of the City of Miamisburg to enter into contracts with the Director of Transportation which is necessary to complete the above described project.

Passed: November 7, 2023.
(Date)

Attested: Kim Conboy
(Clerk)

Attested: Kim Conboy
(Clerk)



City Manager



Mayor

The Ordinance is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Miamisburg of Montgomery County, Ohio

I, Kim Combs as Clerk of the City of Miamisburg, of Montgomery County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 7049 adopted by the legislative Authority of the said City of Miamisburg on the 7th day of November, 2023.

That the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance No. 7049

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 8th day of November 2023.

Kim Combs
(Clerk)

(CITY SEAL) City of Miamisburg, Montgomery County, Ohio
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")

The foregoing is accepted as a basis for proceeding with the project herein described for the City of Miamisburg, Montgomery County, Ohio.
(LPA)

Attested: Kim Combs [Signature] Date 11.8.23
(Contractual Agent)

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For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)