

RESOLUTION NO. 48-15  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Heskam ON THE  
19<sup>th</sup> DAY OF October, 2015.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT, ON BEHALF OF THE CITY OF CENTERVILLE, WITH B. J. BURKE DBA DAYTON DISC GOLF ASSOCIATION ON PROPERTY OWNED BY THE CITY OF CENTERVILLE.

WHEREAS, The City of Centerville is the owner of a public park known as Stubbs Park which is located at 255 West Spring Valley Road, and

WHEREAS, B. J. Burke dba Dayton Disc Golf Association, the Licensee wishes to volunteer in assisting the City in the construction of, operation and maintenance of the Disc Golf Course (hereinafter "the Project") at Stubbs Park, and

WHEREAS, the City of Centerville and the Licensee wish to execute an Agreement in order to reduce to writing their understandings of the project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to enter into an Agreement between the City of Centerville and B. J. Burke dba Dayton Disc Golf Association at Stubbs Park at the Licensee's own expense and in accordance with specifications contained in the Agreement, a copy of which is attached hereto, incorporated herein, and marked as Exhibit "A".

PASSED this 19<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Mayor, City of Centerville, Ohio

ATTEST:

Debra A. James  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 48-15, passed by the Council of the City of Centerville, Ohio, on the 17<sup>th</sup> day of October, 2015.

Debra A. James  
Clerk of Council

Approved as to form, consistency  
with existing Ordinances, the Charter  
and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney

STUBBS PARK AGREEMENT

This Agreement entered into at Centerville, OH this 20<sup>th</sup> day of October, 2015 by and between the City of Centerville, Ohio, an Ohio municipal corporation (hereinafter "the City") and BJ Burke dba Dayton Disc Golf Association (hereinafter known as "the Licensee").

WITNESSETH:

WHEREAS, the City is the owner of a public park known as Stubbs Park which is located at 255 West Spring Valley Road in the City; and

WHEREAS, the City was awarded an Ohio Nature Works Grant to construct a disc golf course at Stubbs Parks; and

WHEREAS, the Licensee wishes to volunteer in assisting the City in the construction of, operation and maintenance of the Disc Golf Course (hereinafter "the Project") at Stubbs Park as set forth in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the parties hereto are executing this Agreement in order to reduce to writing their understandings as to the Project.

NOW THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties hereto agree as follows:

1. **NON-EXCLUSIVE REVOCABLE LICENSE.** The City hereby grants to the Licensee a non-exclusive revocable license to assist in constructing the Project at Stubbs Park as set forth in Exhibit "A." "Non-exclusive" means the Licensee shall have only priority use of the area on which the Project is located and that the members of the general public shall retain the right to use said area when same is not being used by the Licensee. Licensee shall coordinate and schedule its priority usage of the area with the Director of Public Works or his/her designee at least ten (10) business days prior to priority utilization of the area. Park rules must be followed at all times by the Licensee when on park grounds.

2. **THE CONSTRUCTION OF THE PROJECT.** The construction of the project shall consist of the placement of 18 concrete pads, 10 disc golf baskets, a kiosk and 18 tee pad signage markers within the designated areas shown on Exhibit "A". The course will have trash cans and benches placed around the course which are supplemental to the course's operation. Furthermore, occasional tree maintenance and brush clearing will be necessary for operation of the course.

3. **BASIC MAINTENANCE.** The City will continue to perform its basic maintenance to, and mowing of the area of the Project as it has in the past. The Licensee shall be responsible for emptying any course trash cans on a regular or weekly basis as needed throughout the year and depositing all refuse into a dumpster or location as set forth by the City. Any special requirements for the Project such as tree removal or tree and brush clearing must be communicated in advance to the Director of Public Works. The City makes no assurances regarding the condition of the field, levelness of the play area or other matters. It is acknowledged by both parties that the Licensee accepts the Project area as is.

4. **SIGNAGE.** The City, at the request of the Licensee, shall post signs as the City deems appropriate indicating that the Licensee has priority use of the Project Area for Leagues or Tournaments but the City shall not be in any way responsible for enforcement of same.

5. **TERMINATION.** Either party may terminate this Agreement for any reason by giving thirty (30) days' written notice to the other party.

6. **NOTICES.** Any notice to be given hereunder shall be in writing and delivered or mailed to the following:

**The City:**

City of Centerville  
100 West Spring Valley Road  
Centerville, Ohio 45458-3759  
Attn: Gregory B. Horn, City Manager

**The Licensee:**

Dayton Disc Golf Association  
208 Brydon Road  
Kettering, Ohio 45419  
Attn: BJ Burke, President

Either party may change the address at which notices are to be sent by giving written notice of the new address to the other party.

7. **INDEMNIFICATION AND HOLD HARMLESS.** Licensee agrees to indemnify and hold harmless the City, its officers, elected officials, trustees, directors, agents, employees, administrators, successors and assigns, from and against any and all claims, cause of action, suits and demands arising out of the Licensee's use or occupancy of the Project area. In the event that any claim or demand is made against the City, any suit is filed or any cause of action is claimed, the City shall immediately notify Licensee and the Licensee, at the sole option of the City, shall immediately provide the City with a legal defense or reimburse the City for the cost of defense including the payment of any damages, course costs, reasonable legal fees and other related expenses which the City has reasonably incurred.

8. **INSURANCE.** Licensee shall maintain insurance in amounts satisfactory to the City. Licensee shall furnish certificates of insurance and name the City and its officers, elected officials, trustees, directors, agents, employees, administrators, successors and assigns as additional insureds. Certificate of insurance shall contain provisions that require that such insurance will not be canceled or the limits of coverage in any way reduced without at least thirty (30) days' advance written notice.

9. **ASSIGNMENT.** This Agreement may not be assigned by Licensee without the prior written consent of the City. It is anticipated that over time, leadership positions within the Dayton Disc Golf Association may change resulting in a new association delegate for purposes of this Agreement. Thirty (30) days prior to a change of the delegated association officer to be designated as Licensee, the Dayton Disc Golf Association shall provide to the City Manager a written request to amend this Agreement designating a new Licensee to act on behalf of the Association. Approval of such an assignment shall not be unreasonably withheld by the City Manager. The City may assign the Agreement with thirty (30) days' notice.

10. SEVERABILITY. If any provision of this Agreement, or any covenant, obligations or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. If any provision, covenant, obligation or agreement shall be subject to more than one interpretation, such interpretation shall be used to make this Agreement effective. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

11. REPAIR AND RECONSTRUCTION. In the event that the Project is damaged or destroyed by an act of God, vandalism, or other means, it is acknowledged by the parties that the City is under no obligation to repair or reconstruct the Project for use by the general public or the Licensee.

12. MISCELLANEOUS. This Agreement represents the entire understanding between the parties and supersedes any prior written or oral agreement. No amendment or modification shall be effective unless in writing and signed by authorized representatives of both parties. The terms of this Agreement shall be governed by the law of the State of Ohio.

WITNESS:

Debra A. James

CITY OF CENTERVILLE, OHIO

By: [Signature]  
Gregory B. Horn, City Manager

Date: October 21, 2015

WITNESS:

Debra A. James

DAYTON DISC GOLF ASSOCIATION

By: [Signature]  
BJ Burke, President

Date: 11/10/15

APPROVED AS TO FORM:

By: [Signature]  
Scott Liberman, Municipal Attorney

Date: 10/21/2015

