

RESOLUTION NO. 18-02  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul M. Gresham ON THE  
15<sup>th</sup> DAY OF April, 2002.

A RESOLUTION AUTHORIZING THE CITY MANAGER,  
ON BEHALF OF THE CITY OF CENTERVILLE, TO  
EXECUTE A CONTRACT WITH DAYTON OPEN.

WHEREAS, Dayton Open has been granted the right to host sponsor the 2002 BUY.COM Dayton Open Golf Tournament and proposes to hold same at The Golf Club at Yankee Trace, and

WHEREAS, The City of Centerville is the owner and operator of The Golf Club at Yankee Trace, including the course itself, all associated ranges, tees, greens and buildings located at 10000 Yankee Street, and

WHEREAS, City personnel have heretofore managed the day to day tasks of making the Tournament a success, and

WHEREAS, The parties believe that it would be in the best interests of all concerned to have the City continue to supply management and other services necessary or desirable to assure the success of the Tournament.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an Agreement between the City of Centerville and Dayton Open to provide for the management of day to day tasks and other services necessary to assure the success of the 2002 BUY.COM Dayton Open Golf Tournament at The Golf Club at Yankee Trace, a copy of said Agreement which is marked as Exhibit "A", attached hereto and incorporated herein.

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 15<sup>th</sup> day of April, 2002.

Sally D. Beale  
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James, Assistant  
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 18-02, passed by the Council of the City of Centerville, Ohio, on the 15<sup>th</sup> day of April, 2002.

Debra A. James, Assistant  
Clerk of Council

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

Department of Law  
Robert N. Farquhar  
Municipal Attorney

# MANAGEMENT AGREEMENT

**THIS AGREEMENT** entered into this \_\_\_\_ day of March, 2002 by and between the City of Centerville, an Ohio municipal corporation (hereinafter "City") and The Dayton Open, an Ohio not for profit corporation (hereinafter "Dayton Open").

## WITNESSETH:

**WHEREAS**, City is the owner and operator of a public golf facility, including the course, all associated ranges, tees, greens and building (including the club house and parking lots) located 10000 Yankee Street, Centerville, Ohio and known as The Golf Club at Yankee Trace (hereinafter collectively the "Golf Club"); and

**WHEREAS**, Dayton Open has been offered the right to host the 2002 Buy.Com Dayton Open Golf Tournament (hereinafter "Tournament") from July 8th 2002 through July 14th 2002 from the PGA Tour, Inc. and proposes to hold the same at the Golf Club; and

**WHEREAS**, the Dayton Open's right to host the Tournament is contingent upon receipt of a Tournament Agreement from the PGA Tour, Inc.; and

**WHEREAS**, City personnel have heretofore managed the day to day tasks of making the Tournament a success; and

**WHEREAS**, the parties believe that it would be in the best interest of all concerned to have the City continue to supply the management and other services necessary or desirable to assure the success of the Tournament.

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

**1. SCOPE, DUTIES AND AUTHORITY.** The City, under the direction and control of its City Manager or his designee, shall have all of the necessary authority to do any and everything reasonably necessary (subject to the limitations set forth in this agreement) in order to promote and carry into execution a successful Tournament. Those duties are more fully described in the Tour Guide issued by the PGA Tour (hereinafter the "Guide") which is incorporated in this section as if fully rewritten and shall at a minimum include the same services and duties furnished and assumed by the City for the 1999, 2000 and 2001 Tournaments. The Dayton Open shall reimburse the City for compensation paid to the Tournament Director not to exceed \$2083.00 per month through August 31, 2002 and Marketing fees paid to Executive Sports Networking Inc. not to exceed \$2500.00 per month through July 31, 2002 .

The City agrees that it will provide necessary office space, equipment, supplies and support staff in order for the Tournament Director to carry out her duties.

The City shall submit a proposed line item operating budget to the Dayton Open Board of Trustees for review no later than March 30, 2002. The City shall furnish monthly financial reports to the Dayton Open no later than the fifteenth (15<sup>th</sup>) day of the following month during the term of this Agreement.

Dayton Open shall retain exclusive authority for each of the following items:

- A. Execution of a Tournament Agreement with the PGA Tour, Inc.;
- B. Designation of all qualifying charitable organizations;
- C. Allocation and distribution of all funds to qualifying charitable organizations;
- D. Approval of and amendment to a line item operating budget for the 2002 Tournament; and
- E. Payment of any and all expenses in accordance with the line item operating budget.

2. **INDEPENDENT CONTRACTOR STATUS.** When acting under this Agreement, the City shall be acting as an independent contractor and not as an employee of The Dayton Open. Like wise, the employees of the City when acting hereunder shall be acting only as employees of the City and not as employees of The Dayton Open. The City understands that it is solely responsible for:

(a) Payment of any federal, state or local income taxes which may be due as a result of compensation earned as an independent contractor per the terms of this Agreement on behalf of itself or on behalf of its employees.

(b) Providing and paying for all state and federal workers' compensation and unemployment benefits and premiums for all services furnished by the City and its employees pursuant to the terms of this Agreement.

City further understands that it and its agents and employees shall not be eligible for workers' compensation or unemployment benefits and expressly assumes all risk of loss and harm, including personal injury and property damage arising, out of the services provided herein for claims made by any of its employees or agents for workers' compensation or unemployment benefits and shall indemnify and hold Dayton Open, its trustees, members, employees, advisory board volunteers, agents and representatives harmless therefrom.

3. **INSURANCE.** The parties acknowledge that the City presently carries sufficient general liability insurance so that no further coverage is needed. If it is deemed necessary or desirable to have Dayton Open, its officers and trustees, listed as an additional named insured on any applicable insurance policies, the City shall undertake same upon the request of Dayton Open.

4. **TERM AND TERMINATION.** Upon execution of this Agreement by the City and The Dayton Open, The Dayton Open shall execute a Tournament Agreement with the PGA Tour, Inc., for the 2002 Tournament at Yankee Trace.

The term of this Agreement shall commence upon October 1, 2001 and shall terminate 12:00 a.m. (midnight) on September 30, 2002. This Agreement is expressly contingent upon the Dayton Open's execution of a 2002 Tournament Agreement with the PGA Tour, Inc. In the event a Tournament Agreement is not entered into between Dayton Open and the PGA Tour, Inc. before March 30, 2002, then at anytime thereafter either party may terminate this Agreement by giving written notice of termination to the other to be effective ten (10) days after receipt by the other party. This Agreement shall automatically terminate on the date the PGA Tour, Inc. cancels the Tournament Agreement with Dayton Open. Any termination shall operate prospectively only.

5. **PROCEDURE ON TERMINATION.** In the event of termination in accordance with section 4 above, both parties shall work together to conclude all matters between them in an expeditious manner and the City shall deliver all files and documents relating to the Tournament to Dayton Open; provided, however, the City shall be permitted to make and retain copies of any files or documents delivered in accordance with this section.

6. **COMPENSATION AND EXPENSES.** The City shall not be entitled to any compensation for its management services hereunder but it may receive reimbursement for its reasonable and necessary expenses incurred in connection with the execution of its duties hereunder upon the presentation of written evidence of any such expenses to Dayton Open. Reimbursement shall be made within thirty (30) days after the presentation of the documentary support for it. The authority of the City to contract and/or incur any expense for the Tournament shall be expressly limited to the line item budget authorized by the Dayton Open Board of Trustees. The City shall not contract and/or incur any additional expense on behalf of the Dayton Open in excess of said budget without first obtaining the express written consent of the Dayton Open Board of Trustees. Any unauthorized contract or expense shall be the sole obligation of the City.

7. **FINANCIALS.** Dayton Open shall maintain a separate bank account and separate financial records and pay for all of its expenses.

8. **INDEMNIFICATION AND HOLD HARMLESS.** City agrees to indemnify and hold Dayton Open, its trustees, members, employees, advisory boards, volunteers, agents and representatives, from and against any and all claims, causes of action, suits or demands arising out of the Tournament or use of the Golf Club by any third party which is the direct and

proximate result of any intentional or negligent act, error or omission by the City, its employees, agents and representatives. Dayton Open shall be entitled to be reimbursed for any expenses, costs, judgments, interest, court costs and/or attorney fees it incurs by virtue of any such action. At Dayton Open's request, the City shall undertake the full defense of any such claim. This indemnification and hold harmless protection for the Dayton Open shall include, but not limited to, any claims of negligence, breach of warranty, patent and copyright infringement or any other tort or contract action arising out of any intentional or negligent act, error or omissions by the City as described above and shall survive any termination of this Agreement.

9. **MISCELLANEOUS PROVISIONS.** This Agreement contains the entire agreement between the parties and supersedes any prior oral or written understandings. No modification or amendment shall be effective unless in writing, signed by both parties. No assignment of the rights and duties hereunder shall be effective unless agreed to in writing by both parties. Time is of the essence with respect to all of the provisions hereof.

10. **OPTION FOR 2003 TOURNAMENT.** The Dayton Open grants to the City the Option to manage the Tournament in the year 2003 upon the same terms and conditions as set forth herein. Said Option is conditioned upon the Dayton Open Entering into a Tournament Agreement with the PGA Tour, Inc for the 2003 Tournament. The City shall exercise the Option by providing written notification to the President of the Dayton Open Board of Trustees no later than November 30, 2002 or the Option will be void.

11. **ADDITIONAL TERMS** The PGA Tour, Inc., through the ADDENDUM TO 2002 BUY.COM TOUR TOURNAMENT AGREEMENT with Dayton Open, shall be responsible for payment to the Dayton Open an amount equal to the Net Operating Losses, if any, up to maximum of \$25,000.00, that the Dayton Open actually incurs for conducting the 2002 Tournament. The City shall be responsible for all Net Operating Losses, if any, in excess of the first \$25,000.00 in Net Operating Losses, that the Dayton Open actually incurs for conducting the 2002 Tournament. "Net Operating Loss" shall be determined by subtracting from gross income received (including all charitable donations received but excluding all gross income from the Dayton Opens's charitable auction) all ordinary and necessary business and operating expenses incurred (excluding all charitable gifts except those gifts made from gross income received from the Dayton Opens's charitable auction) through August 31 2002. Host Organization shall notify the City on or before August 31 2002 of any Net Operating Losses due to the Dayton Open from the City pursuant to this Agreement. At the time of notification the Host Organization shall provide the City with a copy of its current financial statement itemizing all gross income and ordinary and necessary business expenses in conjunction with its request. The City shall make payment to the Host Organization of the applicable amount within five (5) business days after receipt of the notification. The Dayton Open assigns to the City all rights and interest it has in order to receive reimbursement for Net Operating Losses from PGA Tour, Inc. arising under the ADDENDUM TO 2002 BUY.COM TOUR TOURNAMENT AGREEMENT entered into between The Dayton Open and the PGA Tour, Inc.

12. **GOVERNING LAW.** This Agreement shall be governed by the law of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives have executed this Agreement on the date first above written.

WITNESS:

CITY OF CENTERVILLE

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Gregory B. Horn, City Manager

THE DAYTON OPEN

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Scot A. Stone, Trustee  
Board of Trustees

THIS INSTRUMENT PREPARED BY: SCOT A. STONE, ATTORNEY AT LAW, RUFFOLO, STONE, DRESSEL & LIPOWICZ,  
7501 PARAGON ROAD, DAYTON, OHIO 45459; (937) 436-0033