

RESOLUTION NO. 2023-14
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY RESOLUTION
AUTHORIZING AND DIRECTING
THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO THE PARKVIEW POOL CONCESSIONAIRE
AGREEMENT WITH MVGMM, INC. FOR A ONE-YEAR TERM**

WHEREAS, in order to provide better and more cost-effective concession services at the Parkview Pool, the Mayfield Village Director of Parks and Recreation has recommended contracting with a concessionaire to operate the concession stand at the Parkview Pool; and

WHEREAS, MVGMM, INC. provides such concessionaire services; and

WHEREAS, the Mayfield Village Director of Parks and Recreation has reviewed the qualifications of MVGMM, INC. to operate the concession stand at the Parkview Pool and recommends that the Village enter into the Parkview Pool Concessionaire Agreement with MVGMM, INC. for a one-year term.

BE IT RESOLVED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO,
THAT:

SECTION 1. The Council of Mayfield Village does hereby direct the Mayor and President of Council to enter into the Parkview Pool Concessionaire Agreement with MVGMM, INC. to operate the concession stand at the Parkview Pool for a one-year term, in a form substantially similar to the Agreement attached hereto and incorporated herein as Exhibit "A".

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council, and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it provides for necessary services and equipment to ensure that the Village Parks and Recreation Department is properly supported. It shall, therefore, take effect immediately upon the passage by the

affirmative vote of not less than five (5) members elected to Council and approved by the Mayor or otherwise at the earliest time allowed by law.

STEPHEN SCHUTT
Council President

First Reading: _____, 2023

Second Reading: _____, 2023

Third Reading: _____, 2023

PASSED: _____, 2023

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

DIANE A. CALTA, ESQ.
Director of Law

ATTEST: _____

MARY E. BETSA, MMC
Clerk of Council

PARKVIEW POOL CONCESSIONAIRE AGREEMENT

THIS PARKVIEW POOL CONCESSIONAIRE AGREEMENT (“Agreement”) is made and entered into this 1st day of January, 2023, by and between MAYFIELD VILLAGE, a Municipal Corporation, located at 6622 Wilson Mills Road, Mayfield Village, County of Cuyahoga and State of Ohio, (The “Village”) and MVGMM, INC., an Ohio Corporation, (the “Concessionaire”), located at 839 SOM Center Road, Mayfield Village, County of Cuyahoga and State of Ohio.

For valuable consideration, the parties hereto have agreed that a Concessionaire shall be entitled to operate a concession service at the Mayfield Village Parkview Pool pursuant to the following terms and conditions:

1. CONCESSION STAND: The Village hereby grants to Concessionaire the non-exclusive right to provide and operate the concessions (the “Concession Service”) at the Parkview Pool concession stand area located at 425 North Commons Blvd, Mayfield Village, Ohio (the “Concession Stand”) on the terms and conditions described herein. The right to provide the Concession Service under this Agreement is not exclusive and other vendors may be permitted to operate with the Parkview Pool at the Village’s sole discretion.

2. TERM: The Term of this Agreement shall be from January 1, 2023 through December 31, 2023, unless earlier terminated in accordance with this Agreement.

3. OPERATING SEASON AND HOURS OF OPERATION: The operating season shall commence on May 27, 2023 and terminate on September 4, 2023. The Concession Service shall operate on all days concurrent with regular Parkview Pool hours for the operating season. The Concession Stand shall remain open at such other times as mutually agreed upon between parties.

4. EQUIPMENT: Mayfield Village will make available to the Concessionaire the following items of equipment for their use:

- Cash Register
- Ice Machine
- Freezer
- Refrigerator
- Snow Cone Machine
- Hot Dog Machine
- Popcorn Machine
- Pretzel Machine
- Oven

These items are being provided “as is” in their existing used condition. The Village will be responsible for repair and/or replacement of the listed equipment. Notwithstanding, in the event the repair and/or replacement of the listed equipment is caused by the misuse of Concessionaire,

then Concessionaire shall be solely responsible for repair and replacement of such listed equipment. The repair and/or replacement of the equipment will be at the discretion of the Mayfield Village Parks and Recreation Department.

5. CONSIDERATION: In consideration for Concessionaire to provide the Concession Service at the Concession Stand, Concessionaire shall pay to the Village, the sum of \$500.00 to be paid in two (2) equal installments as follows:

1st payment, \$250.00 on or before June 15th
2nd payment, \$250.00 on or before July 15th

In addition, Concessionaire shall obtain, and pay for the Food Service Operation license as required by the Cuyahoga County Board of Health prior to operation. (The Village shall secure the for the 2023 season)

6. QUALITY OF MERCHANDISE: All food, drinks, beverages, refreshments, etc., ("Merchandise") sold or kept for sale shall be of first quality wholesome and pure, and shall conform in all respects to federal, state, and municipal food laws, ordinances and regulations. All meat items sold or served must be 100% meat, with no cereal added. No imitation adulterated or misbranded articles shall be sold or kept for sale. All Merchandise kept on hand shall be stored and handled with due respect to sanitation laws and regulations. All Merchandise kept for sale shall be subject to inspection, approval and or rejection by the Village Director of Parks and Recreation, or other authorized representative of the Village. If rejected the Merchandise shall be removed from the Concession Stand and shall not be offered for sale. The Village Director of Parks and Recreation shall have the right to recommend the quality, size and weight of any commodity offered for sale and to suggest to the Concessionaire to comply with such change or cease the sale of such Merchandise. The Director of Parks and Recreation may be guided in determining the quality, size and weight of any food product offered for sale by the quality, size and weight of commodities in other places of business and not necessarily those in similar concession stands in other municipalities.

7. BEVERAGES: All beverages served shall be exclusively those distributed by Coca Cola. All containers must be plastic, cans, or cups. (Glass is not permitted.)

8. EMPLOYEES: The Concessionaire shall not employ any person or persons in or about any building or stand conducted by them who shall use improper language or act in a loud or boisterous manner or wear generally unacceptable dress. They shall immediately, upon request of the Mayor or designee, dismiss any employee whom the Mayor deems unsuitable to be in attendance in Concession Stand. At least one person sixteen (16) years of age or over will personally supervise the operations. The dress of all employees shall be appropriate and subject to approval of the Mayor or designee. It shall be expressly understood that all employees of the Concessionaire shall be deemed to be employees of the Concessionaire solely and shall not be considered employees or agents of Mayfield Village.

9. AREAS TO BE CLEANED: The Concessionaire shall be responsible for cleaning all concession facilities, including eating areas with tables and waste containers shall be

kept clean and free from all rubbish and refuse on a frequent and routine basis. The Concessionaire shall be responsible for and shall repair any damages pertaining to the concession facility and immediate park grounds caused by reason of its operation or lack of proper supervision during operating hours. Pool personnel shall help keep eating areas with tables and waste containers clean when available, but shall not be responsible for the overall cleanliness.

All concession facilities, including, but not limited to, floors, walls, ceilings, working surfaces, cabinets, sinks, electrical fixtures, plumbing fixtures, storage areas and food/beverage concession equipment, shall be maintained in a sanitary manner acceptable to Mayfield Village and the Cuyahoga County Department of Health.

If cleaning and bacterial treatment of utensils is done manually, it shall be done in the three (3) compartment or unit sink so as to permit washing, rinsing and sanitizing in not less than 170-degree temperature. After bacterial treatment, utensils shall be stored in a clean, dry place protected from flies and other contamination and shall be handled in a manner to prevent contamination.

ALL STORAGE OF FOOD PRODUCTS MUST BE MAINTAINED AT A TEMPERATURE OF 40 DEGREES OR LESS FOR COLD FOOD OR 140 DEGREES OR MORE FOR HOT FOOD.

10. CONCESSION FACILITY: Equipment and specified area cleanliness standards shall be determined by the Recreation Director of the Mayfield Village.

At the conclusion of the authorized operating season the Concessionaire shall remove all Concessionaire stock items and clean all affected areas to the full satisfaction of the Recreation Director of Mayfield Village. All specified "Close of Season" Concessionaire responsibilities shall be completed within ten (10) calendar days of the last day of the operating season or as otherwise agreed upon.

11. UTILITIES: Concession operations related to electricity, natural gas, and water shall be paid by Mayfield Village. The Concessionaire shall exercise energy conservation methods and procedures whenever possible. Mayfield Village reserves the right to monitor all applicable energy consumption and determine conservation measures, to be implemented by the Concessionaire, which will not impede concession retail potential. In addition to the use of all Mayfield Village owned equipment currently at the facility including but not limited to the equipment listed in Paragraph 4 above, the Director of Parks and Recreation shall have the right to inspect such equipment to determine whether it is being used and cared for properly by the Concessionaire.

12. ADVERTISING SIGNS: Appropriate advertising signs will be permitted; however, the Concessionaire must receive prior written permission from the Director of Parks and Recreation for Mayfield Village relative to size, type and location of all advertising signs.

13. POSTING OF PRICES: The Concessionaire shall post, in a conspicuous place at the Concession Stand, a complete list of prices of all articles offered for sale under the

terms of this Agreement. The manner of posting such lists, including the style and size of the signs, shall be subject to approval of the Director of Parks and Recreation for Mayfield Village. All pricing shall be set at a reasonable rate and shall be subject to review and approval by the Director of Parks and Recreation for Mayfield Village.

The Concessionaire may charge a reasonable mark-up over cost. It is the intention of Mayfield Village to make available to the public the highest quality service with a reasonable profit to the Concessionaire; which will justify the Concessionaire's investment and expenses.

14. LICENSES AND TAXES: The Concessionaire shall pay all taxes and license fees that shall accrue or become due under the laws of the State of Ohio or the ordinances of Mayfield Village during the terms of this Agreement.

15. INSURANCE: The Concessionaire shall obtain, pay for, and cause to remain in effect during the term of this contract liability insurance with limits of One Million Dollars (\$1,000,000.00) combined single limit liability (bodily, injury, and property damage). The policy of insurance shall name Mayfield Village as additionally insured.

16. Mayfield Village, Ohio shall be entitled to cancel this Agreement upon giving five (5) days written notice to the Concessionaire for failure of the Concessionaire to comply with any of the provisions of this Agreement or to furnish satisfactory service in such concession operation. Mayfield Village shall be entitled to terminate this Agreement immediately upon determination by the Mayor of Mayfield Village, Ohio that any act or omission occurred or exist at the concession location which jeopardizes the safety or health of any person.

17. No pool staff or Mayfield Village employees (with the exception of Police, Service Director, Recreation Director and the Fire Department) will be permitted to have a key to the Concession Stand. No Village employee except Police in case of emergency will be permitted to enter the Concession Stand without prior permission from the Concessionaire once the stand has been stocked with product and/or equipment.

18. MAYFIELD VILLAGE SHALL HAVE THE OPTION TO RENEW THIS AGREEMENT ON A YEARLY BASIS, BASED UPON SATISFACTORY PERFORMANCE BY THE CONCESSIONAIRE.

19. INDEPENDENT CONTRACTORS. Concessionaire is an independent contractor and shall not be considered an employee, officer or agent of the Village. Concessionaire shall hire and employ such persons as Concessionaire deems necessary to provide adequate concession services and shall retain the right to exercise full control and supervision of all such persons assisting Concessionaire in the performance of services hereunder. Concessionaire shall be solely responsible for all matters relating to the payment of its employees including workers compensation, social security and income tax withholding, and all other regulations governing such matters.

20. ASSIGNMENT. Concessionaire shall not sub-contract or otherwise assign, delegate or transfer the rights, duties and services to be performed under this Agreement, or any part hereof, without the prior written consent of the Village.

21. INDEMNITY. Concessionaire agrees to indemnify, hold harmless and defend the Village, its officers, agents, and employees from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorneys' fees, however caused, arising out of or resulting from the operations, acts or omissions of the Concessionaire, its employees, officers and agents, in performance of Concessionaire's services and obligations under this Agreement.

22. SEVERABILITY. Every provision of this Agreement is intended to be several. If any term or provision is deemed invalid or illegal for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

23. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each counterpart constituting an original but altogether being one and the same instrument and contract.

[Signature Page to Immediate Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

CONCESSIONAIRE:

MAYFIELD VILLAGE, OHIO

MVGMM, INC., an Ohio Corporation

By: _____

By: _____

Name: Brenda T. Bodnar

Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

By: _____

Name: Stephen Schutt

Title: Council President

Date: _____

APPROVED AS TO LEGAL FORM:

Diane A. Calta
Director of Law
Mayfield Village, Ohio

FISCAL OFFICER'S CERTIFICATE

As the fiscal officer of the Mayfield Village, Ohio, I certify that as of the date of execution of the within Agreement with Mayfield Village, Ohio, the amount required to satisfy payment under the Agreement has been fully appropriated, or authorized or directed for such purpose and is in the Treasury, or is in the process of collection and is free from any obligation or certification now outstanding.

Ronald C. Wynne, Director of Finance
Mayfield Village, Ohio