

AGREEMENT

THIS AGREEMENT made and concluded at Lakewood, Ohio, this 19th day of May, 2017 by and between the CITY OF LAKEWOOD, Ohio, 12650 Detroit Avenue, Lakewood, Ohio (hereinafter referred to as "City") and McSHEPARD ENTERPRISES, ADDRESS (hereinafter referred to as the "Consultant").

WHEREAS, the City is engaged in the creation of the Lakewood Wellness Foundation (hereinafter referred to as the "Foundation") through a Foundation Planning Task Force (hereinafter referred to as the "Task Force"); and

WHEREAS, the Task Force is comprised of a number of resident volunteers with various levels of education, knowledge and experience that each brings to the Task Force; and

WHEREAS, in order to support the Task Force in its mission, the City wishes to engage Consultant with experience in creating such entities as the Foundation to help guide the Task Force through the process and facilitate meetings.

WITNESSETH:

For and in consideration of the mutual promises, covenants and agreements of the parties hereto as herein set forth, the parties hereby agree as follows:

1. **TERMS:** This Agreement shall commence upon signing of all parties and shall continue for a period of five (5) months or until such time that work required

under this Agreement is complete. This Agreement may be terminated by either party by giving thirty (30) days written notice to the other party. Consultant shall be entitled to payment only for services rendered at the time of termination and shall submit a final invoice to the City for services provided within thirty (30) days of the date of termination or provide a refund to the City of any overpayment made to Consultant within thirty (30) days written notice from the City of such overpayment;

2. **SERVICES:** Consultant shall act as a facilitator and shall attend all Task Force meetings as necessary Consultant will assist in identifying priorities for the Task Force, focus on vetting of information, identifying key themes, establishing key deliverables and communicating those deliverables to the community as further described in the City's Request for Proposal-Phase 1, attached as Exhibit A, and Consultant's Proposal-Phase 1, attached as Exhibit B;

3. **FEE:** For services to be rendered under this Agreement, Consultant shall be entitled to a fee not to exceed \$22,000 for completion of the scope of work detailed in Phase 1 of Consultant's Proposal. Consultant shall submit three (3) equal invoices to the City, the first upon signing the agreement, the second when the work is approximately one-half complete, and the final invoice upon completion of all work. It is agreed that Consultant is not an employee for the City, and shall not be entitled to any benefits beyond his fee for services rendered;

4. **DEVOTION OF TIME:** Consultant shall devote the reasonable amount of time which is necessary for the satisfactory, complete and timely performance of the duties under this Agreement; Consultant shall not engage any sub-consultants without prior written approval of the City;

5. INSURANCE AND INDEMNIFICATION: Consultant shall be an independent contractor and not an employee of the City under this Agreement and shall maintain Workers' Compensation Coverage in accordance with law and automobile coverage with limits \$100,000 per occurrence/\$300,000 aggregate.

Consultant shall indemnify, defend, save and hold harmless the City of Lakewood, its departments, agencies, boards, commissions, officials, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. In consideration of the award of this contract, Consultant agrees to waive all rights of subrogation against the City of Lakewood, its officers, officials, agents and employees for losses arising from the work performed by the Consultant for the City of Lakewood.

6. ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promises relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of the City. In the event of an assignment by Consultant to which the City has consented, the assignee or legal representative shall agree, in writing, with the City to personally assume, perform and be bound by the covenants, obligations and agreements contained herein;

9. **SUCCESSORS AND ASSIGNS:** Subject to the provisions regarding assignments, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties;

10. **GOVERNING LAW:** The validity of this Agreement and any of its terms or provisions, as are the rights and duties of the parties hereunder, shall be governed by the laws of the State of Ohio;

11. **AMENDMENT:** This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement;

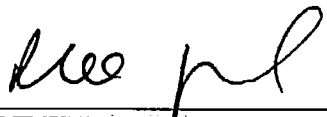
12. **LEGAL CONSTRUCTION:** In the event that anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provisions and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

Executed at Lakewood, Ohio, on the day and year first above written.

WITNESSES:

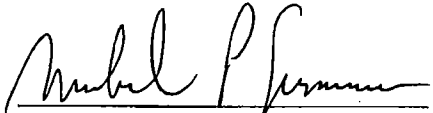
CONSULTANT:

McShepard Enterprises



RANDELL McSHEPARD, Principal

CITY OF LAKEWOOD, OHIO



MICHAEL P. SUMMERS, Mayor

The legal form and correctness of the within document is hereby approved.



JENNIFER G SWALLOW
Chief Assistant Law Director