

AN ORDINANCE AMENDING ORDINANCE NO. 23-99, AN AGREEMENT WITH RONALD WARNER FOR PARKS AND RECREATION CONSULTING SERVICES, AND DECLARING AN EMERGENCY.

WHEREAS, Council authorized an agreement with Ronald Warner for Parks and Recreation consulting services by Ordinance No. 23-99; and

WHEREAS, the City desires to add terms to the agreement regarding additional services for the Total Solar Eclipse on April 8, 2024, and programming leading up to the Eclipse; and

WHEREAS, Council, coming now to consider said addendum, approves it in full.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Ordinance No. 23-99 is hereby amended to include the additional terms of the agreement as follows:

Section No. 2: That said agreement shall state in its terms that the cost of said personal, professional services shall not exceed \$2,500.00 per month according to the terms of the contract outlined in Exhibit A. Upon receipt of an itemized billing, in conformance with the guidelines and scope of work as set forth in said agreement, to the satisfaction of the Recreation Director, the Director of Finance is hereby directed to deliver to Ronald Warner the warrant of this City in the amount due and payable and to cause said warrant to be paid.

Section No. 3: That additional consulting services focused on the Total Solar Eclipse will be performed by Ronald Warner for an increased consulting fee of \$500 per month, effective January 1, 2024, through April 30, 2024. (Exhibit A)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing parks and recreation consulting services, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 1/22/2024

/s/ Martin E. O'Donnell
President of Council

POSTED: 1/26/2024

APPROVED: 1/23/2024

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Mark A. Spaetzel
Mayor

AMENDED AND RESTATED CONSULTING AGREEMENT

This Amended and Restated Consulting Agreement (this “Agreement”) is entered into as of the ____ day of _____, 2024, between the City of Avon Lake, Ohio, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter (the “City”) and Ronald Warner, an Ohio resident (“Consultant”).

RECITALS

WHEREAS, the City retained the Consultant to assist the City’s Parks and Recreation Department upon the terms and conditions set forth in that certain Consulting Agreement dated May 1, 2023 (the “Original Agreement”);

WHEREAS, the City and Consultant desire to amend and restate the Original Agreement to add terms to the Original Agreement regarding additional services for the Total Solar Eclipse on April 8, 2024 (the “Eclipse”) and programming leading up to the Eclipse;

WHEREAS, the City desires to retain Consultant to the City on a more formalized basis and believes such retention is in the best interest of the City; and

WHEREAS, Consultant desires to render consulting services to the City upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment of the Consulting Fee (as defined in Section 5 below) and of the foregoing promises, and the mutual agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Consulting Period; Termination.**

(a) This Agreement shall continue on a month-to-month basis until terminated pursuant to Section 1(b) below (the “Consulting Period”).

(b) This Agreement shall terminate automatically: (i) upon the death or disability of Consultant; (ii) upon the written notice of either the City or Consultant upon the material breach of this Agreement by the other party (subject, if such breach is reasonable curable, to the breaching party’s right to cure such material breach for a period of five (5) business days following the non-breaching party’s written notice to the breaching party of such material breach); or (iii) without cause or any cause, upon thirty (30) days written notice of either City or Consultant to the other party.

2. **Consulting Services.** During the Consulting Period, Consultant shall provide, on a part-time, special project basis, such advisory and consulting services as may be reasonably requested by the director or other authorized representative of the City’s Parks and Recreation Department, including but not limited to, the following services (collectively, the “Consulting Services”):

- Acting as a liaison to external nonprofit organizations that benefit the Parks and Recreation Department;
- Assist the Parks and Recreation Department with the procurement of sponsorships;
- Assist with the evaluation of programs held by the Parks and Recreation Department;
- Assist with large-scale programs and events that are coordinated through the Director of the Parks and Recreation Department; and
- Such other consulting services mutually agreed upon by the City and Consultant from time to time.

Consultant hereby accepts such retention and shall in good faith perform, for and on behalf and in the best interests of the City, the Consulting Services during the Consulting Period. Consultant agrees to be available for a minimum of twenty-five (25) hours per month during the Consulting Period to perform the Consulting Services (vacations and reasonable absences due to illness excepted).

Consultant shall prepare, or assist in the preparation of, such reports and updates as requested by the City to be delivered to the Parks and Recreation Department, Parks and Recreation Commission and/or CERP.

Consultant shall perform all Consulting Services pursuant to this Agreement in a professional manner.

3. Eclipse Consulting Services. For a period beginning on the Effective Date and ending on April 30, 2024 (“Eclipse Consulting Period”), Consultant shall provide, on a part-time, special project, and short-term basis, advisory and consulting services in preparation for the Eclipse, as may be reasonably requested by the director or other authorized representative of the City’s Parks and Recreation Department, including but not limited to the following services (collectively, the “Eclipse Consulting Services”):

- Act as a business liaison to local businesses during the Eclipse Consulting Period;
- Contact local businesses directly to ensure that the businesses are aware of the Eclipse and the potential impact of the Eclipse on their business;
- Promote and sell sponsorship opportunities the City has available to local businesses for events leading up to and including the Eclipse watch party;
- Provide additional event support;
- Plan, coordinate, promote, and manage the Beach Park Station Stop 65 pre-Eclipse event scheduled to be held on Sunday, April 7, 2024.

Consultant hereby accepts retention for these Eclipse Consulting Services in addition to the Consulting Services defined in Section 2. Consultant shall in good faith perform, for and on behalf and in the best interests of the City, the Eclipse Consulting Services during the Eclipse Consulting Period.

In addition to the hours required of the Consultant for the Consulting Services under Section 2, Consultant agrees to be available for a minimum of five (5) hours per month during each month of the Eclipse Consulting Period to perform the Eclipse Consulting Services (excepting vacation time taken with the City's prior approval and reasonable absences due to illness).

Consultant shall prepare, or assist in the preparation of, such reports and updates as requested by the City to be delivered to the Parks and Recreation Department, Parks and Recreation Commission, and/or CERP.

Consultant shall perform all Eclipse Consulting Services pursuant to this Agreement in a professional manner.

4. Independent Contractor. Consultant acknowledges and agrees that Consultant's status at all times shall be that of an independent contractor, and that Consultant may not, at any time, act as an employee, agent or representative for or on behalf of the City, for any purpose or transaction, and may not bind or otherwise obligate the City in any manner whatsoever. In recognition of Consultant's status as an independent contractor, Consultant hereby waives any rights as an employee or deemed employee of the City. In furtherance of the foregoing, in the course of performing the Consulting Services, Consultant shall disclose that Consultant (and any persons acting on behalf of Consultant) is acting as an independent contractor, not as an agent of the City, and that Consultant has no authority to bind the City to any contractual agreement. In addition, while performing the Consulting Services pursuant to this Agreement, Consultant shall be responsible for complying with all applicable federal, state, and local laws, ordinances and regulations related to such services performed hereunder.

5. Consulting Fees; Expenses.

(a) Consulting Fee. In consideration of Consultant's retention hereunder to perform the Consulting Services, the City will pay Consultant an amount (the "Consulting Fee") equal to Two Thousand Five Hundred Dollars (\$2,500.00) per month for the duration of the Consulting Period. The Consulting Fee shall be paid each month during the Consulting Period in accordance with the City's standard accounts payable process. Should this Agreement continue beyond one year, the City and Consultant may mutually agree on a reasonable adjustment to the Consulting Fee to be paid to Consultant during the Consulting Period, but not more than once per calendar year, unless an increase is being made due to a substantial increase in Consultant's scope of work and time requirements.

(b) Eclipse Consulting Fee. In consideration of the Consultant's retention to perform Eclipse Consulting Services, the City will pay Consultant an amount (the "Eclipse Consulting Fee") equal to Five Hundred Dollars (\$500.00) per month for the duration of the Eclipse Consulting Period, which shall be paid in addition to the Consulting Fee paid to Consultant for Consulting Services. The Eclipse Consulting Fee shall be paid each month during the Eclipse Consulting Period in accordance with the City's standard accounts payable process.

(c) Expenses. Consultant shall receive reimbursement for business expenses incurred during the Consulting Period by Consultant so long as consistent with any City expense reimbursement policies; and provided further, that: (i) all such expenses are approved in advance

and in writing by the City; and (ii) Consultant furnishes appropriate documentation as required by the Internal Revenue Code of 1986, as amended (and such other documentation concerning such expenses as the City may, from time to time, reasonably request) no later than fifteen (15) days following the date the expense was incurred.

6. Taxes. Consultant shall pay directly all taxes associated with the compensation Consultant receives under this Agreement. With respect to any payments to Consultant pursuant to this Agreement, the City shall not withhold or pay any FICA or other federal, state or local income or other taxes, or comply with or contribute to state workers' compensation, unemployment or other funds or programs. Consultant acknowledges the separate responsibility for the payment of all such taxes, and agrees to indemnify the City and hold the City and its respective officers, managers, directors and members harmless from and against any and all liability, claims, costs and expenses which any of them may suffer or incur arising out of any failure by Consultant to pay promptly any such tax as required by any applicable law.

7. Indemnification. Consultant shall indemnify, defend and hold harmless the City and its officials, affiliates and employees, (collectively, the "Indemnified Parties") from any claims, judgments, liabilities, awards or damages (including reasonable attorney fees and legal expenses) (collectively, the "Losses") arising from any third-party action brought against the City or the other Indemnified Parties to the extent that such Losses are caused by or arise from Consultant's negligence or willful misconduct.

8. Insurance. Consultant shall add the City as an additional insured and loss payee on his auto, liability and any umbrella insurance policies. Consultant shall maintain commercial liability insurance in an amount to be mutually agreed upon by Consultant and the City and shall name the City as an additional insured on such policy.

9. Return of Materials. Upon the termination of Consultant's engagement hereunder for any reason, Consultant will surrender immediately to the City, any personal property of the City that is in Consultant's possession and which belongs to the City. In the event that such items are not so returned, the City shall have the right to recover such property and to deduct from any earned but unpaid Consulting Fee or expense reimbursement payable to Consultant the reasonable value of such items plus all reasonable costs, attorneys' fees and expenses incurred in searching for, taking, removing and recovering said property.

10. Copyrights. During the course of Consultant's provision of services to the City, Consultant shall promptly disclose to the City all material that may be copyrighted or protected by other property rights and useable by the City, which Company produced, composed, wrote or created, whether individually or in collaboration with others. Such material shall be deemed to be a work for hire and shall be the sole property of the City. In the event that the City desires to obtain copyright protection or other property rights on such material, Consultant, whether or not then under contract with the City, will assist the City or its authorized representative to obtain, maintain and enforce copyrights or such other property rights for such material. Consultant agrees to supply evidence, give testimony, sign and execute all papers and do all other legal and proper things which the City deems necessary for obtaining, maintaining and enforcing copyrights or such

other property rights for such material and for vesting in the City full title thereto, all at the City's expense.

11. Miscellaneous.

(a) Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to conflict of law principles. The parties hereby submit to the personal jurisdiction of the state courts of Lorain County, Ohio. All disputes hereunder shall properly and exclusively be venued in the state courts of Lorain County, Ohio.

(b) Binding Effect; Assignment. The obligations of Consultant may not be assigned or delegated, and the City may not assign this Agreement to any third party, and any attempted assignment or delegation shall be void and of no force or effect. Consultant shall not subcontract any part of the Consulting Services or obligations hereunder. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their respective successors, permitted assigns, affiliates, heirs and legal representatives, as applicable.

(c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(d) Dispute Resolution. In the event of a dispute or claim arising under this Agreement (a "Dispute"), the effected party shall notify the other party in writing of the Dispute with as much detail as possible. Consultant and an authorized representative of the City shall use good faith efforts to resolve the Dispute within thirty (30) days after receipt of the Dispute notice. If the parties are unable to resolve the Dispute, or agree upon the appropriate corrective action to be taken, within the thirty (30) days, then either party may initiate nonbinding mediation before a mediator acceptable to both sides. In the event mediation fails to resolve the Dispute either party may proceed to filing a court action, subject to Section 11(a).

(e) Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when: (a) delivered by hand to the address(es) below; (b) sent by facsimile (with written confirmation of receipt) to the addressee(s) below, provided that a copy is mailed by United States certified or registered mail, return receipt requested; or (c) one business day after deposit with a nationally recognized overnight delivery service (receipt and next day delivery requested), in each case to the appropriate addresses and facsimile numbers set forth below (or such other addresses and facsimile numbers as a Party may designate by notice to the other parties):

If to the City: City of Avon Lake
Attn: Mayor
150 Avon Beldon Road
Avon Lake, Ohio 44012

with a copy to: City of Avon Lake
Attn: Law Director
150 Avon Beldon Road
Avon Lake, Ohio 44012

If to Consultant: Ronald Warner
32145 Augusta Drive
Avon Lake, Ohio 44012

(f) Headings. The headings in this Agreement are used for the convenience of reference only and shall not be used in the construction of, or otherwise impart meaning to, this Agreement.

(g) Entire Agreement; Amendments. This Agreement supersedes all previous agreements, if any, among the parties and is the entire agreement, between the City and Consultant concerning the subject matter hereof. No waiver, amendment or modification hereof shall be valid unless in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have caused this Amended and Restated Consulting Agreement to be duly executed as of the day and year first written above.

The City of Avon Lake, Ohio

By: _____
Name: _____
Title: _____

Ronald Warner