



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: March 12, 2007
SUBJECT: Sanctuary Lake Golf Course Food Service Agreement with Kosch
Special Events, LLC

On February 26, 2007, City Council approved a Resolution for a two (2) year contract with Kosch Catering & Corporate Dining for food service at Sanctuary Lake Golf Course, with an option to renew for a two (2) year period thereafter. City Council also authorized the Mayor and City Clerk to execute the contract when in acceptable form.

Our office has been working with the attorney representing Kosch, John Carlin, to negotiate a contract. As a result of this negotiation, the following contract is proposed for your consideration. There are some modifications from the original bid documents, so it is being brought to City Council for consideration and/or ratification.

First, the Contractor's name in the Agreement has been changed from Kosch Catering & Corporate Dining to Kosch Special Events, LLC. The MLCC liquor license application has been filed in the name of Kosch Special Events, LLC, and consistency with the City of Troy's resolution and the liquor license application will eliminate any unnecessary confusion.

Previously, the bid award provided Kosch with a two year contract, with a two year option to renew. However, this contract period has been extended in the proposed contract to 32 months- from May 1, 2007 to December 31, 2009. This modification to the contract period is recommended, in light of the MLCC's expiration date for liquor licenses. If a new contractor is subsequently recommended, an expiration date of December 31 would provide sufficient time to complete the liquor license application process before the spring opening of the golf course.

A proposed Reconsideration of Resolution and a proposed Resolution to Amend Reconsideration Resolution are attached for your review. If you have any questions, please let us know.

AGREEMENT
FOOD SERVICE AT SANCTUARY LAKE GOLF COURSE

THIS AGREEMENT entered into on _____, 2007, between the CITY OF TROY, 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the "City", and Kosch Special Events, L.L.C., a Michigan Limited Liability Company, whose address is 1450 E. South Street, Troy, Michigan 48085, as the Food Service Provider for Sanctuary Lake Golf Course, hereinafter referred to as the "Operator";

WITNESSETH:

In consideration of the City granting to the Operator the exclusive privilege and right of conducting the sale of food, beverages including alcoholic beverages, vending machines, and catering rights for golf outings, the parties agree as follows:

1. REVENUE PLAN, COMMENCEMENT DATE AND RETURN SCHEDULE:

The Operator agrees to pay the City five (5%) percent of gross revenue over \$125,000.00 and seven and one-half (7 ½ %) percent of gross revenue over \$150,000.00 annually.

The Agreement shall commence on May 1, 2007, or as soon as reasonably possible after that date. The return schedule shall be firm for the entire Agreement period.

The golf course is in operation for eight (8) months from April 1st to November 30th each year. In 2007 and thereafter, the Operator shall pay the City

any profit share due the City by the 31st day of December in the calendar year the profit share was based upon.

2. **USE OF KITCHEN AND LIMITATIONS**: The Operator shall provide a food/beverage service to all users of the Sanctuary Lake Golf Course. The Operator shall be the exclusive caterer of commercially prepared food/beverages served at the golf course. The Operator's services shall include preparation, delivery, and clean up of food and/ or beverages.

Operator shall purchase and install protective weather screening for the patio area of the outside grill at Operator's expense. The protective weather screening material and design must first be approved by the Parks and Recreation Director or her designee. The protective weather screening shall become the property of the City as a fixture after installation. Methods of attachment shall be pre-approved by the Parks and Recreation Director or her designee.

3. **GROUP GOLF PACKAGES**: User groups that wish to have food/beverages catered for their golf outings shall make arrangements, including payment, directly with the Operator. The City and Operator will coordinate outings and provide package pricing, including golf and food service to customers. The Parks and Recreation Director, or her designee, shall approve the pricing on golf packages and the dates available for the scheduling of golf package outings. Customers may pay either party for these events. The party receiving payment will pay the amount designated on the group package pricing for the other party's portion of the food/beverage service or golf fees. Payment of

the amounts for the other party's services shall be made within one (1) month of receipt of payment by the other party.

4. **HOURS OF OPERATION**: The operating schedule for the Sanctuary Lake Golf Course Food Service shall be as follows, unless the Parks & Recreation Director, or her designee, unilaterally amends the schedule based on changed conditions and provides written notice to the Operator:

MINIMUM OPENING DATES AND TIMES

April 1st – April 21st:	Monday thru Sunday 7:30 am
April 22nd – May 16th:	Monday thru Sunday 7:00 am
May 17th – June 6th:	Monday thru Sunday 6:30 am
June 7th – September 5th:	Monday thru Friday 6:30 am Saturday and Sunday 6:00 am
August 23rd – September 5th:	Monday thru Sunday 6:30 am
September 6th – September 26th:	Monday thru Sunday 7:00 am
September 27th – November 15th:	Monday thru Sunday 7:30 am

Closing time shall be no earlier than one (1) hour after sunset.

Note: Opening dates and times are subject to change to meet user demand.

The City shall unilaterally determine opening dates and times. The Parks and Recreation Director, or her designee, will notify Operator within 72 hours of opening dates and times.

4. **OPERATING TIMES FOR OUTSIDE GRILL AND BEVERAGE CART**

Beverage carts are expected to be open and running daily. The outside grill is to be open for special events and at other times when warranted. The Parks and Recreation Director, or her designee, shall have the discretion to

determine hours of operation. The Parks and Recreation Director, or her designee, shall provide Operator with a schedule of hours of operation prior to the effective date of the Agreement. Upon agreement with the Director of Golf, the schedule may be changed due to weather and/or special circumstances.

Operator shall have the option to assume the responsibility of vending machines on the Sanctuary Lake Golf Course property during the normal golf season, including, but not limited to, contracting with vendors, maintaining the vending machines and collecting any fees for the operation of the vending machines, except that the Parks and Recreation Director, or her designee, shall have the sole discretion as to where the vending machines may be placed on the property. If the Operator notifies the Parks and Recreation Director that it does not desire to handle vending machines on the Sanctuary Lake Golf Course, the City shall have sole authority to bid out, contract for or in any other way manage vending machine on the property. _

5. **MAINTENANCE OF PREMISES:** The Operator shall maintain the interior of the kitchen/bar/dining area, vending area(s), outside food service area, inside rest rooms, and all adjacent areas in a clean and neat manner and in compliance with all City ordinances, State law and applicable health codes, standards and regulations. The Operator shall maintain the trash receptacles in all kitchen/bar/restroom/dining areas and be responsible for trash removal to the dumpsters. The Operator is responsible for cleaning all equipment and reporting any type of mechanical problem with the equipment or the facilities to the Parks and Recreation Department.

6. **OPERATOR'S EMPLOYEES:** The Operator shall provide appropriate uniforms and name badges for its employees and shall require that all employees maintain themselves and their uniforms in a clean and neat manner. The Operator is responsible for all wages, benefits or any other condition of employment for Operator's employees, and acknowledges that its employees have no employment relationship with the City. The City shall have the right to mandate that the Operator terminate an employee for inappropriate behavior. All employees serving alcoholic beverages shall do so within the guidelines of the State of Michigan Liquor Laws and may be terminated due to violations of state and local law.

7. **INSPECTION AND REPAIRS:** The City shall have the right to enter and/or inspect the kitchen area at any reasonable time and make repairs to the facility and City owned equipment and/or improvements for non-normal wear and tear items, as it deems necessary. The Operator will pay the expense of periodic maintenance caused by normal wear and tear of the kitchen equipment. Other repairs to equipment or facilities will be done at the City's expense unless it is determined that the repair was necessary due to the misuse or negligence of the Operator, its employees and/or agents in which event the Operator shall be responsible for the costs of said repairs. The City will make every effort to notify the Operator in advance if non-City employees will be entering onto the premises at the City's request for inspection or to complete repairs. Any additions, repairs and/or improvements made on the premises are fixtures and remain the property of the City.

8. SERVING OF ALCOHOLIC BEVERAGES:

(A) The City shall require the Operator to obtain a municipal golf course liquor license (MCL 436.1515) for the premises known as Sanctuary Lake Golf Course and keep the license in good standing under Operator's name during the term of the Agreement. Any violations of the State of Michigan Liquor laws by Operator or its employees will be considered a violation of the Agreement and may result in termination of the Agreement at the City's discretion. Employees serving alcoholic beverages shall do so in compliance with the State of Michigan Liquor laws, administrative rules and procedures and guidelines as set forth by the Michigan Liquor Control Commission. Serving violations by an employee will be just cause for termination of the Agreement at the City's discretion, and the Operator shall be deemed responsible if such conduct occurs. The Operator shall in no way jeopardize the liquor license obtained for the Sanctuary Lake Golf Course facility.

(B) The City grants to the Operator the possession and control of the Sanctuary Lake Golf Course, which includes the Outside Grill, for the limited purpose of controlling and monitoring the consumption of alcohol on the premises, including the collection of money for alcoholic beverages. The City reserves to itself the exclusive right to operate the golf business at Sanctuary Lake Golf Course, including, but not limited to, the collection of all fees related to playing of golf and the operation of a pro shop.

(C) The Operator agrees to assume the responsibilities of a liquor licensee at Sanctuary Lake Golf Course, and agrees to be responsible for all sanctions and/or penalties assessed for alleged violations of the Michigan Liquor Control Commission's Administrative Rules and Regulations and/or federal, state, or local laws concerning the sale of alcohol at Sanctuary Lake Golf Course. This includes the assumption of a licensee's responsibility for the actions of the Operator's employees, agents and/or representatives who sell alcohol.

(D) The Operator agrees that there shall be no sales of alcohol on the Sanctuary Lake Golf Course proper, but that the Operator, if licensed to do so by the Michigan Liquor Control Commission, may sell up to two beers per golfer at the Club House or the Outside Grill, which the golfer can then take onto the golf course for consumption.

(E) The City agrees to provide the Operator with a motorized golf cart, at no charge, for operation by the Operator's employees on the Sanctuary Lake Golf Course, in order to facilitate monitoring of alcohol consumption. The Operator agrees to coordinate its operation of the golf cart with the City's Director of Golf Operations, and understands and agrees that the City may provide back up security to monitor alcohol consumption on the Sanctuary Lake Golf Course.

(F) The Operator agrees to indemnify and hold the City harmless from any and all claims arising out of the sale of alcoholic beverages by the Operator, its employees, its agents and/or its representatives which occurred on City property.

(G) Operator understands that the City is not in the restaurant industry but desires to enhance the services available to the public at the City's Sanctuary Lake Golf Course, a municipal golf course, by having food and beverage service on the premises. The Operator acknowledges that it is the City's responsibility to insure a smooth transition of any food or beverage service at the Sanctuary Lake Golf Course if the Operator's Agreement is not renewed or if it is terminated. Therefore, the Operator agrees that at the Agreement termination or if the Agreement is not renewed, it will fully and professionally cooperate with the City and the Liquor Control Commission to facilitate the liquor license process for the new food service provider or the City, at the City discretion. The Operator also acknowledges that if this Agreement is terminated or not renewed at any time, that the Operator shall be considered to be "out of business" at the Sanctuary Lake Golf Course, as that term is used in MCL 436.1515 of the Michigan Liquor Control Code of 1998, and that the municipal golf course liquor license for Sanctuary Lake Golf Course shall be surrendered to the Liquor Control Commission or transferred to the new food service provider or the City, at the City's discretion and as approved by the Liquor Control Commission.

The Operator acknowledges that failure to cooperate in the transfer or surrender of the liquor license as set out herein will result in severe money damages to the City, possible loss of the liquor license and loss of the market value of the liquor license by the City. In lieu of a denial by a court of specific performance under this Agreement for the transfer or surrender of the liquor license to the City or to a new food service provider approved by the City, or surrender of the liquor license to the Liquor Control Commission, the City shall be entitled to payment of liquidated damages of \$100,000.00, representing a minimum market value of the liquor license, and actual costs and attorney fees incurred by the City for the commencement and continuation of any litigation or Liquor Control Commission filings or hearing precipitated by the Operator's failure to transfer or surrender the municipal golf course liquor license.

9. **KITCHEN SUPPLIES / EQUIPMENT AND MODIFICATION**: The Operator shall provide all necessary supplies and personnel to staff the operation of the kitchen/bar/restroom/dining area(s), catering service for golf outings, and vending machines that are required and not on the **Kitchen Equipment** List attached to the Request for Proposal. Pursuant to the Request for Proposal and Response to Request for Proposal, the Operator shall purchase silverware, chinaware, and other food service equipment listed on Exhibit A that is currently owned by Emerald Food Service L.L.C. and is currently being used at the Sanctuary Lake Golf Course site. The purchase price of the kitchen equipment shall be \$23,659.36 less depreciation based upon a five (5) year IRS straight-line depreciation schedule. The purchase of those items shall occur within thirty (30)

days of the effective date of this Agreement. The kitchen equipment purchased by Operator pursuant to this Paragraph shall become property of the Operator that may be disposed of at the Operator's discretion at the end of this Agreement.

Any necessary building and/or equipment modifications shall be approved in advance by the Parks and Recreation Director, or her designee, and shall become the property of the City at the conclusion of this Agreement or upon termination of the Agreement by either party to this Agreement. Additionally, the Parks and Recreation Director, or her designee, shall approve equipment brought into the facility by the Operator or at the request of the Operator in advance of delivery and use to the Sanctuary Lake Golf Course.

10. **PRICES / PRICE AND HOUR CHANGES:** The menu, including the products sold or marketed, in addition to the prices charged, are subject to regulation by the City and, once established, no changes shall be made without prior approval of the Director of Parks and Recreation or his/her designee. Prices will be re-evaluated at the conclusion of each year of the Agreement. Increases in prices shall be no greater than the percentage increase of the Consumer Price Index of Food Eaten Away from Home. Prices shall be posted for patrons and a detailed printed description of prices shall be available for review by the City.

11. **RECORDS:** The Operator shall keep accurate records of all sales and receipts through the use of computerized/electronic cash registers which provide daily tapes and reports. The City, prior to commencement of the Agreement, shall approve the cash registers that will be used for the operation of the food

services described in this agreement. The Operator shall submit a copy of its monthly Michigan Department of Treasury Sales Tax Return by the 20th date of the month following the month for which the Return was filed. An annual report, summarizing the monthly reports, shall be submitted to the City within sixty (60) days after the first anniversary date of the Agreement and each year thereafter that the Agreement is in effect. The City shall have the right to inspect the books, records, and inventories of the Operator at any reasonable time.

12. **ASSIGNMENT OF AGREEMENT / INDEPENDENT CONTRACTOR**: The Operator shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interests under this Agreement without prior written consent from the City. The Operator acknowledges that it is an independent contractor with no authority to bind the City to any contracts or agreements, written or oral.

13. **COMPLIANCE WITH LAWS**: The Operator shall at all times be in compliance with all federal and state statutes and City ordinances and with all Oakland County Health Department licensing requirements, rules and regulations. The serving of alcoholic beverages will be in full compliance with State of Michigan Liquor Laws. The Operator will be responsible for keeping the State of Michigan Liquor License in force during the term of the Agreement.

14. **INSURANCE**: The Operator shall maintain liability insurance in the amount of one million (\$1,000,000.000) dollars for any actions, claims, liability or damages caused to persons and/or property arising out of the operation and/or maintenance of the food service, kitchen/bar/restroom/dining area(s), vending areas and its catering operation for golf outings where food has been prepared in

the Sanctuary Lake Golf Course food preparation area(s), in addition to product liability insurance and worker's compensation. All insurance coverage shall be approved by the City. Certificates of Insurance shall comply with the sample form attached hereto and attached to the Request for Proposal. The City shall be named as an additional insured under all policies except worker's compensation. All insurance companies must be licensed and admitted to do business in the State of Michigan. All insurance set out herein shall be maintained for the duration of the Agreement. Failure to maintain coverage or to continue to maintain coverage shall be considered a breach of contract with immediate termination of the Agreement at the will of the City. The Operator is responsible for any deductibles under its policies of insurance. The Operator agrees to indemnify and hold the City harmless for any claims, actions, liabilities or damages arising out of the operation, maintenance or management of the food service, kitchen/bar/restroom/dining area(s), vending area(s), on-premises catering for golf outings where food has been prepared in the Sanctuary Lake Golf Course food preparation area(s).

15. **REPORTS OF CLAIMS**: Copies of all claims, damage, or accident reports received by the Operator, its employees and/or agents (whether submitted to an insurance company or not) relating to any damage or accident that occurred or is alleged to have occurred shall be sent to the City.

16. **PERSONAL PROPERTY TAXES**: The Operator shall be liable for any personal property taxes assessed against its equipment or inventory.

17. **UTILITY COSTS**: The City will pay utility costs.

18. **TERM OF AGREEMENT:** This Agreement shall terminate on December 31, 2009 unless terminated by either party upon ninety (90) days written notice sent by certified mail as set out in Paragraph 19. At the end of the initial term of this Agreement, the City may at its option renew this Agreement for a two year period under the same terms and conditions as set out in this Agreement if approved by City Council and also if agreed to in writing by the Operator.

19. **EARLY TERMINATION.** In the event that this Agreement, or the option to renew this Agreement as set out in Paragraph 18 above, is terminated before December 31, 2011, then the City shall pay to Operator (i) an amount equal to the actual documented amount paid by the Operator to Emerald Food Service, L.L.C. for only the items listed on Exhibit A less depreciation based upon a five-year IRS straight-line depreciation schedule commencing as of the date the equipment is purchased from Emerald Food Service, L.L.C. and, (ii) an amount equal to the cost for the patio enhancements/protective weather screening installed on the Sanctuary Lake Golf Course restaurant patio which have been approved by the Parks and Recreation Director pursuant to Paragraph 2 of this Agreement less depreciation. Depreciation shall be based on the rules and regulations published by the Internal Revenue Service Act of 1986, as amended.

20. **NOTICE:** All written notices to be given under this Agreement shall be mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.

21. **SECTION HEADINGS**. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

22. **ENTIRE AGREEMENT**: This Agreement incorporates by reference the Request for Proposal #06-61, General Specifications and attachments to the Request for Proposal, and Operator's Response to Request for Proposal as though fully set out herein. These documents constitute the entire Agreement and any changes thereto shall be in writing signed by both the parties unless otherwise set out in the Agreement.

IN WITNESS WHEREOF, the City and the Operator have executed this Agreement.

WITNESS:

_____ KOSCH SPECIAL EVENTS, L.L.C., a
Michigan Limited Liability Company,

_____ BY: _____
TITLE: _____

CITY OF TROY, a Michigan Municipal
Corporation,

BY: _____
Louise E. Schilling, Mayor

BY: _____
Tonni Bartholomew, City Clerk

APPROVED:

City Manager or Designee

RESOLUTION NUMER: _____

APPROVED AS TO FORM AND LEGALITY:

BY: _____

City Attorney

ATTEST: _____
(City Clerk)

EXHIBIT A

KITCHEN EQUIPMENT SUBJECT TO BUY BACK LESS DEPRECIATION

	<u>Cost</u>	<u>Purchase Date</u>
Sysco Food Services Equipment*	\$ 14, 567.77	2005/06
Wild Bill Signs (The Grill Signs)	577.00	5/25/05
Signs by Tomorrow (The Grill Signs)	254.00	6/15/06
Bluestone Restaurant Systems (POS)	4,618.00	5/5/05
American Hotel Supply (Plasma TV System)	2,105.00	5/27/05
Moorehead Communication (Dish Network)	150.96	5/18/05
American Hotel Supply (Safes)	849.63	4/18/05; 6/25/05
Leonard Syrups (Keg Cooler)	389.00	6/1/05
Gold Star (Keg Dolly)	<u>148.00</u>	5/27/05
 Total:	 \$ 23,659.36	

* Attached Sysco List incorporated herein as part of Exhibit A.