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October 11, 2024

To: Mayor and Council  
From: City Attorney Doug Herman  
Re: Celebration Committee Refund  
Date: September 27, 2024

Dear Mayor and Council:

I have been asked to give an opinion, or options related to the Council desire to collect the \$20,000.00 investment made by the City to the Oelwein Celebration Committee, also known as “Oelwein Celebrations Renewed, Inc.”

Here are the facts as I understand them:

1. The City has for a number of years financially supported the “Oelwein Celebration Committee” in relation to a City ‘Celebration’ event.
2. The City again supported the Committee with financial support in the amount of \$20,000.00 paid on or about August 28, 2023 for the Celebration event to be held in late May / early June 2024.
  - a. The funds were paid from the Hotel Motel Tax Fund
  - b. The funds were approved based upon an Application
3. The late May / early June 2024 proceeded as scheduled, however, the “Wrestling” component was cancelled, per the Celebration committee, by the RuggedPro Wrestling contractor, outside control of the Committee.
4. Per a report provided by the Committee to the Council, the event resulted in income totaling \$22,766.71,
5. Council requested a refund from the Committee by letter to Kimberly Pont.
6. The Committee, and/or Kimberly Pont, by message to the City Attorney reports that the Committee has no funds to reimburse the City.
7. The City has no ‘Contract’ with the Committee setting out expectations and/or obligations of the Committee.
  - a. Without a contract including those terms there is no clear path forward to allege breach of contract with a related request to return the City funding.
    - i. For example, the City did not fund the event specifically to cover the wrestling component nor did the City condition funding on a need by the Committee for the funding to break even.

**Options:**

1. Make a renewed demand for a refund.
  - a. Set forth the basis for the refund. Letter from City to Committee referenced that the Committee made a profit and failed to provide wrestling event. Letter also indicated that the City would not longer allow this Committee to “do events in the community”.
    - i. While the City can control City property it cannot control private property, and, if the Committee found non-public grounds on which to hold events they likely could do so.
  - b. Renewed demand could include request of Committee members to attend a Council meeting at which this would be discussed.
    - i. This would put them in a position of publicly defending themselves, explaining why the refund should not be made, etc.
    - ii. Because this Committee is a group designed to be beneficial to the “public” it would seem that they would want to be above board, open, transparent.
  - c. Renewed demand could soften the claim that the City will no longer allow the group to “do events in the community”. If they do not think they will be allowed to hold future events, that no future funding will be available, they will have less incentive to work with the City and/or consider a refund.
  - d. Renewed demand could point to the Hotel Motel tax funding guidelines in support of request for reimbursement.
    - i. Budget proposed with application does not match up with actual numbers presented after the project. Program Rules indicate, “Upon completion of the project, the applicant must submit documentation of expenses and a project recap within 60 days to City Hall. Any funds that are not expended or are found to be outside the scope of the grant made by the Funding Advisory Board must be reimbursed/returned, by the applicant, to the City of Oelwein within 60 days.”
      1. The weakness of this argument might be that there is no requirement that the event not make money, not have a carryover, etc. Would seem that a carryover, or review of financials, may instead impact future investment.
    - ii. However, under the application for funds, “Assurance” section, the applicant acknowledges as follows:
 

“...grantee warrants that should it use the grant for any purpose not allowed by Iowa Code Section 422A(2)(4)(2007) that it will reimburse, in full, the City of Oelwein the entire amount of the grant” (Note, 422A should be referenced as 423A with the 2007 being dropped and specific reference to 423A.7(4)(a) and (b).)

City could argue that if the event profited in the amount of \$20,000+ that the City funds were not actually needed and/or used, and the maintenance of those funds in the account of the applicant would not qualify as a permitted use of the funds.

2. File Suit.
  - a. Filing suit would require a district court filing, not magistrate court filing. District Court is more expensive and time consuming, but is necessary if requesting more than \$6,500 in damages.
    - i. Claim would be that there was a violation of an “Oral Agreement” as no written agreement exists. Claim would be tied to committee’s failure to provide the wrestling component and/or other failure to perform, if any.
      1. This claim would need to be supported by evidence, written or oral, that it was understood that the investment was tied to the wrestling and/or other expected ‘performance’. Without such testimony, it would not be a viable claim. There needs to be evidence of expectations and failure to meet those expectations.
    - ii. Claim could also be that the investment was tied to or intended to cover expenses that would not otherwise be covered, that the donation was not intended to create a profit to the event or Committee.
  3. Work with Committee to modify how they ‘do business’, make clear that the City will only work with them if they make changes, make clear that the City will not be making any investment for 2025, that it expects the 2024 investment, which resulted in a profit, to be used moving forward. That the City will consider future investments based upon performance of the Committee, success of events.
  4. Suggest to Committee that Council will not support Committee moving forward until their books are subject to review and audit.
    - a. This could be at their expense or City expense.
    - b. In my experience, the State Auditor’s Office when auditing the City would look at this entity as a private entity designed to support/benefit the public entity and to that end would likely ask for or be interested in seeing the books. While not required, the Committee it would seem should share their books.
      - i. It is common for the auditor to look at non-profits tied to “Ambulance, Fire Dpt., Parks, Library” and the like. Sometimes referred to as “friends” groups.
  5. Take no action, just recognize that the investment for 2024 did not work out as you expected.
  6. Moving forward, enter into a detailed agreement with the Committee, and other similar groups, setting forth expectations, terms and conditions on the donation/grant, maybe tying the donation/grant to a date at which it can be shown to be needed, after presentation and review of revenue/expense information, require reimbursement under certain circumstances, etc. (This type of agreement should be used whenever a donation/investment such as this is being made and can be tailored to each situation. The State Auditor will likely ‘ding’ the City if

money is being paid out without such an agreement. (Template Agreement attached hereto.)

I do not believe litigation makes sense. The expense tied to the litigation if defended against by the Committee could be significant and then, if successful, would be offset by the judgment and funds received, if any. If unsuccessful, which is possible in light of the fact that there was no agreement, no clear expectations, no clear breach, would just put the City in a worse financial position.

The other options are political in nature. Whether the community looks forward to this celebration event, whether it will be missed if not held, whether the Committee will agree to a different direction, different management, etc.

If I had to land on a recommendation, I think it would be to reach out by letter, explaining the reasons the City has requested reimbursement, soften the City position on no future Committee events as a means of opening the door to discussion, and then invite them to have a public discussion in a meeting where the public will have an opportunity to hear and be informed.

Any questions, please let me know

Sincerely yours,

*Douglas D. Herman*

Douglas D. Herman

**LYNCH DALLAS, P.C.**

**Template Charitable Investment Agreement**

**AGREEMENT**

This Agreement (“Agreement”) is made as of the date of last signature below between the **CITY OF \_\_\_\_\_**, **IOWA** (“CITY”), an Iowa Municipal Corporation, and \_\_\_\_\_ (“ORGANIZATION”), an Iowa Non-Profit Corporation.

**RECITALS**

**WHEREAS**, the Organization has made a request of the City for funding; and

**WHEREAS**, the City, when expending City funds, must consider and find that the use of said funds for the requested purpose has a beneficial public purpose; and

**WHEREAS**, the Organization is a domestic non-profit corporation pursuant to applicable laws of the State of Iowa and a 501(c)(\_\_) organization pursuant to applicable regulations of the Internal Revenue Service; and

**WHEREAS**, any agreement by the City to support the Organization must be reduced to writing, approved by Resolution of the Council, and recorded in the City Council minutes with the minutes and the Resolution clearly setting forth the public purpose of the expenditure; and

**WHEREAS**, the ORGANIZATION proposes to use the requested funds for the following public purpose(s) / qualifying expenses: (Consider and describe services provided directly to the City and/or services/benefits to the “Public” in general.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**WHEREAS**, the City Council hereby finds that the ORGANIZATION will use the funds requested for a valid public purpose as set forth above and should, therefore, be approved in the amount of \$\_\_\_\_\_.

**AGREEMENT**

**NOW THEREFORE**, in consideration of identified Public Purpose(s) set forth above to be provided and/or performed by the ORGANIZATION and other good and valuable consideration, the CITY and the ORGANIZATION do hereby agree as follows:

1. **FINANCIAL CONTRIBUTION.** The CITY agrees to invest \$\_\_\_\_\_ in the ORGANIZATION to be used by the ORGANIZATION for the public purposes identified above.

2. **MANNER OF PAYMENT.** The CITY’S investment to the ORGANIZATION shall be paid as follows for the proposed qualifying expenses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. **PROOF OF QUALIFYING EXPENSES.** ORGANIZATION agrees to submit to the CITY one or more application(s) for reimbursement of qualifying expenses to the CITY, said application(s) to provide sufficient detail for the City Council to find that the public purpose is being met by said qualifying expenses.

4. **REPAYMENT of INVESTMENT.** The ORGANIZATION agrees to repay to the CITY any and all investment made by the CITY to the ORGANIZATION in the event the ORGANIZATION does not satisfy the obligations of this agreement within one (1) year of the date of this agreement. In such event, the ORGANIZATION shall remit payment to the CITY within sixty (60) days of receiving the CITY’S written demand for repayment.

5. **GENERAL PROVISIONS.** In the performance of this Agreement time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the ORGANIZATION. This Agreement contains the entire agreement of the parties and shall not be amended, except by a written instrument duly signed by the CITY and ORGANIZATION. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.

6. **NOTICE.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery, email, or mailed by certified mail, addressed to the parties at the addresses given below.

7. **APPROVAL.** This Agreement is expressly contingent upon approval hereof by the City Council.

8. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all parties are not signatories to the original or the same counterpart. Furthermore, the parties may execute and deliver this Agreement by electronic means, such as .pdf or a similar format. ORGANIZATION and CITY agree delivery of the Agreement by electronic means shall have the same force and effect as delivery of original signatures and that each of the parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.

9. **EXECUTION.** When and if executed by both ORGANIZATION and CITY, this Agreement shall become a binding contract.

**ORGANIZATION**  
an Iowa Non-Profit Corporation

**CITY OF \_\_\_\_\_, IOWA,**  
an Iowa Municipal Corporation

Dated this \_\_\_\_ day of \_\_\_\_\_ 2022.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2022.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name), (Print Title)

\_\_\_\_\_, Mayor

Attest: \_\_\_\_\_

\_\_\_\_\_, City Clerk

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_ City Hall  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: (319) \_\_\_\_ - \_\_\_\_\_

Telephone: (319) \_\_\_\_ - \_\_\_\_\_