

82808

DATE: February 22, 2021

TO: Board of Acquisition and Contract

FROM: Ann Marie Berg
Commissioner of Finance

Kathleen O'Connor
Commissioner of Parks, Recreation and Conservation

RE: **Resolution authorizing the County of Westchester (the "County") to enter into an agreement with GolfNow, LLC for a five year term, for the provision of credit card processing services payable pursuant to an approved fee schedule.**

Transmitted herewith is a resolution which, if approved by your Honorable Board will authorize the County of Westchester (the "County") to enter into an agreement with GolfNow LLC ("GolfNow") for the provision of a golf reservation system and credit card processing services at County park and golf course locations (the "Agreement") as set forth in the list attached to the Resolution as Schedule "A" and are subject to change upon the approval of the Commissioner of Finance. The services will commence on or about February 25, 2021 for a five year term, with an option to terminate upon 30 days prior written notice to the other party. The Agreement shall be in an estimated annual amount of \$138,600 for a total estimated amount of \$693,000 for the five year term, payable pursuant to an approved fee schedule.

The reservation system that GolfNow provides is state of the art and with the increased use of County golf courses during the COVID-19 pandemic, this system is necessary to maintain the increased reservation volume that has become the norm.

Thus, authority is hereby requested to authorize the County to enter into an Agreement with GolfNow for the provision of credit card processing services. The proposed Agreement requires the County to indemnify GolfNow substantially as set forth below:

"...the County shall indemnify, defend and hold harmless Acquirers and their directors, officers, employees, affiliates and agents from and against all proceedings, claims, demands, losses, liabilities, damages and resulting from or otherwise arising out of (i) the Acquirer services

in this Sub-Merchant Agreement, (ii) County's or County's employees and agents acts or omissions in connection with the Acquirer Services provided pursuant to this Sub-Merchant Agreement, (iii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of or in any way related to County's ability to use the Acquirer Services provided herein including, but not limited to County's use of an Agent or any other third party processor or system or (iv) any issue between County and Provider. This indemnification shall survive the termination of the Sub-Merchant Agreement."

The goal of this Agreement is to provide credit card processing services at County parks. The performance by GolfNow will be monitored by the Department of Parks, Recreation and Conservation and Finance staff utilizing regular reports.

Due to the fact that the County is using the EZSuite by Golfnow technology platform and that GolfNow is its only integrated credit card processor and is the only entity that can perform this work, I recommend that this procurement be classified as a sole source procurement pursuant to Section 9 of the Westchester County Procurement Policy.

Accordingly, I recommend adoption of the annexed Resolution.

AMB/KO/d

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION SECRETARY
10/25/2021

RESOLUTION

Upon a communication from the Commissioners of Finance and Parks, Recreation and Conservation, be it hereby

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into an agreement (the “Agreement”) with GolfNow, LLC (“GolfNow”) for the provision of golf reservations and credit card processing services at County parks and golf courses that use the “EZSuite by Golfnow” technology platform which are set forth in the list attached hereto as Schedule “A” and are subject to change upon the approval of the Commissioner of Finance, commencing on or about February 25, 2021 for a term of five years, with an option to terminate upon 30 days prior written notice to the other party, for an estimated annual amount of \$138,600 for a total estimated amount of \$693,000 payable pursuant to an approved fee schedule; and be it further

RESOLVED, that the Agreement shall provide substantially as set forth below:

“...the County shall indemnify, defend and hold harmless Acquirers and their directors, officers, employees, affiliates and agents from and against all proceedings, claims, demands, losses, liabilities, damages and resulting from or otherwise arising out of (i) the Acquirer services in this Sub-Merchant Agreement, (ii) County’s or County’s employees and agents acts or omissions in connection with the Acquirer Services provided pursuant to this Sub-Merchant Agreement, (iii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of or in any way related to County’s ability to use the Acquirer Services provided herein including, but not limited to County’s use of an Agent or any other third party processor or system or (iv) any issue between County and Provider. This indemnification shall survive the termination of the Sub-Merchant Agreement.”

; and be it further

RESOLVED, that pursuant to Section 9 of the Westchester County Procurement Policy, this procurement is deemed a sole source procurement; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to implement this Resolution.

Agreement # PRC-1300

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Revenue	Object	Dollars	
165	42	1100 1100	9994		\$115,000.00	2021
165	42	7150 7150	9996		\$500.00	2021
165	42	1100 1100	9994		\$138,000.00	2022
165	42	7150 7150	9996		\$600.00	2022
165	42	1100 1100	9994		\$138,000.00	2023
165	42	7150 7150	9996		\$600.00	2023
165	42	1100 1100	9994		\$138,000.00	2024
165	42	7150 7150	9996		\$600.00	2024
165	42	1100 1100	9994		\$138,000.00	2025
165	42	7150 7150	9996		\$600.00	2025
165	42	1100 1100	9994		\$23,000.00	2026
165	42	7150 7150	9996		\$100.00	2026

Budget Funding Year(s) 2021-2026 Start Date Upon execution End Date five years
 (must match resolution)
 Funding Source Tax Dollars \$693,000
 State Aid _____
\$693,000 Federal Aid _____
 (must match resolution) Other _____

Schedule "A"

GolfNow will be used for the primary point of sale system for the following locations:

Blue Mountain Reservation
Croton Point Park
Dunwoodie GC
Glen Island Beach
Hudson Hills GC
Maple Moor GC
Mohansic GC
PRC Westchester Headquarters
Saxon Woods GC
Saxon Woods Pool
Sprain Lake GC
Sprain Ridge Park
Tibbetts Brook Park
Ward Pound Ridge Park
Westchester County Center
Willson's Woods Park

Processing charges for the County Center will be charged to 165-42-7150-7150-9996
Estimated at \$600 per year.

Processing charges for all other locations will be charged to 165-42-1100-1100-9994
Estimated at \$138,000 per year.

Total Estimated Annual Charges \$138,600.

Schedule "B" Fee Schedule



ORDER FORM
SO-20836

This Order Form, subject to the terms and conditions of the Agreement (as defined below) is entered into between GolfNow, LLC ("GolfNow") and Westchester County NY ("Client") (individually, a "Party" and collectively, the "Parties"), effective as of the Effective Date set forth below, and shall govern GolfNow's provision of software, marketing, and/or technology services for Client's golf courses listed below.

GolfNow: 7580 GolfChannel Drive Orlando, FL 32819	Client (Legal Entity Name): Westchester County NY Client's Mailing Address: 148 Martine Ave White Plains, NY 10601	
Client's Golf Course List: Blue Mountain Reservation Croton Point Park Dunwoodie Golf Course Glen Island Beach Hudson Hills Golf Course Maple Moor Golf Course Mohansic Golf Course PRC Westchester Headquarters Saxon Woods Golf Course Saxon Woods Pool Sprain Lake Golf Course Sprain Ridge Park Tibbetts Brook Park Ward Pound Ridge Reservation Westchester County Center Wilson's Woods Park		

Prepared By:	Lindsey Wellenstein	Client's Contact Name:	Neil Squillante
Phone:	(320) 469-8146	Client's Contact Phone:	(914) 231-4509
Email:	lindsey.wellenstein@nbcun.com	Client's Email:	nas1@westchester.gov.com

TERM AND RENEWALS: The Initial Term of this Agreement shall be effective as of the last date of the last signature written below (the "Effective Date") and shall expire Five (5) Years thereafter unless cancelled by either party in writing at least Thirty (30) days in advance.

PRODUCT(S) & SERVICE(S)

Golf Course	Product	Program
Blue Mountain Reservation	Other	Payments
Croton Point Park	Other	Payments
Dunwoodie Golf Course	Other	Payments
Glen Island Beach	Other	Payments
Hudson Hills Golf Course	Other	Payments
Maple Moor Golf Course	Other	Payments
Mohansic Golf Course	Other	Payments
PRC Westchester Headquarters	Other	Payments
Saxon Woods Golf Course	Other	Payments
Saxon Woods Pool	Other	Payments
Sprain Lake Golf Course	Other	Payments
Sprain Ridge Park	Other	Payments
Tibbetts Brook Park	Other	Payments
Ward Pound Ridge Reservation	Other	Payments

APPROVED BOARD OF ACQUISITION CONTRACT - 02/25/2021 USA MARIJAJ, SECRETARY



ORDER FORM

50-20826

Westchester County Center	Other	Payments
Wilson's Woods Park	Other	Payments

TOTAL PAYMENT(S)

Merchant Processing Fees for GolfNow Payments

Golf Course	Card Present Transactions*	Card Not Present Transactions*
Mohansic Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Sprain Lake Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Glen Island Beach	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Saxon Woods Pool	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Wilson's Woods Park	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Blue Mountain Reservation	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Maple Moor Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Saxon Woods Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Hudson Hills Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Ward Pound Ridge Reservation	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
PRC Westchester Headquarters	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Dunwoodie Golf Course	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Sprain Ridge Park	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Westchester County Center	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Tibbets Brook Park	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction
Croton Point Park	2.05 % + \$0.00 cents per transaction	2.90 % + \$0.30 cents per transaction

*Card Present and Card Not Present transactions are as defined/categorized by the card issuer. Where available, ACH transactions are charged \$1.00 fee per transaction.

GOLFNOW BOOKING ENGINE	ACKNOWLEDGED
Client shall be required to use a booking engine powered by GolfNow.	Yes
ONLINE MARKETING	ACKNOWLEDGED
Does Client agree to grant GolfNow permission to purchase keywords in search engine marketing that include Client's name, or any other trade name, trademark or other intellectual property belonging to Client?	Yes
MILITARY TEE TIMES	ACKNOWLEDGED
Does Client agree to grant GolfNow permission to add Client inventory to MilitaryTeeTimes.com at a fifteen percent (15%) discount relative to all inventory released and posted on golfnow.com?	No

AGREED TO AND ACCEPTED

This Order Form is subject to all the Standard Terms and Conditions and applicable Additional Terms located on the website: <https://business.golfnow.com/about/terms-and-conditions> (the "Terms and Conditions"), subject to change by GolfNow from time to time, and any attached addenda (collectively, the "Agreement"). The Agreement shall constitute a legally binding agreement between Client and GolfNow, and Client accepts and agrees to the terms of the Agreement by signing below. For the avoidance of doubt, this Agreement shall not terminate or supersede the prior Agreement between GolfNow and Client, 50-19755 dated XXXX XX, XXXX.

_____ Initial Here to confirm you have read the Terms and Conditions

Client Signature: _____ Printed Name: _____ Date: _____

GolfNow Signature: _____ Printed Name: _____ Date: _____



Addendum A – Amendment to Terms and Conditions

As of the date of the last signature written below (the "Amendment Effective Date"), GolfNow and Client (as defined in the attached Order Form), hereby agree to amend the Terms and Conditions as set forth below. Except as specifically amended below, the Terms and Conditions shall continue in full force and effect and shall govern Agreement as if repeated herein in full. It is understood and agreed that in the event there are any conflicting or omitted provisions or variations between the terms, conditions, rights or remedies in the Agreement and the terms of this Amendment, the terms of this Amendment shall control. Any capitalized terms not defined herein shall have the same meaning as set forth in Terms and Conditions and/or the Agreement.

THEREFORE, the Parties agree as follows:

1. **Amendment to Section 22 (Dispute Resolution):** The Parties agree to amend Section 22 of the Standard Terms and Conditions by deleting it in its entirety and inserting the following in lieu thereof:

22. **Dispute Resolution.** This Agreement shall be governed, interpreted and construed under the laws of the United States and the State of New York without regard to any conflict of law principles. The Parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "dispute") between the Parties under or related to this Agreement. Any Dispute arising out of this Agreement which cannot be resolved by the Parties shall be governed exclusively by binding arbitration initiated and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in the New York, New York, metropolitan area. The arbitrator shall have the power to award reasonable attorneys' fees and costs to the prevailing Party in any arbitration, and either Party shall have the right to take appropriate action to enforce any arbitration award in any court having jurisdiction over the applicable Party.

2. **Amendment to Section 7 (Miscellaneous) of the GolfNow Payments Merchant Services Agreement for Sub-Merchants ("Sub-Merchant Terms"):** The Parties agree to amend Section 7 of the Sub-Merchant Terms by deleting it in its entirety and inserting the following in lieu thereof:

7. **Miscellaneous.** This Sub-Merchant Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio for Acquirer and its Member Bank, and New York for Provider, without regard to conflicts of law provisions. This Sub-Merchant Agreement may not be assigned by Sub-merchant without the prior written consent of both Acquirers and Provider. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. Acquirers and/or Provider may amend this Sub-Merchant Agreement upon notice to Sub-merchant. If any provision of this Sub-Merchant Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Sub-Merchant Agreement will be construed as if such provision is not contained in the Sub-Merchant Agreement. "Member Bank" as used in this Sub-Merchant Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Sub-Merchant Agreement. As of the commencement of this Sub-Merchant Agreement, Member Banks shall be Fifth Third Bank, an Ohio Banking Corporation, located at 38 Fountain Square Plaza, Cincinnati, OH 45263. The Member Banks are party to this Sub-Merchant Agreement. The Member Banks may be changed, and their rights and obligations assigned to another party by Acquirers at any time without notice to Sub-merchant.

AGREED TO AND ACCEPTED		
Client Signature: _____	Printed Name: _____	Date: _____
GolfNow Signature: _____	Printed Name: _____	Date: _____