

BRUNSWICK CITY COMMITTEE-OF-THE-WHOLE

Agenda

MARCH 25, 2024

6:35 PM

**or Immediately Following
Safety & Environment Committee**

1. Discussion Items
2. Motion Items
 - (a) Proposed Non-Exclusive Lease Agreement with Brunswick Youth Sports (BYS)
 - (b) Motion to accept Request for Proposals for Planning & Zoning Code Update.
3. Review Legislation
4. General Discussion
5. Executive Session
 - (a) Motion to go into Executive Session to discuss the subject of pending or imminent court action.
6. Adjournment

PROPOSED MOTION



DATE: 3/25/2024

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Carl DeForest

COPY: Mayor Ron Falconi

MOTION: Proposed Non-Exclusive Lease Agreement with Brunswick Youth Sports (BYS)

BACKGROUND: The City of Brunswick and Brunswick Youth Sports (BYS) are desirous of entering into this Lease and terminating the Initial Lease. The term of this Lease would be for a period of five (5) years commencing on January 1, 2024 and ending on December 31, 2028.

PURPOSE AND EXPLANATION: The purpose of this motion is subject to City Council's final approval.

IMPLEMENTATION SCHEDULE: If accepted, this new lease would be effective immediately with a term commencing on January 1, 2024 through December 31, 2028.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

ADDITIONAL INFORMATION:

NON-EXCLUSIVE LEASE AGREEMENT

THIS NON-EXCLUSIVE LEASE AGREEMENT (the "Lease"), is entered into by and between the City of Brunswick, a municipal corporation organized and existing pursuant to its Charter and the laws of the State of Ohio (hereinafter the "City") and Brunswick Youth Sports, Inc., an Ohio non-profit corporation and a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code (hereinafter "BYS").

WHEREAS, the City owns real property containing baseball/softball Fields under the supervision of the Parks & Recreation Department, as more particularly described hereinbelow;

WHEREAS, on October 24, 2016, City Council authorized entering into a Non-Exclusive Lease Agreement (the "Initial Lease") with BYS for the Fields upon the terms and conditions contained therein;

WHEREAS, on or about November 23, 2016, the City and BYS entered into the Initial Lease for a term of twenty-five (25) years from January 1, 2017 through December 31, 2041; and

WHEREAS, the City and BYS are desirous of entering into this Lease and terminating the Initial Lease, which is set to terminate on February 6, 2025 per Notice of Termination duly served upon BYS on February 6, 2024 (the "Notice of Termination").

NOW THEREFORE, in consideration of the following terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. PREMISES. The City hereby leases to BYS, on a non-exclusive basis, the fields known as Boston Knoll, Mooney Park, Corwin, Neura Upper and Neura Lower (the "Fields") in their "AS-IS, WHERE-IS" condition. Any fields built on City owned real property in the future shall not be part of this Lease unless otherwise agreed upon in writing by the parties hereto.

BYS shall also be permitted to utilize the concession stand at Mooney Park and store personal property associated with use of the concession stand therein. BYS shall maintain the concession stand in a clean and sanitary manner and acquire any and all necessary approvals and/or insurance to sell food therefrom.

2. TERM. The initial term of this Lease (the "Initial Term") shall be for a period of five (5) years commencing on January 1, 2024 (the "Effective Date") and ending on December 31, 2028. Upon written agreement of the parties hereto during the final twelve (12) months of the then applicable Term hereof, this Lease may be renewed for successive five (5) year terms (each a "Renewal Term" and together with the Initial Term, the "Term").

Upon the Effective Date of this Lease and except as otherwise provided herein, the Initial Lease shall automatically terminate (the "Initial Lease Termination Date") and neither party shall have any further responsibility,

obligation or liability thereunder except as shall have accrued prior to the Initial Lease Termination Date.

This Lease is expressly contingent upon BYS being certified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code ("IRC") and providing certification thereof issued by the Internal Revenue Service ("IRS") to the City no later than July 1, 2024. In the event same is not timely provided, this Lease shall be automatically and immediately null and void without the requirement of any further action, with the Initial Lease to be reinstated subject to the February 6, 2025 termination date as detailed in the Notice of Termination.

3. TERMINATION. This Lease may be terminated without cause by either party hereto upon written notice to the other party, such termination to be effective twelve (12) months after written notice is provided.

Separately, in the event of a default by either party in the performance of any of its obligations hereunder, the non-defaulting party shall deliver to the other party written notice setting forth the nature of the default. The defaulting party shall have thirty (30) days to cure the default. If the default is not cured to the satisfaction of the non-defaulting party within such thirty (30) day period, the non-defaulting party may terminate this Lease effective immediately.

4. USE OF FIELDS. The Fields shall only be utilized by BYS for organized baseball/softball activities for persons between the ages of three (3) and twenty-one (21). Any other use of the Fields by BYS shall require the prior written approval of the City of Brunswick Parks & Recreation Director (the "Director"), at the Director's sole and absolute discretion. The use of the Fields shall be done in a safe, careful and proper manner in accordance with all rules and regulations of the Parks & Recreation Department and the City, including, without limitation, applicable alcohol and smoking policies.

No later than March 1st of each calendar year during the Term of this Lease, the Director shall provide BYS with a schedule of Fields that are available. Thereafter, BYS and the Director shall schedule BYS' usage of the Field for the upcoming calendar year, which shall be subject to the Director's final written approval in his/her sole and absolute discretion.

This Lease is non-exclusive to BYS and shall not preclude the use of the Fields by any other person, entity and/or organization, including other organized, non-scholastic youth baseball/softball organizations, which use shall be at the sole and absolute discretion of the Director.

5. PUBLIC USE OF FIELDS. The Fields shall remain open for public use when not being utilized by BYS or any other person, entity and/or organization, including other organized, non-scholastic youth baseball/softball organization, as duly authorized by the Director.

6. FIELD MAINTENANCE. BYS shall maintain the Fields, at its sole cost and expense, in such manner as to permit the use of such Fields for the intended purpose under this Lease, except that the City shall mow the grass at the Fields. In the event either party receives any complaints relative to the conditions of the Fields, such party shall notify the other party of such complaint within three (3) calendar days of receipt thereof.

At the beginning and end of each season, the Director and BYS shall inspect all Fields to document the condition thereof and identify maintenance and/or improvement needs.

The City shall be responsible for any and all maintenance to the Fields directly and proximately caused by the use of such Fields by any third-party or the public.

7. FIELD IMPROVEMENTS. Separate from the Field maintenance requirements contained herein, BYS shall budget the annual minimum amount of Five Thousand Dollars (\$5,000.00) to be utilized for Field improvements. Any improvements to the Fields shall require the prior written approval of the Director.

Any unutilized funds remaining upon the expiration of this Lease or termination of this Lease by the City due to default by BYS, shall be transferred to the City for improvements to the Fields. Any improvements to the Fields shall become the sole and exclusive property of the City.

8. ANNUAL REPORT. BYS shall provide the Director with an Annual Report due no later than January 31st of each year of the Term of this Lease (or at such other time as otherwise requested by the Director) detailing the following:

- A) A list of all Field improvements and/or maintenance completed by third-parties, including an itemized listing and copies of all paid invoices for costs incurred.
- B) A log of all Field maintenance completed by BYS, including a description of and the date such maintenance was performed.
- C) Annual confirmation issued by the IRS that BYS remains a

tax exempt organization under Section 501(c)(3) of the Internal Revenue Code.

D) Annual confirmation issued by the Ohio Secretary of State that BYS remains an active non-profit corporation in good standing with the State of Ohio.

E) An accurate listing (including names, email addresses and primary phone numbers) of all Board Members, Officers and Directors, including any subsequent updates thereto.

F) Rules & Regulations applicable to non-participant supervisory personnel, which shall include the requirement that such non-participant supervisory personnel submit to a background check.

G) A calendar of all regularly scheduled meetings of BYS for such upcoming calendar year. BYS shall provide written notice of any scheduled special meetings no less than five (5) calendar days prior thereto per the notice provisions contained in this Lease.

H) A copy of a fully executed contract with a certified public accountant ("CPA") specifically detailing services to be provided which shall include, without limitation, those items detailed in Section 11 herein.

I) An annual Audit Report as prepared by the CPA as detailed in Section 11 herein.

J) Prior to commencement of BYS activities for each calendar year, BYS shall submit to the City a listing of each league designation, applicable league fees and applicable participant rules and regulations.

K) Such other information and/or documentation as requested by the City and/or the Director, which shall be provided within ten (10) business days of request (if not included within the Annual Report).

9. PUBLIC RECORDS. BYS acknowledges and understands that any and all documentation provided to the City pursuant to this Lease is a public record subject to disclosure pursuant to applicable Ohio Law, subject to any redactions as required or otherwise permitted by applicable Ohio Law.

10. MEETINGS. The Executive Board of BYS (including the CPA retained by BYS pursuant to this Lease) shall meet with City officials upon written request.

11. RETENTION OF CPA. At all times during the Term of this Lease, BYS shall retain a CPA to: (a) prepare all tax returns and/or other financial reporting documents as required by applicable law; (b) obtain all necessary IRS/Ohio Secretary of State certifications required under this Lease; and (c) conduct an annual audit of BYS' financial records and prepare an Audit Report detailing the results thereof.

12. LIGHTS. BYS shall be permitted to utilize the lighting system at Neura Upper and Neura Lower.

13. SIGNS. BYS shall not be permitted to erect any signage at the Fields unless prior written approval is received from the Director, which may be granted or denied in the Director's sole and absolute discretion.

14. INDEMNIFICATION. BYS shall indemnify, defend and hold the City, its officers, directors, agents, employees and insurers harmless from and against any and all third party claims, losses, costs, damages, and reasonable attorney fees arising out of or related to the acts or omissions directly or indirectly attributable to BYS or any of its officers, directors, employees, agents or contractors or related to the lease of the Fields or use of the Mooney Park concession stand as provided herein. BYS shall further indemnify, defend and hold the City, its officers, directors, agents, employees and insurers harmless from and against any and all claims, losses, costs, damages, and reasonable attorney fees arising out of or related to any matter arising from this Lease.

15. INSURANCE. BYS shall, at its sole cost and expense, procure and continue in force during the Term of this Lease general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of the use of the Fields and its obligations as set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) on account of bodily injury to or death of one person and One Million Dollars (\$1,000,000.00) on account of bodily injuries to or death of more than one person as a result of any one accident or incident and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage in any one accident. Within five (5) business days of full execution of this Agreement, BYS shall provide the City with a current certificate of insurance reflecting the continuing coverage of all such policies procured by BYS in compliance herewith. Such insurance shall name the City as an additional insured and shall bear an endorsement stating that the insurer agrees to notify the City not less than thirty (30) days in advance of any proposed modification or cancellation of any such policy.

16. ASSIGNMENT/SUBLEASE. This Lease may not be assigned or the rights conferred herein sublet without the prior written consent of the City, which may be granted or denied in the City's sole and absolute discretion.

17. LIEN PROHIBITION. BYS shall not cause any lien of any kind or description whatsoever to be filed against the Fields. In the event any mechanics' lien or any other lien is filed against the Fields (or any real property owned by the City), the City, at its option may declare BYS to be in default of this Lease and after thirty (30) days written notice to BYS may, in addition to any other remedies provided herein, terminate this Lease and pay the lien without inquiring into the validity thereof. BYS shall forthwith reimburse the City the total expense incurred in discharging the lien.

18. MISCELLANEOUS. This Lease shall be governed by the laws of the State of Ohio. This Lease contains the entire agreement between the parties and any amendment hereto shall be mutually agreed upon in writing by the parties hereto.

19. NOTICES. All notices which either party hereto may give shall be addressed, in the case of the City, as follows:

The City of Brunswick
Attn: City Manager
4095 Center Road
Brunswick, Ohio 44212
cdeforest@brunswick.oh.us

And in the case of BYS, as follows:

Brunswick Youth Sports, Inc.
Attn: President
P.O. Box 181
Brunswick, Ohio 44212
Email: amurphy@brunswickyouthsports.org

With a copy to:

William J. Muniak, Esq.
Brown, Amodio & Chandler LPA
4046 Center Road
Brunswick, Ohio 44212
wmuniak@medina-legal.com

Such notices shall be delivered by electronic mail to the email addresses set forth above or such other email addresses as either party may direct in writing.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Non-Exclusive Lease Agreement to be executed as of the dates indicated below.

Brunswick Youth Sports, Inc.

City of Brunswick,
Ohio



Adam Murphy, President

Date: 3/12/2024

Carl S. DeForest, City Manager

Date: _____

Approved as to form:

Dennis A. Nevar, Law Director

PROPOSED MOTION



DATE: 3/25/2024

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Grant Aungst

COPY: Mayor Ron Falconi

MOTION: Motion to accept Request for Proposals for Planning & Zoning Code Update.

BACKGROUND: A motion confirming the City of Brunswick Administration was permitted to accept Request for Proposals for the Planning and Zoning Code Update, RFP No. 2024-001, which has been submitted in accordance with the specifications on file in the Office of Administrative Services. The RFP's shall be opened at 12:00 noon local time on March 26, 2024 in the Brunswick City Council Chambers at City Hall.

PURPOSE AND EXPLANATION: Council approval is necessary in order to accept Request for Proposals to update the Planning & Zoning Code.

IMPLEMENTATION SCHEDULE: Adopt on March 25, 2024.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY: The 2024 budget does include an allotment for this service/activity. Eligible expenses would be charged to 001-0900-54218, not to exceed the City Council's appropriation limit.

RECOMMENDED ACTION: Recommend adoption.

ADDITIONAL INFORMATION: