

Meeting Date (?) 01/10/2017

Subject Matter* (?) Bombers 4th Amendment
This must match rolling agenda entry

Department of Origin* EXECUTIVE

Submitted By* Hugh R Walker

Type of Meeting* BCD Special Regular

Classification* Public Hearing Consent Statutory Regular

Ordinance* None First Read Second Read First & Only Read

Strategic Initiative* Public Safety Service
 Economic Development Infrastructure
 Quality of Life

Agenda Item Description* A proposed Fourth Amendment to the Agreement between the City of Bryan and Infinity Sports Entertainment, LLC to provide improvements to the leased premises commonly known as Travis Major Baseball Field or Nutrabolt Stadium and a certain area immediately surrounding the field. Possible improvements include those listed in the Third Amendment, as well as synthetic turf, portable bleachers, and other improvements. The City will front costs in an amount not to exceed \$1,863,935.00, with the City's not to exceed amount at the end of the Agreement term being \$1,585,575.00; Infinity's not to exceed amount is \$278,360.00, and their annual payments are \$27,836.00 for ten (10) years.

Summary Statement* After a presentation by City staff and Brazos Valley Bombers President Uri Geva at the November 8, 2016, City Council Workshop, the City Council indicated an interest in pursuing a synthetic field for the Bombers at Travis Field, also known as Nutrabolt Stadium. To accommodate the proposed project and funding request, City staff met with Mr. Geva and prepared the attached Fourth Amendment to the Agreement, which is between the City of Bryan and Infinity Sports Entertainment, LLC, a limited liability company that serves as the umbrella company for the Brazos Valley Bombers.

The City of Bryan and Infinity Sports Entertainment have agreements dating back to 2006. The following is a summary of various agreements:

1. August 23, 2006: This date marks the Original Agreement between the City of Bryan and Infinity Sports Entertainment.
 - a. The agreement has a termination date of October 1, 2017, with an option to renew for ten (10) years.
 - b. The leased premises are defined as the "Facility," which includes Travis Major Baseball Field and the area immediately surrounding the Travis Major Baseball Field (see map of the "Facility," which is Exhibit "A" of the Original Agreement dated August 23, 2006 and an exhibit to the Fourth Amendment).
 - c. Infinity does not pay rent for the facility.
 - d. City pays utility expenses in an amount not to exceed \$7,500/fiscal year.
 - e. Infinity is responsible for repairs to and maintenance of the facility.
 - f. The City is responsible for maintaining facility lighting; interpreted to mean field lighting at the facility.
2. January 22, 2008: The City of Bryan and Infinity Sports Entertainment enter into the First Amendment to the Agreement. This amendment addresses two (2) improvements:
 - a. Restroom Facilities: Infinity is responsible for the addition of new restrooms with the City reimbursing Infinity in an amount not to exceed \$90,000. (Note: Actual amount directly paid by City to the contractor was \$49,493.38.)
 - b. Parking Lot Improvements: Infinity is responsible for parking lot improvements and the City is responsible for reimbursing Infinity in an amount not to exceed \$120,000. (Note: Actual amount directly paid by City to the contractor was \$118,425.00)
3. May 14, 2010: The City of Bryan and Infinity Sports Entertainment enter into the Second Amendment to the Agreement.
 - a. With the Second Amendment, the term is extended to December 31, 2019 (i.e., changed from October 1, 2017).
 - b. Sections addressing "Rent" are removed. Infinity does not pay rent as part of the agreement.
 - c. The City's utility expenses not to exceed amount is increased to \$25,000/fiscal year (i.e., up from the Original Agreement amount of \$7,500/fiscal year).

4. March 22, 2016: The City of Bryan and Infinity Sports Entertainment enter into the Third

7. March 22, 2016. The City of Bryan and Infinity Sports Entertainment enter into the Third Amendment to the Agreement.

- a. With the Third Amendment, the term is extended to December 31, 2020, to encompass the reimbursement period for Infinity as addressed in the Third Amendment.
- b. An annual report due date is established as March 1.
- c. Various facility improvements are included along with the funding commitments for both parties. The City is committed to cover the initial costs in an amount not to exceed \$463,935. Of the total cost, the City is to be ultimately responsible for \$324,754, and Infinity responsible for \$27,836/year over five (5) years for a total not to exceed amount of \$139,181. The Third Amendment limits Infinity's fiscal exposure to thirty percent (30%) of project costs. Projects are to be completed by May 15, 2017. Possible projects include but are not limited to: fence replacement, field projects, grandstand enhancements, new lighting installation, parking lot modifications, and a replacement scoreboard.

Based on the City Council's interest demonstrated at the November 8, 2016, Workshop, City staff worked with Mr. Geva to develop the proposed Fourth Amendment. The Fourth Amendment was written in a manner to replace and combine the Original Agreement and the three (3) previous amendments. A summary of the Fourth Amendment includes:

- Section 1 (Term of Agreement): A new term date through December 31, 2025, which provides for the payments Infinity is obligated to pay over ten (10) years. Additionally, an option exists for Infinity to extend the Agreement for another ten (10) years (i.e., until 2035) – a similar option is in the Original Agreement.
- Section 2 (Leased Premises): Essentially no change other than to clarify property for which Infinity has non-exclusive use and no maintenance responsibility.
- Section 3 (Rent): Essentially no change; the Amendment states Infinity accepts the Facility as is.
- Section 4 (Use of the Facility): As stated in the Original Agreement, this section states the intended primary use of the Facility by Infinity shall be to host baseball games for the Texas Collegiate League (TCL).

As amended, this section now also addresses "Heads in Beds," if Hotel Occupancy Tax (HOT) funds are used to fund projects. Within this section, Infinity is responsible for tournaments at the Facility to promote tourism and the convention and hotel industry. Additionally, Infinity is responsible for providing documentation of HOT compliance.

- Section 5 (Inspections): Essentially no change; the City is permitted to inspect the Facility for general conditions and maintenance issues.
- Section 6 (Accommodation of Existing Users and Activities): Essentially no change; Infinity agrees to continue make the Facility available to other uses, such as youth little leagues and other youth and adult baseball and softball leagues.
- Section 7 (Utilities): Essentially no change; the City is responsible to pay all utility expenses in an amount not to exceed \$25,000. Most recently, utility expenses paid by the City are about \$23,000/year.
- Section 8 (Alterations, Additions, Improvements): Essentially no change; Infinity is allowed to make improvements to the Facility. Improvements shall result in the Facility being in a condition that is superior to that of the effective date of the Amendment.
- Section 9 (Signs): Essentially no change; signs and banners shall comply with applicable sign ordinances.
- Section 10 (Repairs and Maintenance): Infinity is solely responsible for repairs to and maintenance of the Facility, except the City is responsible for maintaining field lighting. Language is added to address Infinity's responsibility of maintaining manufactured fields to the manufacturer's specifications and recommended maintenance schedule.
- Section 11 (Liens and Encumbrances): Essentially no change; Infinity shall not permit any mechanic's or materialman's liens or any other liens or encumbrances to be placed on or against the Facility or any property owned by the City.
- Section 12 (Food and Beverage Operations): Essentially no change; Infinity shall comply with state and local laws governing the sale or provision of food and beverages.
- Section 13 (Beer and Wine Concession): Essentially no change; the City grants to Infinity the exclusive right to sell beer and wine for on-premises consumption.
- Section 14 (Indemnification): Essentially no change; Infinity shall indemnify the City.
- Section 15 (General Requirements and Terms): While this section is essentially unchanged, multiple subsections exist. For example, Infinity shall have the exclusive right to retain all revenues. Infinity shall make a formal written report to the City no later than March 1st of each year regarding the use of the Facility (e.g., number and age of groups using the facility, issues,

etc.).

- Section 16 (Insurance): Essentially no change; this section includes language to address insurance requirements for both parties.

- Section 17 (Taxes): Essentially no change; Infinity shall be solely responsible for the payment before delinquency of any real property or personal property taxes assessed as a result of the activities of Infinity at the Facility or resulting from the rights granted to Infinity under this Agreement.

- Section 18 (Environmental Matters): Essentially no change; Infinity shall comply with all federal, state, and local laws and regulations pertaining to the storage, use, and disposal of "hazardous or toxic wastes, substances, or materials" as defined by applicable law.

- Section 19 (Assignment): Essentially no change; Infinity shall neither directly nor indirectly assign this Agreement to any third party without the prior written consent of the City Council.

- Section 20 (Termination): Essentially no change; this section includes language for the City and/or Infinity to terminate the Agreement, including the effects and remedies.

- Section 21 (Damage or Destruction; Eminent Domain, Force Majeure Events): Essentially no change; this section addresses implications of damage/destruction, eminent domain, and force majeure events.

- Section 22 (Facilities Improvements): This section includes significant changes to address the project(s) presented during the November 8, 2016, City Council Workshop, and some projects included in the Third Amendment. Exhibit "B" lists discussed projects, and this section states such are a sampling of possible projects, but actual projects may vary. The total upfront cost, for which the City is responsible, is an amount not to exceed \$1,863,935. Infinity is responsible for annual payments of \$27,836 for ten (10) years or a total of \$278,360. However, if costs of all projects do not amount to at least \$1,478,685, then Infinity's obligation shall be nineteen percent (19%) of the total cost for all projects. For example, if the total cost of all projects is \$1,000,000, then Infinity's total funding requirement is \$190,000 and not \$278,360. Projects are to be completed by May 15, 2018.

Section 22 also addresses Infinity's requirements relating to Hotel Occupancy Tax (HOT), if such are used to fund improvements. Infinity is responsible for satisfying the "Heads in Beds" requirement in Section 4(D) of this Amendment. Per this section, if the HOT funding requirement is not met and the City becomes legally obligated to refund the HOT funds out of the General Fund, then Infinity shall reimburse the City forty percent (40%) of the amount the City has to repay.

Note: The Third Amendment was in an amount of \$463,935, and City staff estimates synthetic field costs at \$1,400,000 for a new amount of \$1,863,935. Some projects in the Third Amendment will be absorbed into the synthetic field project, but other projects may exceed earlier estimates, and consequently, staff believes the estimated amount of \$1,863,935, which was provided during the November 8, 2016, Workshop, is conservative but possibly necessary to cover low estimates. The amount of \$1,478,685 was provided by Infinity, but staff believes this figure is low, and consequently, it is used as a baseline for Infinity's percentage participation threshold. The amount of \$1,863,935 is a not to exceed amount.

- Section 23 (Miscellaneous): Essentially no change; this section addresses mostly boilerplate terminology.

- Section 24 (Funding Availability): The greatest change to this section is removing the contingent language regarding Infinity being approved to own/operate a TCL or comparable caliber team. Since Infinity met this goal nearly ten (10) years ago, the language is no longer relevant. The remaining terminology states the City's obligations are subject to approval of funding from current available municipal funds during each fiscal year.

The following is a summary of the City's past and future responsibilities:

1. Utility Expenses (annual):
 - a. 2006-2008: maximum of \$7,500
 - b. 2008-2015: maximum of \$25,000 (2016 is estimated at \$23,000)
 - c. Actual total since 2007: estimated at \$150,000

2. General Maintenance:
 - a. Field light maintenance (Infinity is responsible for other light maintenance needs)
 - b. Not required but City assists with clean-up, electric repairs, irrigation repairs, etc. on an irregular basis (in-kind)
 - c. Actual total since 2007 is not estimated

3. First Amendment (2008):
 - a. Restroom facility: \$49,493
 - b. Parking lot improvements: \$118,425
 - c. Total project costs for First Amendment: \$167,918

Note: City's total estimated cost since 2007, excluding General Maintenance and in-kind: \$317,918

4. Fourth Amendment (captures Third Amendment, too):
 - a. \$1,863,935 (Infinity to reimburse \$278,360 over ten (10) years)
 - b. Third Amendment (March 22, 2016): If the Fourth Amendment is not approved, the City remains responsible for \$463,935 in improvements (Infinity is to reimburse the City in the amount of \$139,180 over five years (5) years)

Staff Analysis & Recommendation*

Based on the City Council's direction at the February 23, 2016, and the November 8, 2016 City Council Workshops, staff prepared a proposed Fourth Amendment to the Agreement between the City of Bryan and Infinity Sports Entertainment, LLC to provide for improvements to the leased premises, commonly known as Travis Major Baseball Field or Nutrabolt Stadium, and a certain area immediately surrounding the field. (Note: An exhibit to the Amendment shows the leased premises).

During Mr. Geva's February 23, 2016, Workshop presentation, the information shared included the following (i.e., data after the 2015 season):

- An average of 1,848 individuals attended Bombers games in 2015.
- Throughout the 2015 season, over 57,000 fans made their way through the gates.
- Over 150 baseball games were played for the sixth straight year at the ballpark
- Additionally, according to the information provided by Mr. Geva, in 2015 the Bombers :
 - First Texas Collegiate League (TCL) Champion to win three (3) consecutive titles.
 - Won the regular season for the fourth consecutive year.
 - Won their seventh consecutive ½ season title.
 - Made the playoffs for a record ninth consecutive year.
 - Had the Most Valuable Player (Geonte Jackson) and six other players were selected to the 2015 All-Texas Collegiate League Team.
 - Had the Texas Collegiate League Coach of the Year (Head Coach Curt Dixon) for the fourth consecutive year.

Based on the above information, the Bombers appear to have a positive impact on the quality of life within the community. If the City Council desires to assist with additional improvements to the home of the Bombers (i.e., Travis Field or Nutrabolt Stadium), then the City Council should consider approving the proposed Fourth Amendment to the Agreement between the City of Bryan and Infinity Sports Entertainment, LLC.

The proposed Fourth Amendment captures some of the improvements suggested during the February 23rd and the November 8th Workshop presentations, reflects negotiations that occurred since that time between Mr. Geva (i.e., Infinity) and City staff, and combines the Original Agreement and previous three (3) amendments into a single document.

Actual completed projects may vary as discussions continue and work/projects are further evaluated along with actual costs. Projects are anticipated to be completed over the next roughly fifteen (15) months with some projects possibly being completed before the 2017 TCL season.

Funding sources are listed below in the Funding Source section. However, Hotel Occupancy Tax (HOT) funds have been discussed as one possible funding source. Within the proposed agreement, Infinity Sports Entertainment agrees to reimburse the City forty percent (40%) of the amount the City has to repay to the HOT fund, if the HOT funding requirement is not met (see Sections 4.D. and 22.C.4). That is, if HOT funds are used, State statute stipulates certain accountability requirements, and if such requirements are not met, then the City is responsible for paying back the HOT fund with General Fund funding. Staff does not recommend a heavy reliance, if any, on HOT funds for projects contemplated with this Fourth Amendment. Instead, staff recommends using other listed funding source options for projects contemplated in the proposed Fourth Amendment.

Options*

(In Suggested Order of Staff Preference)

1. Approve the proposed Fourth Amendment.
2. Amend the proposed Fourth Amendment and then approve, which may require additional discussions with Infinity Sports Entertainment representatives and consideration at a future City Council meeting.
3. Do not approve the proposed Fourth Amendment and provide direction to staff.
4. Other?

Funding Source*

Some projects contemplated in the Fourth Amendment, such as synthetic turf and portable bleachers, were not included in the Fiscal Year 2017 Budget. Consequently, a specific funding source was not identified during the budget process. As such and in an attempt to complete as many projects as possible before the beginning of the 2017 TCL season, staff recommends the City Council approve the Fourth Amendment and allow staff the flexibility to return with projects requiring City Council approval to have a recommended funding source. Examples of funding sources include: the General Fund (fund reserve), the Capital Reserve Fund, the Oil & Gas Fund, the Parkland Dedication Fund, the HOT Fund, debt funds, or some other funding source. For projects that do not exceed the City Manager's spending authority (i.e., \$50,000 or less), staff recommends the City Council direct staff to keep the governing body informed of funding sources used for those projects.

Attachments

Infinity_Fourth_Amendment_2017_with_Exhibits.pdf	690.7KB
Bombers 4th Amendment_Presentation.pdf	2.21MB

Please detail attachments and note attachments available for viewing in City Secretary's Office:

1. Proposed Fourth Amendment with Exhibits A, B, and C
2. Select slides from the November 8, 2016, City Council Workshop Presentation
3. Copies of the Original Agreement, the First Amendment, the Second Amendment, and the Third Amendment are available for viewing in the City Secretary's Office

Dept. Head Signature



Deputy City Manager Signature



City Manager Signature



City Attorney Signature

