

Agenda Item Details

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| Meeting | May 11, 2021 - Bryan City Council Second Regular Meeting |
| Category | 5. Consent (Automatic Approval) Agenda - This agenda consists of ministerial or "housekeeping" items required by law such as routine bids, contracts, purchases, and resolutions. Items may be removed from the consent agenda for separate consideration at the request of two Councilmembers. |
| Subject | C. Approval of a Fifth Amendment to City of Bryan and Infinity Sports Entertainment, L.L.C., Exclusive Facility Use Agreement for Travis Major Baseball Field |
| Type | Action (Consent) |
| Preferred Date | May 11, 2021 |
| Absolute Date | May 11, 2021 |
| Budget Source | na |
| Goals | Quality of Life |

Summary:

With an initial agreement between the City of Bryan (City) and Infinity Sports Entertainment, LLC (Infinity) dated August 23, 2006, Infinity has had exclusive use of the Travis Major Baseball Field (Facility) since 2006. Infinity is the umbrella organization for the Brazos Valley Bombers. Since 2006, four (4) amendments have been agreed to by the parties. Under consideration with this Council Action Form (CAF) is a proposed Fifth Amendment.

A summary follows of the current status of terms based on the City Council's action over the last almost fifteen years and the current Fourth Amendment:

A. Term (Section 1): The Agreement terms extends to December 31, 2025

B. Use of the Facility (Section 4): Infinity shall use the Facility as a sports and entertainment venue, with the primary use being to host baseball games for teams in the Texas Collegiate League. Infinity is required to provide documentation of HOT compliance.

C. Utilities (Section 7): The City is responsible to pay all utilities in an annual amount not to exceed \$25,000.

D. Alterations, Additions, Improvements (Section 8): Infinity is allowed to make improvements to the Facility with the City's written approval. Improvements shall result in the Facility being in a condition that is superior to that of the effective date.

E. Repairs and Maintenance (Section 10): Infinity is responsible for repairs and maintenance, except for field lighting (in place at the time of the Fourth Amendment), which is the City's responsibility.

F. Beer and Wine Concession (Section 13): Infinity has exclusive right to sell beer and wine for on-premises consumption.

G. General Requirements and Terms (Section 15): Infinity has the exclusive right to retain all revenues. Infinity is required to provide an annual formal written report to the City no later than March 1st.

H. Termination (Section 20): Various methods to terminate the Agreement exist.

I. Facilities Improvements (Section 22): The City was obligated to expend a minimum of \$1,478,685 in Facility improvements in 2017; the estimate was \$1,863,935. If the City reached the minimum, then Infinity was committed to contribute \$278,360, which could be paid in ten (10) annual payments of \$27,836 (due on the 15th day of September through 2025; the City received the first payment in 2016). Note: This term is the one being addressed with this CAF and proposed Fifth Amendment.

Between 2007 and 2016, the City spent approximately \$320,000 for Facility improvements and utilities, excluding general maintenance and in-kind. In 2017, the City spent approximately \$1,650,000 for Facility improvements alone, which was greater than the required minimum (\$1,478,685) but less than the original estimate (\$1,863,935).

The proposed Fifth Amendment is in response to a request dated October 26, 2020, from Chris Clark (Managing Partner, Brazos Valley Bombers) and Uri Geva (Founder & Team President, Brazos Valley Bombers). The request was to "defer our [Infinity's] 2020 annual rent payment to a future date." The Agreement does not refer to an "annual rent payment," but states that Infinity will "contribute" a specific amount and can do so in ten annual payments. The contribution was derived from the agreed upon Facility improvements, which the City fully funded. The request references the challenges created by COVID-19, which has had a dramatic fiscal impact on many local businesses, with Infinity (i.e., Bombers) being one such business.

After discussions over several months, the result is the proposed Fifth Amendment, which defers Infinity's September 15, 2020, payment of \$27,836 until the earlier of September 15, 2025, or thirty (30) days after notice of termination for convenience by City in accordance with Section 20 (Termination) of this Agreement, or upon early termination for cause by either party in accordance with the provisions of Section 20 (Termination) of this Agreement.

Staff Analysis and Recommendation:

Since the request from Infinity to defer their 2020 payment, Infinity and the City have discussed payment options. The proposed Fifth Amendment is a result of those discussions and Infinity has agreed to the proposed terms. As stated above, the Fifth Amendment provides three scenarios for the 2020 payment, depending on future actions by Infinity and/or the City.

Based upon Infinity's agreement to the proposed Fifth Amendment and the City Council's interest to recognize and assist with economic-related financial hardships created by COVID-19, City staff recommends approving the Amendment.

Options:

1. Approve the proposed Fifth Amendment as presented

2. Amend and then approve the proposed Fifth Amendment, which may require additional discussions with Infinity representatives and consideration at a future City Council meeting
3. Do not approve the Fifth Amendment and provide direction to staff (Note: Infinity's 2020 payment is past due)

Attachments:

1. Proposed Fifth Amendment
2. Fourth Amendment dated January 10, 2017
3. Request letter dated October 26, 2020, from Chris Clark (Managing Partner, Brazos Valley Bombers) and Uri Geva (Founder & Team President, Brazos Valley Bombers)

[Infinity Fifth Amendment.pdf \(134 KB\)](#)

[Infinity4thAmendment_2017.pdf \(3,271 KB\)](#)

[2020_COB_BVB_Letter - signed.pdf \(838 KB\)](#)

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