ACTION FORM
BRYAN CITY COUNCIL

Meeting Date (?) 03/22/2016

Subject Matter* (?) Bombers 3rd 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 Third 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 and a certain area immediately surrounding the field. Possible improvements include a new outfield fence, irrigation improvements, grandstand enhancements, LED lights, parking lot improvements, and a new scoreboard. The City will front costs and based on cost participation, the City's not to exceed amount is $324,754; the amendment states total projects costs of $463,935 with Infinity being responsible for thirty percent (30%) of costs up to a not to exceed amount of $139,181. Infinity is responsible for making annual payments over five (5) years in the amount of $27,836/year to the City.

Summary Statement*

At the February 23, 2016, City Council Workshop, after a presentation about the Brazos Valley Bombers by Mr. Uri Geva, the City Council directed staff to move forward with certain projects and funding requests presented within the presentation. To accommodate the proposed projects and funding requests, City staff visited with Mr. Geva and prepared the attached proposed Third Amendment to the Agreement, which is between the City of Bryan and Infinity Sports Entertainment, L.L.C., a limited liability company that serves as the umbrella company for the Brazos Valley Bombers.

The City of Bryan and Infinity Sports Entertainment has 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 had a termination date of October 1, 2017, with an option to renew for ten (10) years.
b. The leased premises were defined as the “Facility,” which included 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).
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.

2. January 22, 2008: The City of Bryan and Infinity Sports Entertainment entered into the First Amendment to the agreement. This agreement addressed two (2) improvements:
a. Restroom Facilities: Infinity was 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 was responsible for parking lot improvements with the City 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 entered into the Second Amendment to the agreement.
a. With the Second Amendment, the term was extended to December 31, 2019 (from October 1, 2017).
b. Sections addressing “Rent” were removed. Infinity does not pay rent as part of the agreement.
c. The City’s utility expenses not to exceed amount was increased to $25,000/fiscal year (up from $7,500/fiscal year).

While the proposed Third Amendment to the original agreement includes facility improvements, the Amendment also includes housekeeping and other changes to better reflect current operations and to modernize existing agreements. The following is a summary of the Third Amendment:

• Section 2.1: This section amends the “Term of the Agreement.” Currently, the agreement between the two parties terminates on December 31, 2019, which would be one (1) year before Infinity’s five (5) year payback period ends in this proposed agreement. The proposed term is through December 31, 2020, which includes the fifth year of payment from Infinity to the City.

• Section 2.2: This section is more of a housekeeping item and is amended to better reflect current practices of the use of the facility. It addresses the use of the field by other parties and includes certain requirements for such use, such as insurance for third parties.

• Section 2.3: While an annual report is already required, this section provides a due date (i.e., March 1) for the annual report.

• Section 2.4: This section modernizes insurance required to be maintained by Infinity.

• Section 2.5: This section updates previous reference to “Force Majeure Events.”

• Section 2.6: This section removes parts of the First Amendment as such sections have been completed or are no longer valid. (For reference purposes, see Sections 1 and 2 of the attached First Amendment.)

• Section 2.7: This section addresses the facilities improvements, which references Exhibit "A' as a sample of possible projects similar to those presented on February 23rd; that is, actual projects could vary with mutual agreement by both parties. Within the proposed Third Amendment is language that protects Infinity so that if the City does not fund at least $463,935, Infinity's funding amount is only based on actual costs up to that amount. That is, Infinity is only responsible for thirty percent (30%) of total costs or an amount not to exceed $139,181. For example, if total projects costs result in the City only spending $300,000, Infinity is only responsible for thirty percent (30%) of that amount or $90,000 and not $139,181. If necessary, Infinity’s adjustment – a lesser amount – will be with the final payment in 2020. Since the facility is City owned, the City, and not Infinity, is responsible for the projects. The proposed agreement includes a required completion date for the projects; all projects are to be completed by the City of Bryan by May 15, 2017. However, Infinity’s payments (i.e., $27,836/year) to the City are over a five (5) year period; total amount of $139,181. Depending of the cost of projects, some projects may be presented to the City Council for consideration. Infinity's annual payments ($27,836.00) are due to the City by September 15 of each year beginning in 2016 and ending in 2020.

These proposed changes within the proposed Third Amendment result in the City being responsible for an amount not to exceed $324,754 based on the cost participation formula of 70/30 with the City being responsible for seventy percent (70%). However, the City is initially responsible for the entire amount (i.e., up to $463,935) as Infinity’s payments ($27,836/year) are over five (5) years.

Projects and improvements at the facility (i.e., Travis Field) were not contemplated or discussed during the Fiscal Year 2016 Budget process. Consequently, funding was not included in the FY16 Budget. The General Fund's fund balance is the most likely funding source for these projects. Another possible source is the Hotel Occupancy Tax (HOT) fund. If that source is the desired option by the City Council, Infinity will be required to provide appropriate documentation verifying the HOT funds meet State requirements for such funds. If documentation cannot be provided or projections are not met, the General Fund would be required to repay the amount to the HOT fund. Additionally, if HOT funds are the desired funding source, the City Council may want to consider adding appropriate language to this proposed Third Amendment to require certain documentation from

appropriate language to the proposed Third Amendment to require certain documentation from Infinity. Such changes likely require consideration at a future City Council meeting and additional discussions with Infinity.

The February 23rd Workshop presentation showed a total improvements cost amount of $403,219. The cost-sharing was based on a 75/25 split with the City being responsible for $302,219 or seventy-five percent (75%). The presentation showed Infinity making annual payments to the City over five (5) years, which results in $20,200/year. As proposed in the Third Amendment, funding amounts are increased as compared to the February 23rd presentation for both parties:

1. City of Bryan: $324,754
2. Infinity: $139,181 ($27,836/year over five (5) years)
3. Total: $463,935 (City fronts all costs)

Staff Analysis & Recommendation *

Based on the City Council's direction at the February 23, 2016, City Council Workshop, staff prepared a proposed Third 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 and a certain area immediately surrounding the field (note: an attachment shows the leased premises).

During Mr. Geva's February 23, 2016, presentation, the information shared included the following:

• 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:

• Were the 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 improvements to the home of the Bombers (i.e., Travis Field, to be called Nutrabolt Field during the 2016 season), then the City Council should consider approving the proposed Third Amendment to the agreement between the City of Bryan and Infinity Sports Entertainment, LLC.

The proposed Third Amendment captures some of the improvements suggested during the February 23rd presentation, and reflects negotiations that occurred since that time between Mr. Geva (i.e., Infinity) and City staff. 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 2016 TCL season. While the not to exceed amount and the City's funding amount are more than what Mr. Geva presented during his presentation, which was in the amount of $403,219 and $302,219, respectively, the proposed cost-sharing split has Infinity paying a greater percentage (i.e., now at 30% versus 25% in the presentation) resulting in Infinity paying a greater amount, too.

Options *

(In Suggested Order of Staff Preference)

1. Approve the proposed Third Amendment between the City of Bryan and Infinity Sports Entertainment, L.L.C. (Note: If the City Council desires to use HOT funds, the Council's motion must specify such intent, otherwise the funding source is the General Fund. If HOT funds are the desired funding source, the City Council may want to consider adding appropriate language to this proposed Third Amendment to require certain documentation from Infinity. Such changes likely require consideration at a future City Council meeting and additional discussions with Infinity.)

2. Make changes to the proposed Third Amendment and then approve, which may require consideration at a future City Council meeting and additional negotiation with the Infinity Sports Entertainment, L.L.C. (Note: If the City Council desires to use HOT funds, the City Council's motion must specify such intent, otherwise the funding source is the General Fund. If HOT funds are the desired funding source, the City Council may want to consider adding appropriate language to this proposed Third Amendment to require certain documentation from Infinity. Such changes likely require consideration at a future City Council meeting and additional discussions with Infinity.)

3. Do not approve the proposed Third Amendment between the City of Bryan and Infinity Sports Entertainment, L.L.C.

4. Provide other direction to staff

Funding Source *

These projects were not contemplated or discussed during the Fiscal Year 2016 Budget process. Consequently, these projects are not funded within the FY16 Budget. The General Fund's fund balance is the most likely funding source for these projects. Infinity Sports Entertainment will participate in the funding, but those funds are being paid over a five (5) year period; $27,836 per year for five (5) years for a total of $139,181. (Note: If the City Council desires to use HOT funds, the City Council's motion must specify such intent, otherwise the funding source is the General Fund. If HOT funds are the desired funding source, the City Council may want to consider adding appropriate language to this proposed Third Amendment to require certain documentation from Infinity. Such changes likely require consideration at a future City Council meeting and additional discussions with Infinity.)

Attachments

Infinity_03222016_Original_1st_2nd_Agreements.pdf	4.39MB
BombersPresentation_02232016.pdf	8.47MB
Bombers_3rd_Amendment_Amendment.pdf	235.91KB

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

Note: Attachments 1, 2, and 3 are a single pdf file.

1. Original Agreement between the City of Bryan and Infinity Sports Entertainment, LLC (August 23, 2006)

2. First Amendment to the Original Agreement between the City of Bryan and Infinity Sports Entertainment, LLC (January 22, 2008)

3. Second Amendment to the Original Agreement between the City of Bryan and Infinity Sports Entertainment, LLC (May 14, 2010)

4. PowerPoint Presentation provided by Mr. Uri Geva to the City of Bryan City Council during the February 23, 2016, City Council Workshop

5. Proposed Third Amendment between the City of Bryan and Infinity Sports Entertainment, LLC

Dept. Head Signature

Hugh R. Walker

Deputy City Manager Signature

Hugh R. Walker

City Manager Signature

City Attorney Signature

Janis K Hampton