



REQUEST FOR COUNCIL ACTION

City of Greenville, South Carolina

Agenda Item No.

16a

TO: Honorable Mayor and Members of City Council
FROM: John F. McDonough, City Manager

Ordinance/First Reading Ordinance/Second & Final Reading Resolution/First & Final Reading Information Only

AGENDA DATE REQUESTED: March 22, 2021

ORDINANCE/RESOLUTION CAPTION:

RESOLUTION TO APPROVE A LEASE FROM THE SCHOOL DISTRICT OF GREENVILLE COUNTY FOR USE OF THE RECREATIONAL FACILITIES LOCATED AT BLYTHE ACADEMY, COMMONLY KNOWN AS KIWANIS PARK

SUMMARY BACKGROUND:

The purpose of this Resolution is to enter into a lease from the School District of Greenville County for use of the recreational facilities located at Blythe Academy commonly known as Kiwanis Park.

IMPACT IF DENIED:

The lease will not be entered into.

FINANCIAL IMPACT:

One dollar per year.

REQUIRED SIGNATURES

Department Director Angela Prosser
DocuSigned by: A251EDD25B774BE...

OMB Director _____

City Attorney Michael Pitts
DocuSigned by: 5E0F2A267E2D413...

City Manager John McDonough
DocuSigned by: FDC2AC15040F440...

A R E S O L U T I O N

TO APPROVE A LEASE FROM THE SCHOOL DISTRICT OF GREENVILLE COUNTY FOR USE OF THE RECREATIONAL FACILITIES LOCATED AT BLYTHE ACADEMY, COMMONLY KNOWN AS KIWANIS PARK

WHEREAS, the city ("City") of Greenville has traditionally leased certain school recreational facilities from the School District of Greenville County (the "School District") for after-hours use by the City in the City's programming of community recreation; and

WHEREAS, the School District's lease to the City for the use of recreational facilities located at Blythe Academy, commonly known as "Kiwaniis Park" (the "Park"), will soon terminate; and

WHEREAS, the School District and the City would like to enter into a new lease, which is attached hereto and incorporated herein as Attachment 1;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, the City Manager is authorized to execute on behalf of the City an agreement to lease from the School District the recreational facilities of the Park on a form, and subject to, terms and conditions that are substantially similar to those set out in Attachment 1. This lease is also subject to School District of Greenville County Board approval. The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the attached documents as may be necessary or appropriate, provided there is no compromise of the substantive purposes of this Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to Council for further review before the final execution.

This Resolution shall become effective upon the date of passage.

RESOLVED THIS _____ DAY OF _____, 2021.

MAYOR

Attest:

CITY CLERK

insurance coverage. Any failure by Lessee to maintain the coverage required herein shall terminate this Lease.

9. Business Automobile Liability Insurance. During the term of this Lease, Lessee shall procure and maintain business automobile liability insurance in the amount of at least \$1,000,000.00 for each accident. This policy must be a “comprehensive form,” meaning that it covers all vehicles, owned, hired, and non-owned, for which Lessee may be liable in its use of Kiwanis Park. The policy should be issued by an “A” rated carrier licensed to do business in the State of South Carolina and satisfactory to Lessor. Prior to the Effective Date and annually thereafter, Lessee shall present to Lessor a certificate verifying the existence of this insurance coverage. The insurance carrier shall also verify to Lessor that it will provide Lessor 30 days’ written notice of any cancellation of this insurance coverage. Any failure by Lessee to maintain the coverage required herein shall terminate this Lease.

10. Workers’ Compensation Insurance. During the term of this Lease, Lessee shall procure and maintain a policy of excess workers’ compensation insurance, applicable to all of Lessee’s employees who may work on Kiwanis Park, in compliance with the State of South Carolina’s statutory requirements and employers’ liability insurance with limits of \$500,000/\$500,000/\$500,000. The policy shall be issued by an “A” rated carrier licensed to do business in the State of South Carolina and satisfactory to Lessor. Prior to the Effective Date and annually thereafter, Lessee shall present to Lessor a certificate verifying the existence of this insurance coverage. The insurance carrier shall also verify to Lessor that it will provide Lessor 30 days’ written notice of any cancellation of this insurance coverage. Any failure by Lessee to maintain the coverage required herein shall terminate this Lease.

11. Utilities. Lessee shall pay all charges for electricity, gas, heating, fuel, water, sewer rentals or charges, and any other utility charges used by Lessee during Lessee’s use of Kiwanis Park.

12. Alterations. Lessee, after receiving written permission from Lessor, may make certain alterations, additions, and improvements to Kiwanis Park. All alterations, additions, or improvements of any kind or nature whatsoever will become part of Kiwanis Park and the Premises and will remain intact at the end of this Lease with no cost to Lessor. Once made, any alterations, additions, or improvements to Kiwanis Park shall become the property of Lessor at no cost to Lessor. Lessor’s freedom from any costs for alterations, additions, or improvements shall survive any default or termination of this Lease.

a. Lessor shall provide gated access to Kiwanis Park for use by the public (pedestrians) and maintenance vehicles.

b. Lessee shall regularly inspect and provide all labor, materials, and equipment necessary to maintain the irrigation system in good working order.

c. Lessee shall mow and otherwise maintain the playing field in good playing condition.

13. Repairs by Lessor. N/A

14. Repairs by Lessee. N/A

15. Signs. Lessee may place or attach to Kiwanis Park signs or other such identification as needed after receiving written permission from Lessor. Any signs or other form of identification

allowed must conform to Greenville County or City ordinances governing at the time. Any damage caused to Kiwanis Park by Lessee's erecting or removing such signs will be repaired promptly by Lessee at Lessee's expense.

16. Personal Property. All personal property moved into Kiwanis Park by Lessee shall be at the risk of Lessee or the owners of the personal property. Lessee agrees that Lessor shall not be liable for any damage, loss, or theft of personal property, regardless of the cause or responsibility for the loss.

17. Trash Removal and Maintenance of the Grounds. Lessee agrees to keep Kiwanis Park clean at all times at its sole expense. Lessee further agrees to keep the grass and shrubbery neatly cut at its sole expense.

18. Abandonment. N/A

19. Default. It is mutually agreed that any one or more of the following enumerated events shall constitute and be referred to as a "Default":

a. Lessee fails to perform any of the terms or provisions of this Lease and fails to cure such failure within 10 days' after receiving written notice of Default from Lessor; or

b. A materialman's, mechanic's or other lien is filed against Kiwanis Park in connection with any improvements, alterations, or additions made by Lessee pursuant to Section 12 of this Lease and Lessee is responsible for the cost of the improvements, alterations, or additions, but allows the lien or liens to stand against Kiwanis Park and does not secure the discharge of the property from such liens by filing an appropriate bond pursuant to applicable law. In the event Lessee does not file a bond and elects to contest the liens, there shall be no Default pending final determination of such disputed matter; then, after final determination, Lessor, at its option, may terminate this Lease if, after written notice of Default to Lessee by certified mail, Lessee fails to secure the release of Kiwanis Park from any such lien within 10 days of the date such notice of Default is received by Lessee.

20. Right to Terminate. Lessor may elect, upon Lessee's failure to cure any Default within 10 days of the date written notice of Default, by certified mail, is received by Lessee, to terminate this Lease. In such event, this Lease shall be regarded as canceled as of the date the notice of Lessor's election to terminate is received by Lessee. Lessor or Lessee may terminate this Lease at any time, in its sole discretion, by giving 90 days' written notice to the other party. Termination of this Lease by either party, for any reason, shall not relieve either party of any obligation incurred one to the other prior to termination.

21. Damage to or Destruction of Premises. During the term or any extension of this Lease, Lessee shall promptly notify Lessor's representative, the Principal of Blythe Academy, in the event of any fire, damage, unsafe condition, or other casualty to Kiwanis Park.

22. Condemnation. In the event the Premises shall be condemned, in whole or in part, taken by court decree, or taken by any other lawful authority (including power of eminent domain), Lessee shall have no claim or interest in any award of damages or other compensation for such taking.

23. Governmental Orders. Lessee, at its sole expense, agrees to observe and comply with all laws, ordinances, rules, and regulations of the federal, state, county, and City authorities as may apply to the activities of Lessee in Kiwanis Park.

24. Waiver of Rights. The parties agree that no waiver of any condition of the Lease by a party, whether implied or in writing, shall constitute any further waiver by that party of any other condition of this Lease. The rights and remedies created by this Lease are cumulative and the use of one remedy does not exclude or waive the right of the use of another.

25. Zoning. The use of Kiwanis Park is subject to any applicable zoning ordinances, regulations, and setback lines of any governmental authority.

26. Notices. All notices required or desired to be given hereunder by either party to the other shall be given by certified mail, return receipt requested. Notices to the respective parties shall be addressed as follows:

To the Lessor: The School District of Greenville County
 Attention: Mrs. Sherrill Fuller
 Facilities Department
 2 Space Drive
 Taylors, SC 29687

To the Lessee: City of Greenville, South Carolina
 Attention: Director of Parks & Recreation
 206 South Main Street (29601)
 P.O. Box 2207
 Greenville, SC 29602

Either party may, by like written notice, designate a new address and/or individual to whom such notices shall be directed.

27. Liens. Lessor and Lessee mutually agree and covenant that they will not cause or suffer the creation of any liens on behalf of contractors, subcontractors, mechanics, laborers, materialman, or other liens, for any labor performed or materials furnished for or on behalf of Lessor or Lessee, which may cloud or impair Lessor's title to Kiwanis Park or the Premises; and that if any such lien shall arise due to an act or omission of Lessor or Lessee, such party shall promptly remove the same at its own expense.

28. Quiet Enjoyment. Lessor warrants that it is the owner of Kiwanis Park and the Premises and has full right and authority to enter into this Lease. Lessor covenants that, for and during the term of this Lease and any extension thereof, neither Lessor nor its agent will cause or suffer anything to be done which will impair Lessee's leasehold interest and rights hereunder.

29. Written Agreement. The Lease contains the entire agreement between the parties. It may be modified only by an agreement in writing signed by Lessor and Lessee.

[Signature page follows]

IN WITNESS WHEREOF, the parties herein set their hands and seals the year and day first above written.

Attest:

The School District of Greenville County

Witness

Name: Lynda Leventis-Wells
Chairman, Board of Trustees

Witness

Name: Derek Lewis
Secretary, Board of Trustees

Attest:

City of Greenville, South Carolina

Witness

John F. McDonough
City Manager

EXHIBIT A

