

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2020 Legislative Session

Legislative Day No. 25

RESOLUTION NO. 122-2020

Introduced by: The President of the Council at the request of the Acting County Executive

A RESOLUTION APPROVING A USE AGREEMENT BETWEEN EASTSIDE YOUTH SPORTS COUNCIL AND WICOMICO COUNTY, MARYLAND, FOR PROPERTY KNOWN AS THE EASTSIDE YOUTH SPORTS COMPLEX IN WILLARDS, MARYLAND.

WHEREAS, pursuant to Section 22-1 of Chapter 22 entitled "County-owned property" Paragraph E, the County Executive is authorized and empowered to lease County property in furtherance of public purposes; and

WHEREAS, approval of the County Council is required for any lease of County property for a lease term of more than one year; and

WHEREAS, the Acting County Executive desires to lease the Eastside Youth Sports Complex consisting of sports fields, parking lot, playground and concession stand in Willards, Maryland; and

WHEREAS, the Lease shall be for a period of five (5) years; and

WHEREAS, the leased property will be used for sports fields, parking lot, playground and concession stand.

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland, that the Acting County Executive be, and is hereby, authorized to execute, on behalf of the County, a Use Agreement in substantially the same form attached as Exhibit "A" with the Eastside Youth Sports Council for a term of five (5) years.

DONE at Salisbury, Maryland this 17th day of November, 2020.

ATTEST:

Laura Hurley, Council Administrator

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND Larry W. Dodd, Council President (SEAL)

CERTIFICATION

THIS RESOLUTION was Adopted [checked], Adopted with Amendments, Failed, Withdrawn by the County Council on November 17, 2020.

Certified by Laura Hurley, Council Administrator

USE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the EASTSIDE YOUTH SPORTS COUNCIL (the "Council") and the Wicomico County Department of Recreation and Parks (the "County"), WITNESSETH:

WHEREAS, the Council desires to utilize Eastside Youth Sports Complex in Williards for regularly scheduled games and practices;

NOW, THEREFORE, for and in consideration of the mutual covenants here contained, the County grants to the committee, use of Sports Complex in Williards. Use of this facility by and between the parties shall be as follows:

ARTICLE I TERM

The Council shall have the right to utilize the Eastside Youth Sports Complex for a term of one (1) year commencing January 1, 2021 and renewing annually without further action for five (5) years, unless sooner terminated as hereafter provided.

ARTICLE II PURPOSE OF USE AGREEMENT

The Council shall have the right to utilize the sports fields, parking lot, playground, and concession stand in connection with regularly scheduled baseball and softball games and practices for youth.

The Council must receive approval to conduct special events on the property from the County. In all cases of special use, trash removal, security, utilities, maintenance and other services deemed necessary by the County, shall be provided by The Council to conduct these special events.

The Council shall not sub-let the use of the premises without permission of the County.

ARTICLE III INSURANCE

A. Council must obtain and keep in effect Commercial General Liability Insurance in the amounts listed below for its activities and operations and those of the Willards Little League. The insurance must include coverage for personal injury, discrimination, and civil rights violation claims. All insurance must name County, its employees, and agents as "ADDITIONAL INSURED". A copy of the certificate of insurance must be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$500,000 for property damage. Coverage must be written on an occurrence form.

B. Council must obtain and keep in effect, automobile insurance on all vehicles used in this Contract to protect Council against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Council in connection with the Contract. All insurance must name County, its employees, and agents as "ADDITIONAL INSURED".

C. Council must provide the County with a certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.

D. All insurance policies must have a minimum 30 days notice of cancellation to County. The County must be notified immediately upon cancellation or restriction by the insurance company of any insurance policy referred to in this section.

E. When insurance coverage is renewed, Council must provide new certificates of insurance prior to expiration of current policies.

The Council will indemnify the County, its officers, agents, and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims, or judgments (including attorney's fees) resulting from injury to or death of any person or damage to property of any kind, which injury, death, or damage arises out of, or is in any way connected with the Council's and/or the Willards Little League's performance or failure to perform the obligations under this Agreement.

This obligation applies to any acts, omissions, or negligent conduct, including acts or omissions of Council's or Willard Little League's agents or employees, except that it is not applicable to injury, death, or damage to the property arising from the sole negligence of Wicomico County, its officers, agents, or employees.

ARTICLE IV

I. General Maintenance

- A. The Council will maintain and keep the premises safe and attractive. The Council shall cut the grass and maintain the quality of the turf. Grass cutting and maintenance shall entail the entire Complex, except for the children's playground as provided in Article IV, Section 1.1 below.
- B. The Council shall be responsible for providing all labor, materials and equipment necessary to maintain the ball diamond's infield. This shall include, but is not limited to, filling of all depressions, infield dragging and setting base lines.
- C. The Council shall be responsible for providing home plates, pitching rubbers and bases.
- D. The Council shall be responsible for proper storage of all equipment.
- E. The Council shall be responsible for the removal and placement of trash from the grounds, into the proper receptacles and its removal from the premises. In this case, grounds includes parking lot and all areas within the complex.
- F. The Council shall always have an adult, paid or volunteer, on site for each practice session, games or special event, who shall be responsible for the conduct of the participants and spectators.
- G. The Council shall maintain all fences, gates, dugouts, score boards, press boxes, P.A. systems, telephones, irrigation systems and sidewalks in safe and working order.
- H. The Council shall provide all tools, equipment and manpower to meet the commitment outlined in this section.
- I. The County shall maintain the children's playground.
- J. The Council shall maintain the parking lot.

2. Contact Building: The County shall grant permission for The Council to utilize the concession stand facility located on the premises, under the following conditions:
- A. The Council shall meet the required Federal, state and local permit license requirements.
 - B. The Council shall be responsible for all normal maintenance of the concession facility, including but not limited to plumbing, electricity, routine repairs and replacements, concession equipment, doors, electric lamps and bulbs. In addition, the Council shall pay, or cause the Willards Little League to pay, for all utilities, including water treatment, required to operate the concession facility and the equipment therein.
 - C. The Council shall permit inspections of the concession facility at all reasonable times, by an authorized official of the County and promptly comply with any proper order issued as a result of such an inspection.
 - D. The Council shall comply with, and cause the Willards Little League to comply with, all fire prevention codes of the State of Maryland and Wicomico County and all regulations and requirements of proper authorities for fire prevention, which are applicable to the concession facility with respect to all activities conducted by the Council or Willards Little League, including activities in connection with the concession facility. In addition, the Council shall maintain at its expense, and/or cause the Willards Little League to maintain at its expense, all necessary and reasonable fire extinguishers, buckets, axes and/or other fire prevention devices required.
 - E. The Council shall clean restroom facilities and maintain them in working order.
 - F. The Council shall maintain water, sanitation and sanitary facilities in accordance with applicable state and local law.

ARTICLE V
OTHER

The use of the Complex shall not be converted to any use other than that contemplated by this Use Agreement, without prior written approval of the County.

The County, its agents and employees shall have the right to inspect the complex for compliance with this agreement.

The Council shall, upon the termination of this Use Agreement, yield up the said premises to the County in good condition and repair, but the Council shall not be liable for losses caused by fire and ordinary wear (except for maintenance and repair as required by the Council pursuant to Article IV).

The Council, upon the written approval of the County, shall have the right, at its sole cost and expense, during the term of this Use Agreement, to alter, reconstruct, or demolish existing buildings and structures, and to construct new buildings and structures, and to construct new buildings or structures, and attach fixtures and install underground facilities and utilities in or upon the demised premises. At the County's option, upon termination of this Use Agreement, the County may require the Council to remove some or all of such buildings, structures, facilities, and utilities, at the Council's expense, or elect that some or all of such buildings, structures, facilities, and utilities shall become owned by and become the property of the County. If the County requires the Council to remove any such buildings, structures, facilities or utilities, the Council shall repair any damages to the premises caused by such removal. The Council shall be responsible for all utility expenses. Any contracts entered into by the Council to alter, construct, reconstruct, demolish, attach or install any such building structures, facilities or utilities must comply with all federal, state and local laws, and with all requirements which the County must meet in connection with contracting with respect to Program Open Space property.

The Council shall, in its use of the premises, abide by the following restrictions required by Program Open Space, being the same restrictions imposed upon the County in the deed among the Land Records of Wicomico County in Liber A. J. S. No. 877, Folio 139, et seq:

1. The property shall be used solely for public outdoor recreation and open space use and shall not be converted to any other use other than public outdoor recreation and open space use, without prior written approval of the Secretary of Natural Resources of the State of Maryland and the Secretary of the Department of State Planning of the State of Maryland. Any such approval shall not be granted unless the applicant replaces the property with property and/or facilities of at least equal area and of equal recreation or open space value. The said Secretaries, in their sole discretion, shall determine the relative recreation and open space value of the property, considering the fair market value, usefulness, quality and location of the property and/or facilities.
2. The Council shall not convert the use of the property to any other than that contemplated and approved when assistance was obtained from the Capital Program Administration of the Department of Natural Resources without the prior written approval of the Secretary of the Natural Resources and the Secretary of the Department of State Planning. These restrictions shall be enforceable by the State of Maryland or any of its departments.

The Council pledges its full faith and credit to any and all debts, liabilities and obligations arising under this agreement to the extent allowed by the laws of the State of Maryland.

The Council also agrees that its rights under this Use Agreement are subject to any requirements applicable to the County in connection with Program Open Space.

ARTICLE VI
COMPLIANCE WITH LAW

The Council must comply with and conform to all environmental, cultural and planning laws applicable to the implementation of Program Open Space assisted projects. In addition, the Council will not discriminate on the ground of race, creed, color, national origin, handicap, sex or other protected characteristic. The Council will take affirmative action to ensure that no person on the ground of race, creed, color, national origin, handicap, sex or other protected characteristic be excluded from participating in any employment or participating in activities.

ARTICLE VII
INDEPENDENT CONTRACTOR

The Council warrants and agrees that Council is an independent contractor and not an employee of the County. The Council is responsible for all federal or state taxes applicable to any compensation or payments paid by Council to any third party. No such third party employed or retained by Council is eligible for any social security, unemployment insurance, or workers' compensation benefits or compensation from or through the County. The Council agrees to immediately provide the County notice of any claim made against the Council by any third party.

This agreement shall inure to the benefit of, and be binding upon, the Council and the County and their respective successors and assigns, including assigns and successors by way of privity of estate and contract, and nothing in this agreement, expressed or implied, shall confer upon or create against any other person, corporation or governmental unit, any right or remedy under or by reason of this agreement; provided however, that the Council will have no right to assign this Use Agreement to any other person or entity without the consent of the County, which it may exercise in its sole discretion.

Upon written notice, County may terminate the Agreement, in whole or in part, when County determines termination is in County's best interest. Termination for convenience is effective of the date specified in the County's written notice.

The performance of this agreement by either party is subject to acts of God, government authority, disaster, epidemic or other emergencies, fire, or riot, any of which make it illegal or impossible to provide the goods, facilities and/or services to be provided by a party under this contract. If one or more of such circumstances occur, then performance under this agreement may be delayed or terminated for any one or more of such reasons by written notice from one party to the other, in which case, neither party shall have any liability to the other, including any direct, consequential, compensatory, special, incidental, liquidated or other damages of any nature whatsoever, by reason of such delay or termination.

This Agreement is governed by and will be construed under the laws of the State of Maryland and Wicomico County.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above written.

WITNESS:

Brandon White
Brandon White

Eastside Youth Sports Council

By

[Signature] President
Dale B. White 10/1/2020

WITNESS:

Wicomico County

By _____

John D. Psota
Acting Wicomico County Executive