



Legislation Details (With Text)

File #: 0978-2008 **Version:** 1

Type: Ordinance **Status:** Passed

File created: 6/4/2008 **In control:** Recreation & Parks Committee

On agenda: 6/9/2008 **Final action:** 6/11/2008

Title: To authorize the Director Recreation and Parks to execute instruments and documents as may be necessary to secure a Covenant Not To Sue (CNS) including an environmental covenant, an Operation & Maintenance agreement, and any other additional documents and instruments that are necessary and incident thereto, and to declare an emergency.

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
6/11/2008	1	CITY CLERK	Attest	
6/10/2008	1	MAYOR	Signed	
6/9/2008	1	Columbus City Council	Approved	Pass
6/9/2008	1	COUNCIL PRESIDENT	Signed	
6/5/2008	1	Rec & Parks Drafter	Sent to Clerk's Office for Council	
6/4/2008	1	Rec & Parks Drafter	Sent for Approval	
6/4/2008	1	REC & PARKS DIRECTOR	Reviewed and Approved	
6/4/2008	1	Rec & Parks Drafter	Sent for Approval	
6/4/2008	1	CITY ATTORNEY	Reviewed and Approved	

In 2003 a Memorandum of Understanding (MOU) was entered into by the City of Columbus, the Columbus and Franklin County Metropolitan Park District and Audubon Ohio to redevelop approximately one-half of the Whittier Peninsula into parkland and a nature center. Being that the majority of the future parkland is owned by the City and has been designated a brownfield due to previous industrial uses, the MOU, which was amended and restated in 2006, held the City of Columbus responsible for the land's environmental condition and for obtaining one or more covenants not to sue from the State of Ohio. Per the MOU, the City retains land ownership and leases the future park area to Metro Parks, who will subsequently sub-lease approximately five acres of parkland to Audubon for construction and operation of a nature center.

At this time, the City of Columbus, through its consultant Burgess and Niple, is participating in the Ohio EPA Voluntary Action Program (VAP) to secure a Covenant Not To Sue (CNS) for a portion of the parkland known as the "Southern Tier Parkland Audubon Area." As part of the VAP process, Burgess and Niple is completing a No Further Action (NFA) letter for submission to the Ohio EPA. The NFA letter will contain an "Operations and Management" agreement (O & M) that commits the City to a specific site remediation plan. In order to secure a CNS, the City is required to execute an Environmental Covenant, that will limit the use of the property to recreational, commercial, or industrial land use, pursuant to Ohio Revised Code §§ 5301.82 to 5301.92.

This legislation seeks authorization to execute instruments and documents as may be necessary to secure a CNS including an environmental covenant, an operation & maintenance agreement, and any other additional documents and instruments that are necessary and incident thereto. It is necessary for the CNS to be awarded by the Ohio EPA prior to Audubon starting construction of their facility.

Emergency action is necessary in order to maintain progress on this project.

FISCAL IMPACT: None

To authorize the Director Recreation and Parks to execute instruments and documents as may be necessary to secure a Covenant Not To Sue (CNS) including an environmental covenant, an Operation & Maintenance agreement, and any other additional documents and instruments that are necessary and incident thereto, and to declare an emergency.

WHEREAS, per the 2003 MOU and subsequent amended MOU between the City of Columbus, Metro Parks and Audubon Ohio, the City of C

WHEREAS, the Whittier Peninsula is a brownfield site for which remediation must occur prior to the development of parkland or a nature center; and

WHEREAS, the City has contracted with Burgess and Niple, Inc. to complete a No Further Action (NFA) letter for an area of the Whittier identified as the Southern Tier Audubon (center) site. Located in the general vicinity of City Recreation and Parks facilities, site remediation is taking place under the Ohio EPA's Voluntary Action Program such that a Covenant Not to Sue (CNS) can be obtained from the Ohio EPA; and

WHEREAS, as part of the MOU, Audubon Ohio requires that a CNS be obtained and in place for the site prior to starting development/construction of the nature center; and

WHEREAS, in order to obtain the desired CNS, the City is required to execute an Operation & Maintenance Agreement that commits the City to a specific site remediation plan and an Environmental Covenant pursuant to Ohio Revised Code §§ 5301.82 to 5301.92; and

WHEREAS, an emergency exists in the usual daily operation of the Recreation and Parks Department in that it is immediately necessary to execute the necessary instruments and documents for the preservation of public health, peace, property and safety; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. That the Director of Recreation and Parks is hereby authorized to execute instruments and documents as may be necessary to secure a Covenant Not To Sue (CNS) including an environmental covenant, an Operation & Maintenance agreement, and any other additional documents and instruments that are necessary and incident thereto.

Section 2. That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.