

VILLAGE OF NEW LEBANON
MONTGOMERY COUNTY, OHIO

RESOLUTION NO: 2025-07
BY
MAYOR DAVID NICKERSON

A RESOLUTION AUTHORIZING THE ACTING VILLAGE MANAGER TO EXECUTE AN AGREEMENT WITH THE NEW LEBANON YOUTH ATHLETICS, INC. FOR THE USE OF DON RUSK MEMORIAL PARK.

WHEREAS, the Village seeks to continue its relationship with New Lebanon Youth Athletics, Inc.; and

WHEREAS, as part of that relationship, the Village must enter into an agreement with NLYA for the use of the Don Rusk Memorial Park; and

WHEREAS, the Acting Village Manager proposes entering into an agreement with NLYA for the next two years—a copy of the proposed agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF NEW LEBANON, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:

SECTION I That Acting Village Manager be, and hereby is, authorized to enter into an agreement with NLYA for the use of Don Rusk Memorial Park.

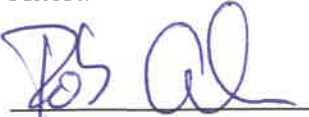
SECTION II It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III That this Resolution shall take effect immediately upon adoption.

PASSED this 18th day of February 2025.


David Nickerson, Mayor

Attest:


Robert Anderson II
Acting Clerk of Council


Date:

**NEW LEBANON, OHIO
RECORD COPY
DO NOT REMOVE FROM FILE**

DON RUSK MEMORIAL PARK USAGE AGREEMENT

This Agreement, dated February 19, 2025, is between the Municipality of New Lebanon (“Village”) and New Lebanon Youth Athletics, Inc. (“NLYA”).

ARTICLE 1: PREMISES, TERM, AND USAGE

The Village grants NLYA use of the Don Rusk Memorial Park Concession Stand, Baseball Diamonds, and Soccer Fields at 201 S. Fuls Rd., New Lebanon, OH, for **two (2) years**, ending December 31, 2026, for \$1. A new contract will be negotiated by October 31, 2026; without one, a month-to-month agreement (maximum 3 months) applies.

NLYA may manage the facilities identified above, with exclusive use of the concession stand. Other park facilities are to remain open for public use and scheduling during NLYA’s use periods. NLYA shall provide pre-scheduled activity lists to the Village Manager one month before baseball and soccer seasons, respectively. Usage by NLYA requires a written application approved by the Village. None of the above terms shall in any way supersede the permitting process used by the Village.

ARTICLE 2: PAYMENT AND FINANCIALS

NLYA will pay \$1 annually and shall submit financial statements (profit/loss, balance sheets, IRS 990) and any other financial documents requested by the Village, annually for review. Failure to provide statements may result in a certified audit at NLYA’s expense. Updated organizational by-laws and conflict of interest statements shall also be submitted to the Village annually. The NLYA further agrees not to place any charges or fees, on the use of Don Rusk Memorial Park without prior written, express authorization of the Village.

ARTICLE 3: TAXES AND LICENSES

The Village covers property taxes; NLYA is responsible for payroll taxes, workers’ compensation, unemployment, and necessary permits, which must be displayed on-site.

ARTICLE 4: INSURANCE

The Village maintains fire and extended coverage insurance during the entire term of this Agreement on the buildings pursuant to its statutory obligation as a municipal corporation.

The NLYA agrees to obtain and maintain good and responsible insurance during the entire term of this Agreement as follows:

- a. Public liability insurance in the minimal amount of \$1,000,000 from the loss from an accident resulting in bodily injury or death to persons, and in the amount of \$1,000,000 for loss from an accident resulting in damage to or destruction of property;
- b. The NLYA shall cause to have the Village named as an additional insured and a loss payee on all policies of insurance coverage;

- c. On securing the foregoing coverage, the NLYA shall give to the Village, written notice thereof together with a current and up to date copy of the appropriate policy;
- d. Proof must also be given by the NLYA to the Village that each of the policies provided for in this article expressly provides that the public liability insurance policy amount shall not be canceled or altered without prior written notice to the Village;
- e. If the NLYA, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, the Village shall be permitted to obtain such insurance in the NLYA's name or as the agent of the NLYA and shall be compensated by the NLYA for the cost of the insurance premiums. The NLYA shall pay the Village interest on paid insurance premiums at the rate of 10% per annum computed from the date written notice is received that the premiums have been paid;
- f. Proceeds from any such policy or policies shall be payable to the Village for structures, who shall use such proceeds to pay any claims or make any repairs as provided for below;
- g. If the building or other improvements on the premises should be damaged or destroyed by fire, flood, or other casualty, the NLYA shall give immediate written notice thereof to the Village;
- h. If the building on the premises should be totally destroyed by fire, flood, or other casualty, or if it should be so damaged that rebuilding or repairs cannot reasonably be completed within sixty (60) working days from the date of written notification by the NLYA to the Village of the occurrence of the damage, this Agreement shall terminate.
- i. If the building or other improvements on the premises should be damaged by fire, flood, or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within sixty (60) working days from the date of written notification by the NLYA to the Village of the occurrence of the damage, this Agreement shall not terminate. In the event that the Village shall fail to complete such rebuilding or repairs within sixty (60) working days from the date of written notification by the NLYA to the Village of the occurrence of the damage, the NLYA may at its option terminate this Agreement by written notification at such time to the Village, whereon all rights and obligations hereunder shall cease.

ARTICLE 5: UTILITIES

NLYA pays for phone, water, and sewer services, with penalties for late payments and shall hold the Village harmless from any liability therefore. Payments for these services shall be paid to the Village each month by the due date or a late penalty of \$10.00 shall occur if payment is one to

four days (1-4) late and a \$20.00 late penalty shall occur if the payment is five to nine (5-9) days late. If the payment is ten or more days late a penalty of \$20.00 plus \$5.00 for each day late will occur. Water may be prepaid based on estimated usage. NLYA is responsible for winterizing the park facilities. The NLYA, at its expense, shall winterize, and/or coordinate with the Village, to winterize the premises, including but not limited to the concession stand, restrooms, and exterior water fountains.

ARTICLE 6: WASTE AND SAFETY

NLYA will keep the premises clean and orderly, ensuring the walking path and parking areas remain clear at all times. NLYA shall ensure that all trash and debris from any part of their leased area is removed in a timely manner. Limited vehicle access is allowed near the concession stand for loading and unloading of materials, equipment, and food. At no time shall more than 2 vehicles be parked near the concession stand area at the same time.

ARTICLE 7: MAINTENANCE

The NLYA agrees to keep the premises in good order and repair, reasonable wear and tear (and damages by accident, fire, or other casualty not resulting from the NLYA's negligence) excepted. The NLYA further agrees to keep the premises clean, and to repair or replace all broken or damaged doors, windows, plumbing fixtures and pipes, floors, stairways, railings, or other portions of the premises, resulting from the NLYA's negligence. NLYA will maintain and repair all buildings and playing fields on the premises during the term of this agreement, with prior written Village approval for any major repairs and professional field treatments.

ARTICLE 8: ALTERATIONS

All improvements or alterations require prior written Village approval. NLYA holds the Village harmless for claims related to such changes.

ARTICLE 9: TERMINATION

This Agreement may be terminated by either party with 90 days' written notice or for non-compliance.

ARTICLE 10: PROPERTY REMOVAL

Upon termination of this Agreement for any reason, NLYA must remove its property and restore the premises within 30 days of the termination. Abandoned items become the Village's property.

ARTICLE 11: DEFAULT

If the NLYA defaults in the performance of any term, covenant, or condition required to be performed by NLYA under this Agreement, the Village may elect to terminate this Agreement on giving at least thirty (30) days notice to the NLYA of such intention, thereby terminating this Agreement on the date designated in such notice, unless the NLYA shall have cured such default prior to the expiration of the thirty (30) day period.

ARTICLE 12: INSPECTIONS

The Village may inspect the premises with prior notice. NLYA must provide keys and alarm codes within 14 days of signing.

ARTICLE 13: ASSIGNMENT

NLYA cannot assign or sublease the Agreement without written Village consent.

ARTICLE 14: HOLD HARMLESS

The NLYA hereby agrees to indemnify, defend, and hold harmless the Municipality of New Lebanon, its officials, employees, agents, and representatives (collectively referred to as "the Village") from and against any and all claims, demands, suits, actions, liabilities, losses, damages, costs, and expenses (including, but not limited to, reasonable attorney's fees and court costs) arising out of or resulting from:

1. Any negligent act or omission, misconduct, or wrongful act of the NLYA, its members, officers, employees, volunteers, agents, contractors, or participants during the use or occupancy of Don Rusk Memorial Park or any activities conducted therein.
2. Any injury to persons (including death) or damage to property occurring on or about the premises used by the NLYA, except to the extent caused by the sole negligence or willful misconduct of the Village.
3. Any failure by the NLYA to comply with applicable laws, ordinances, rules, regulations, or terms of this Agreement.

This hold harmless clause shall survive the termination or expiration of this Agreement.

ARTICLE 16: PUBLIC HEALTH AND SAFETY

To ensure public health and safety, including during emergencies, pandemics, or disasters, The Village reserves the right to close or limit access to fields, shelters, entry/exits, and walkways during scheduled events, in compliance with federal, state, and local regulations. Such closures or limitations will be approved in coordination with the NLYA. Additionally, the Village may independently close or restrict access to Don Rusk Park for public health and safety. NLYA will be notified promptly of any such actions.

ARTICLE 17: MISCELLANEOUS

1. **Notices:** All notices must be sent via certified or registered mail to:
 - o **Village:** Municipality of New Lebanon, 198 S. Clayton Road, New Lebanon, OH 45345
 - o **NLYA:** New Lebanon Youth Athletics, Inc., P.O. Box 129, New Lebanon, OH 45345
2. **Binding Effect:** This Agreement is binding on and benefits the parties and their respective heirs, successors, and assigns as permitted.

3. **Governing Law:** The Agreement is governed by Ohio law, with all obligations performable in Montgomery County, Ohio.
4. **Severability:** If any provision is deemed invalid, illegal, or unenforceable, the remaining provisions remain in effect as if the invalid provision were excluded.
5. **Entire Agreement:** This Agreement supersedes all prior agreements, written or oral, regarding the subject matter.
6. **Amendments:** Changes to this Agreement must be in writing, dated, and signed by both parties.
7. **Rights and Remedies:** The rights and remedies in this Agreement are cumulative and do not limit other legal rights.
8. **No Waiver:** Failure to enforce any term does not waive the right to enforce other terms or subsequent breaches.

Time is of the essence of this agreement.

IN WITNESS THEREOF, the undersigned Village and the NLYA hereto execute this agreement as of the date and year first written above.

Witness

Village of New Lebanon

Date

Witness

Witness

New Lebanon Youth Athletics, Inc. Date

Witness