



MEMORANDUM

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TO: Members of the Metropolitan Sports Authority
Members of the Metropolitan Board of Fair Commissioners

FROM: Jon Cooper

DATE: June 26, 2018

RE: MLS Stadium Agreements

We are pleased to submit initial agreements regarding construction of a new Major League Soccer stadium at the Fairgrounds Nashville to the Sports Authority and the Fair Board. As you will recall, as part of Substitute Resolution No. RS2017-910, the Metropolitan Council included a number of conditions that must be satisfied prior to the issuance of debt to construct the stadium. Those include approval of a ground lease by both the Fair Board and the Sports Authority and approval of an operating lease by the Sports Authority. In addition, the Sports Authority will be asked to approve a development agreement with the MLS Team and a construction administration agreement with the contractor selected to build the stadium. Summaries of the agreements are included below.

There will be a separate agreement between the Fair Board and a subsidiary of the MLS Team that will include certain restrictions and requirements for the operation of the stadium. The terms of this agreement are still being finalized and will be submitted for Fair Board approval at a later date since approval of that agreement is not necessary prior to the issuance of stadium debt.

The Fair Board will be asked to approve the ground lease at its regular meeting on July 11, and the Sports Authority will be asked to approve all four agreements at its regular meeting on July 19. The Sports Authority will also need to approve the construction management agreement once the procurement process to select the construction manager has concluded. Separate informational meetings regarding these agreements will be scheduled soon for both boards. Representatives from Metro Legal and the MLS Team will be available to answer your questions.

We look forward to this next step in the process toward making Major League Soccer a reality in Nashville.

Development Agreement Summary

- Between Sports Authority and Walsh Management LLC (Walsh) – a wholly-owned subsidiary of the Nashville Soccer Holdings, LLC
- Construction of the +30,000 seat stadium will be a cooperative endeavor between the Authority and the Team
- ICON will serve as the Walsh’s representative, and Ron Gobbell and Capital Project Solutions will serve as the Authority’s/Metro’s representatives during construction
- Walsh and Authority will enter into a separate construction administration agreement described below whereby ICON will essentially serve as the Authority’s authorized representative to manage day-to-day design and construction of the project
- Establishes a four member Development Committee comprising two representatives from the Authority and two representatives from Walsh
 - The Development Committee will work together throughout the design, development and construction process
 - One of Walsh’s representatives will serve as chair of the Committee and will have the authority to make decisions in the event of a dispute among Committee members unless such decision would have a materially adverse impact on the Authority’s future capital expense obligations
 - In such case, the parties would work together in good faith to resolve the issue
- Final plans must be submitted to MLS for review no later than February 25, 2019
- The Authority is to deliver the site in pad ready condition no later than June 30, 2019
- The stadium is to be ready for occupancy no later than February 1, 2021
- The MLS Team will contribute \$25,000,000 toward the construction cost of the stadium, and will be responsible for all cost overruns

Operating Lease Agreement Summary

- Between Sports Authority and Walsh Management, LLC, a wholly-owned subsidiary of the Nashville Soccer Holdings, LLC
- Term is for 30 years from the date Walsh takes occupancy of the stadium
- Walsh will pay rent in the amount of the revenue bond debt service less the total amount of sales and ticket taxes collected at the stadium (the “rent reduction”)
- For years 1 through 5 of the lease, Metro guarantees the total amount of sales and ticket taxes collected will not be less than \$4,000,000 per year, and not less than \$3,000,000 per year for years 6 through 10
- The rent payments will be made twice a year to coincide with the revenue bond payment dates
- Walsh and the Team will be responsible for all operating and maintenance expenses associated with the operation of the stadium, including utilities and security

- The Sports Authority will be responsible for all capital expenses necessary to keep the stadium in compliance with MLS standards applicable to all MLS stadiums
 - Starting in year 6 of the lease, fifty cents of the ticket tax on each ticket will be set aside for capital expenses, which will increase to seventy-five cents per ticket in year 8
 - Walsh will be required to provide a capital asset management plan (“CAMP”) to the Authority every other year starting in year 7 of the lease
 - CAMP will be prepared by an independent consulting firm
 - CAMP is to include a general assessment of the stadium plus a summary of the capital expenses expected to be required during the next 10 years
- The Team will be required to maintain operations in Nashville and must use the name “Nashville” in the Team name
- The Team will be allowed to play up to 3 games per year at another facility, but will be required to reimburse Metro for the lost sales and ticket tax revenue at the stadium to the extent Metro is required to make up the difference between actual annual collections during the 10 year guarantee period noted above
- Team will be entitled to keep all revenues from concessions, naming rights, advertisements and parking for stadium events
- Walsh and the Team will coordinate scheduling with Fairgrounds Executive Director so that fairgrounds can continue to provide the events required by the Metro Charter
 - Walsh and the Team will use good faith efforts to accommodate fairgrounds events, specifically the flea market dates
- The Authority will have 20 days of rent-free use of the stadium for Metro events. Metro will be responsible for paying the expenses related to such events.
- Walsh will be required to maintain insurance on the stadium in an amount not less than the full replacement cost of the stadium and the associated improvements, as well as \$50,000,000 in general commercial liability insurance coverage
- Walsh will be required to indemnify the Authority for damage or injuries resulting from its operations
- Team is required to provide guaranty unconditionally guaranteeing all rent payments for the entire lease term, the Team’s \$25,000,000 capital contribution, and all cost overruns for the stadium.
 - If John Ingram ever ceases to be the controlling owner of the team, then a successor guarantor or guarantors acceptable to the Director of Finance will enter into a guaranty agreement acceptable to the Director of Finance to guaranty any remaining obligations.
- Walsh or the Team cannot assign the lease without the written permission of the Authority
- The lease includes standard provisions required by MLS making MLS a third party beneficiary and allowing MLS to step into the Team’s shoes in the event of a default

Construction Administration Agreement Summary

- Between Sports Authority and Walsh Management, LLC (“Walsh”)
- Walsh, through ICON, will cause the architect and construction manager to design and construct the stadium in accordance with the architect agreement and construction contract approved by the Authority
- This agreement is modeled after the agreement between Cobb County, GA and the Atlanta Braves for the construction of their new stadium, which had a similar financing arrangement
- The term of the agreement is through the completion and expiration of the construction manager’s responsibilities
- Walsh will carry out its responsibilities primarily through ICON, a program manager with substantial construction oversight experience
- ICON will be the primary conduit for communications between the design and construction teams and the Authority
- ICON will report to and meet regularly with the Authority’s representatives to facilitate the design and construction processes
- ICON will recommend to the Authority the terms of any additional contracts necessary to construct the stadium
- Walsh will have the right to enforce the provisions of the construction contract as a third party beneficiary
- ICON will be responsible for:
 - Developing project milestones
 - Setting the final guaranteed maximum price in consultation with the Authority’s representative on the development committee and Ron Gobbell/CPS
 - Monitoring stadium costs in relation to the project budget and the guaranteed maximum price
 - Conducting and coordinating stadium project team meetings to discuss progress of the stadium construction
 - Monitoring completion of punch list items
 - Assisting the Authority in maintaining complete and accurate records regarding the design and construction of the stadium
 - Reviewing applications for payment to contractors and providing such applications to the Authority for approval
 - Submitting change orders to the Authority for approval

Ground Lease Summary

- Between Fair Board and Sports Authority
- Term is for 30 years with a nominal annual rent payment

- Sports Authority is responsible for causing the stadium to be constructed on the property
- The property may be used for Sports Authority purposes consistent with state law
- The property is being leased in “as-is” condition
- Lease cannot be transferred or assigned without written approval of the Fair Board
- The ground lease acknowledges the existence of the Operating Lease Agreement described above, and the Fair Board consents to such agreement as a sublease to the Ground Lease
- Fair Board agrees to execute a standard recognition, non-disturbance and attornment agreement (RNDA) whereby the Fair Board agrees to continue to recognize the Operating Lease in the event the Ground Lease with the Sports Authority is ever terminated
- Includes the following list of prohibited uses:
 - Any use that constitutes a public or private nuisance;
 - Any use or purpose that violates in any material respect any applicable law
 - The sale or commercial display of any obscene sign or advertisement, including any sign or advertisement that promotes obscene activities;
 - Any sexually oriented business as such term is defined in Chapter 6.54 of the Metropolitan Code;
 - The sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;
 - A shooting gallery, target range, vehicle repair facility, warehouse, or industrial use; and
 - A massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor.

Construction Management Agreement Summary

- This agreement will be between the Authority and a construction manager (“CM”) to be selected through a competitive procurement process
- CM candidates will be required to have substantial experience on similar projects
- The selected CM will be involved in the project from the beginning of the design process to provide assistance as to value engineering, constructability and scheduling
- When stadium designs are sufficiently complete, CM will provide a not-to-exceed or guaranteed maximum price (“GMP”) to build the stadium in accordance with those designs
- If the CM’s GMP proposal is acceptable, the CM will be engaged to complete the project
- In order to expedite construction, CM may undertake some parts of the project prior to establishment of the GMP, such as excavation and foundation work
- The CM will be accountable for completing the stadium on time and within the GMP

