

SPECIAL CALLED MEETING 08/15/2018

AGENDA ITEM #1: Authorize negotiation and execution of agreements with Precourt Sports Ventures, LLC, or its affiliates, related to the construction, lease, and occupancy of a sports stadium and associated infrastructure and development on a city-owned site located at 10414 McKalla Place, under terms outlined in a term sheet.

COUNCIL MEMBER ALTER'S OFFICE

Structure of the Stadium and Development Agreement Terms:

1) Page 10 of the term sheet indicates "The Club will guarantee all obligations of StadiumCo to the City." Has city staff reviewed the financial wherewithal of the Club to make sure it can actually perform on the guarantee? If yes, please describe the financial standards used to make that determination. If not, please describe how the City expects the guarantee to be meaningful. These are important safeguards because StadiumCo is a single asset entity with no other revenue or assets except for the stadium which will have a lien on it. The Club needs to have substantial net worth and cash flow besides this stadium.

With the assistance of the City's consultants and outside counsel with expertise in this area, City staff has conducted due diligence on Precourt Sports Ventures (PSV) and is satisfied with its financial ability to perform on the guarantee. The City is aware that the obligations of StadiumCo need to be safeguarded and has accounted for that. All MLS-related revenue will flow through StadiumCo as direct party and the Club as guarantor. StadiumCo will have additional revenue streams via non-MLS events at the stadium, and the Club has substantial value by virtue of its MLS operating rights.

PSV Financing:

2) P. 7 states "PSV projected sources and uses for financing proceeds will be reviewed with, and be subject to comment and reasonable approval by the City and its advisors for the sole purpose of confirming PSV's ability to finance the Stadium Project." Given that language, what protections will there be in the financing for the City to make sure Austin is protected first, before the lenders? For instance, how do we make sure our lease is not subordinate to their loan, that we get notice of defaults etc. What rights will we have as a creditor if PSV files for bankruptcy? - and following the term sheet when would those rights be clarified?

The City is the lessor and is not acting as a creditor, nor is the City acting as any type of financial backstop on PSV's obligations. The Term Sheet contemplates adequate guarantees and protections that will be further delineated in the Stadium Lease and Development Agreement. The lenders and the City will enter into a customary non-disturbance and attornment agreement to ensure the continued operation of the Stadium following an event of default under the StadiumCo financing. The City will not be required to subordinate its fee interest in the property to the

leasehold mortgage of the lenders. The fee interest of the City will remain unaffected. The non-disturbance and attornment agreement will also provide that the lenders will give notices to the City of a default under the StadiumCo financing. In the unlikely event of a StadiumCo bankruptcy, the City would be entitled to pursue all amounts owing to the City under the Stadium Lease and Development Agreement.

3) What happens if PSV does not secure financing, permitting, construction in a timely way, or never does anything period? Can we get the land back in the first 5 years? Can PSV sit there for 5 years paying no rent and doing nothing? Is there a deadline by when PSV needs to secure their financing or Austin can walk away? Or do we have to sit there for 5 years with no rent income?

PSV has an interest in developing the new stadium as soon as possible. However, if PSV does not obtain financing for the Stadium Project by a date to be specified in the agreement, the City may terminate the agreement. In addition, if PSV does not enter into a construction contract by a date to be specified in the agreement, the City may terminate the agreement.

Government Approvals:

4) Page 4 of the term sheet states: "The City will assist and cooperate with PSV and StadiumCo through the City's execution of consents, subordination and non-disturbance agreements, estoppels and such other assurances as may be reasonably requested by PSV's lenders from time to time." Please describe the scenarios envisioned where the city would consider subordination as described at the top of page 4. In addition, please explain if the term "subordination" on page 4 would allow the city to subordinate its land lease. I am concerned that if PSV defaults on its loan the bank could wipe out the lease and Austin would have nothing. Finally, why would Austin ever subordinate its land lease?

As landlord, it may be necessary for the City to reasonably assist PSV and StadiumCo in these customary respects. The City will not, however, subordinate its interest in the Rent, Stadium Lease and Development Agreement and the Site. These provisions typically run to the benefit of the lenders as against the tenant, not against the landlord. The non-disturbance agreement would have the lenders and the City confirm that it will maintain the lease in effect following a foreclosure or similar event and grant the lender a cure period to rectify any defaults of StadiumCo under the lease. As long as the City is not in default of its obligations under the lease, the lease will survive any foreclosure action and be kept in place. The land will remain owned by the City under all scenarios.

Stadium Development:

5) With reference to terms on page 5, how does the city enforce the obligation to tear down a half built stadium if PSV or the Club is broke? More broadly, how are all of PSV's obligations enforced if their only asset is this stadium and team?

Protections for the lender and City will be included in the financing documents to prevent this from occurring.

Ancillary Development:

6) Who can get revenues from ancillary developments is confusing - page 11 attributes the revenue solely to StadiumCo, but on pages 2 and 3 city approval or rights to ancillary development may contradict that notion. Please explain how we should think about the ancillary developments in terms of taxation, approval rights, and revenue.

PSV's financial commitment to fund construction of the stadium, site preparation, open spaces, parking, transit improvements, combined with the rent and other financial commitments and risk has been made with the understanding that PSV would retain the right to develop a portion of the balance of the property and retain such revenues. PSV would pay property, sales and other taxes on the ancillary development. The City retains approval rights and land use, zoning, and all other regulatory approvals for the ancillary development.

7) The parking clause related to the city taking over ancillary development seems like it would preclude much future ancillary development by the city. Would this clause allow them to park cars on dirt and then say we have to replace that parking?

The Stadium Lease and Development Agreement and approved site development permit will determine which, if any, parking replacement will be required. The project does not contemplate dirt parking onsite.

8) Under what conditions would the ancillary development made possible by the term sheet come before Council for approval?

Ancillary development would be subject to normal regulatory approval processes required under the Land Development Code. If Council approval is part of that normal process, it will come before Council.

9) Can ancillary development be built and taxable without subdividing the land? Either way, how come future ancillary development building off the lease agreement does not require an RFP?

It is not anticipated that subdivision would be required in order to build the ancillary development. TCAD can establish separate tax parcels that do not correspond to property lines. An RFP requirement is not triggered by what is proposed to be done on leased City land but rather by the length of the proposed lease term. Because City land may be sold only through a competitive process, if a lease term is effectively a sale (such as a 99-year lease), then a competitive process

would be required. A lease term of 20 to 50 years is not effectively a sale and is truly a lease. An RFP is not required for a lease.

Other questions:

10) As structured, it seems like PSV has a 5-year option for no option fee on a \$20 million asset. Is there a list of steps that PSV needs to take by certain dates? In other words, is there a part of the terms or agreement that requires PSV to accomplish certain aspects by certain dates where failure to meet those dates is a default and Austin can terminate or such that there are real penalties for PSV for not reaching milestones?

PSV does not have a 5-year option. If PSV fails to provide reasonable evidence to the City of a financing plan to fund the Budgeted Costs in accordance with the procedures and benchmarks to be mutually agreed upon by the parties in the Stadium Lease and Development Agreement, the City may terminate the agreement without any further financial obligation and be reimbursed for certain fees and costs incurred by the City. In addition, the agreement will include covenants on construction schedule, completion date, and consequences of a delayed opening.

11) Does anything in this agreement indicate the MLS team has to be the Columbus Crew? Were MLS to grant the rights would the agreement allow them to start a team from scratch?

PSV controls the operating rights to Columbus Crew SC and is the only entity that has rights to the Austin market for MLS.

12) Why was the last clause of the Real Estate section related to public access deleted in the updated term sheet? What kind of rights of public access exist?

The deleted language was superfluous and redundant with other terms already in the Term Sheet. The Term Sheet includes a provision related to public access: "The Site is expected to include just over eight (8) acres of green space, open space and performance areas that will be accessible to the general public year-round during non-event times." In addition, "The grounds, open space and trails outside of the Stadium shall remain open to public access when the Stadium and Site are not holding scheduled events."

13) The "additional considerations" section lays out minimizing the impact on neighboring communities during construction. How are the neighboring communities protected during the use of the stadium i.e. in the post construction period?

The Club will work with the Austin Center for Events (ACE) for the process to establish the event impact area around the Stadium for home games and other large events. This existing ACE process includes working with AFD, APD and Transportation to determine emergency access for fire and police, no parking areas (if and as needed), lane closures or controlled access (if and as

needed) and amplified sound permits. The ACE process also includes working with area stakeholders, including all neighborhood associations in proximity to the park as well as businesses and residential buildings (condos/apartments). During this process, all parties will work together to make sure that the impact to surrounding residents and businesses is minimized. This includes but is not limited to: no parking signage in neighborhoods and strict enforcement by APD, which also ensures that emergency vehicles can access any resident and managed lanes.

14) Does the City have the right to terminate the lease after 20 years? What happens to the stadium if PSV does not renew at 20 years?

No. PSV has the right to renew for three additional 10-year terms. At the end of the initial lease term, PSV could choose not to exercise its renewal option, and the agreement would expire. In that case, the City retains ownership and could: seek an alternative tenant (other team / league); lease it to another provider of outdoor entertainment (such as music production company); sell the stadium to another entity (such as a school district or university), or demolish the stadium for redevelopment.

15) Can PSV spend the Capital Reserve Fund before the 20 years are up?

PSV is responsible for all capital repairs, replacements, and improvements to the Stadium for the benefit of the City regardless of the level of the Capital Reserve Fund. In the event the Capital Reserve Fund does not have funds, PSV would still have to make the repairs, replacements, and improvements. The purpose of the Capital Reserve Fund is to provide an extra level of certainty that repair and replacement of stadium components will be made according to the Capital Repairs Standard. It is possible that the last of the Capital Repairs Reserve Fund could be used in the final year of the initial term. This would mean that needed repairs are being carried out according to the Capital Repairs Standard.