

Overview and Update on Proposed Documentation for Successor Facility to the Georgia Dome

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Georgia World Congress Center Authority
Stadium Development Committee

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Agenda

General Transaction Overview and Update

Transaction Agreement

Project Development and Funding Agreement

Stadium License and Management Agreement

Non-Relocation Agreement

Club Guaranty Agreement

Intellectual Property License & Sublicense Agreements



General Transaction Overview and Update



- On April, 5, 2013, after Board approval, GWCCA executed the MOUs relating to the New Stadium Project or “NSP”
- The drafting, review and negotiation of the various “Project Documents” has been on-going since the execution of the MOUs
- We last reviewed many of the Project Documents with you on July 23-24, 2013, and provided a further update to you in September at the Board Retreat
- Since July 2013, the Parties have agreed to the South Side location as the NSP Site and have been actively working on property acquisitions



- The next step is the execution of the Transaction Agreement on or about **October 31, 2013**, which is referred to as the “Initial Closing”
 - The Transaction Agreement will supersede the MOUs
 - The Transaction Agreement will have various Project Document forms attached to it, almost all of which we reviewed with you in detail in July 2013
- The road ahead calls for the parties, as the case may be, to:
 - Complete the acquisition of all parcels needed for delivery of the NSP Site to StadCo
 - Continue to work on the completion of the remaining project documents
 - Continue to work with IA on the issuance of the H/MT Revenue Bonds



Transaction Agreement



Pre-Final Closing Actions/Rights/Obligations

- As previously outlined for you, execution of the Transaction Agreement constitutes the “Initial Closing” as defined in the MOUs
- The Transaction Agreement supersedes the MOUs and sets forth actions to be taken prior to Final Closing and at Final Closing
- Key “Pre-Final” Closing Actions and related dates include:
 - Agreement upon preliminary schematic drawings by October 31, 2013 **(Note: Final schematic drawings are being presented for your approval.)**
 - StadCo, the GWCCA and the General Contractor must agree to the guaranteed maximum price on or before June 30, 2014
 - Allows GWCCA the discretion/option to enter into or extend certain license agreements for the Georgia Dome Legacy Events as part of the transition to the New Stadium



Update on Other Pre-Final Closing Documents

- Contemplates the execution of the Project Development and Funding Agreement on or prior to execution of the Transaction Agreement. **Note: This has been delayed until November 2013.**
- Requires execution of PSL Marketing Agreement, designating StadCo as the sole and exclusive sales representative for the NSP “seat rights,” on or prior to execution of the Transaction Agreement. **Note: This has been delayed.**
- Also requires that StadCo and the City of Atlanta enter into a Public Infrastructure Agreement prior to Final Closing
- **Open issue relating to whether acquisition of the Herndon Homes site is necessary for StadCo to proceed with Final Closing**



Final Closing on Project Documents

- Consistent with the MOUs, the Transaction Agreement requires the execution of the following Project Documents at the Final Closing:
 - Stadium License and Management Agreement
 - Site Coordination Agreement
 - Non-Competition Agreement
 - Club Guaranty Agreement
 - Intellectual Property Stadium License Agreement
 - Club Stadium Sub-License Agreement



Final Closing on Project Documents (cont.)

- Non-Relocation Agreement
- **Hotel-Motel Tax Funding Agreement***
- **Operations & Maintenance Agreement***
- **Bond Proceeds Funding and Development Agreement***
- Indemnification Agreement
- NSP Neighborhood Prosperity Agreement

***Agreements previously reviewed and approved by the Board at the MOU phase**



Termination

- Transaction Agreement provides for the following, limited termination rights:
 - Mutual written consent of GWCCA and StadCo
 - By GWCCA if prior to September 30, 2014 StadCo fails to satisfy its StadCo Contribution obligations
 - By StadCo if prior to September 30, 2014 Invest Atlanta fails to issue and properly deposit net proceeds of at least \$200 million in H/MT Revenue Bonds for the NSP Project
 - By either StadCo or GWCCA if the Final Closing does not occur by December 31, 2014
 - By either StadCo, GWCCA or Invest Atlanta, as applicable, if representations and warranties of another party are not true, the conditions precedent to closing have not been met or there is an event of default under any Project Documents



Project Development and Funding Agreement



Refresher on the Project Development Agreement (PDA)

- The PDA governs key aspects of the design, construction, development and financing of the NSP Project, as between GWCCA, StadCo and the Club
- Certain aspects of the financing component of the transaction are covered by the Invest Atlanta Rights and Funding Agreement
- Subject to the various Project Documents, StadCo, working in conjunction with GWCCA, the Lead Architect and the General Contractor, is charged with the design, development, construction, completion and operational readiness of the NSP
- StadCo's performance must be consistent with the NSP Scope set forth in the MOU and the Design Documents



Key NSP Site Provisions

- **Specifically identifies the South Side location as the NSP Site**
- StadCo agrees to furnish GWCCA with soil and other geotechnical reports relating to the Site and to make GWCCA a reliance party on such reports
- The PDA also (i) specifically identifies any off-site property and easements needed to prepare for, develop and operate the NSP, and (ii) specifies which Party is required to acquire and pay for such off-site property and easements
- StadCo is responsible, at its sole cost and expense, for addressing the feasibility and other construction and development concerns centering around the location of MARTA easements and any desired NSP connectivity with MARTA
- GWCCA must reasonably cooperate with StadCo's efforts



Key NSP Site Provisions (cont.)

- Any property acquired or otherwise made available as part of the NSP Site is expressly provided to StadCo “as is” (including all physical, environmental and other site conditions that may exist on, adjacent to or in proximity to the NSP Site and Off-Site Property)
- StadCo may include environmental remediation costs as NSP Costs, unless such work is required due to negligent actions of StadCo, the General Contractor or any of their respective subcontractors or consultants



Key NSP Construction Provisions

- A Substantial Completion Date of on or before March 1, 2017 and Final Completion within 120 days after Substantial Completion are established, subject to GWCCA Caused Delays and Force Majeure
- In the event Substantial Completion does not occur on or before June 30, 2019, as so extended, GWCCA shall have the option to terminate the PDA and the other Project Documents (within 30 days after such date)
- StadCo remains obligated to diligently pursue liquidated damages from the General Contractor and any other construction contractor
- GWCCA has a limited right to recover liquidated damages



NSP Costs/Financing the NSP

- All material provisions from the MOU relating to the composition of eligible NSP Costs, the allocation of payment responsibilities and related limitations concerning same have been incorporated from the MOU
- These provisions include, among others, StadCo's obligation to reimburse GWCCA in an amount up to \$2.5 MM for Professional Fees incurred after April 5, 2013
- Similarly, the salient provisions concerning the H/MT Revenue Bonds to be issued by Invest Atlanta, the related Public Contribution amount, and the accounts, disbursement provisions and other material financing terms have been incorporated from the MOUs



NSP Costs/Financing the NSP (cont.)

- StadCo remains obligated to fund any NSP Costs exceeding the Public Contribution (the “StadCo Contribution”)
- StadCo also retains its liability to fund NSP Cost Overruns, which overruns remain subject to review and comment by GWCCA, and, to the extent such NSP Cost Overruns exceed StadCo’s demonstrated financing capacity, approval by GWCCA
- GWCCA and its advisors are permitted to review financial information confirming StadCo’s ability to finance the StadCo Contribution prior to the Initial Closing



Georgia Dome

- The PDA retains the Georgia Dome demolition provisions from the MOU and establishes the date the GWCCA must make the Georgia Dome available for demolition (but not earlier than the Substantial Completion Date)
- StadCo remains obligated to fund all Dome Demolition Costs



Stadium License and Management Agreement



Background/Grant of License/Term

- The Stadium License Agreement (SLA) is one of the key Project Documents concerning the operation of the NSP
- Under the SLA, GWCCA grants StadCo an exclusive license to the Stadium and the Stadium Site
- The SLA also covers the FF&E and grants StadCo use of all of the GWCCA's Intangible Property Rights described in the Intellectual Property License Agreement during the License Term



Background/Grant of License/Term (cont.)

- The Term commences on the date of the Final Closing and extends to February 28, 2047
 - The Term is subject to extension for NFL home playoff games for the Falcons
 - The Term is automatically modified so as to cover 30 full NFL seasons if the NSP does not open on or before the Falcons' first home game for the 2017 NFL Season
 - The SLA provides StadCo with 3, 5-year extension options on the Term



Background/Grant of License/Term (cont.)

- The SLA grants StadCo a license to use and occupy the “Premises”
- Customary covenants such as Right of Occupancy, Quiet Enjoyment, and Senior and Priority Status of the License Interest are made by GWCCA
- The SLA limits StadCo’s Air Rights and Subsurface Rights to that which is required to construct and operate the Stadium
- The Stadium Site is licensed “as is, where is”
- Licensee assumes all construction and operational risks



License Fee

- StadCo will pay GWCCA a License Fee of \$2,500,000 per annum for each year during the Term, as escalated by 2% annually
- License Fee is payable by StadCo in semi-annual installments on May 1 and December 1 of each year, commencing on the later of May 1, 2017, or the first day of the first month following Substantial Completion Date
- Late Payments bear interest at the Default Rate



NSP Prohibited and Permitted Uses

- Permitted Uses remain unaltered and appropriately protect the interests of GWCCA
- Prohibited Uses are also clearly prescribed, appropriately measured and remain unaltered



Revenues

- With very limited exceptions, StadCo will have full and exclusive control of the management and operation of the Premises, and responsibility for all F&B, sponsorship rights, advertising and parking on the Premises
- StadCo shall own all revenues of any source generated on or from the Premises or the operation or management thereof
- StadCo and GWCCA have the right to sell Personal Seat Licenses (PSLs) to purchase future tickets for certain premium and general seating as provided in the forthcoming PSL Agreement, but GWCCA will have no obligations or liabilities in respect of the PSL program
- Subject to the respective license agreements for Georgia Dome Legacy Events, GWCCA Events and Atlanta Bid Events, StadCo has full and exclusive rights to sell and receive revenue for all other Seat Rights



Insurance

- Since our July 2013 briefing, GWCCA and StadCo have been diligently working on the appropriate insurance requirements/levels, in consultation with DOAS and the Parties' respective insurance consultants
- **The Parties are close to reaching agreement on these matters**



Ownership of Premises; Sale or Disposal; Access

- Ownership and related provisions for this transaction have remain essentially unaltered
- GWCCA will own the Stadium Site and the Stadium
- During construction of the Improvements and after the Commencement Date and throughout the Term, all construction materials and consumables that will be incorporated into or constitute Improvements to be constructed on the Premises will be deemed donated by StadCo to GWCCA prior to installation
- StadCo will, however, retain the title to its personal Property located in the Premises and the right to remove such upon the expiration of the Term



Non-Relocation Agreement



Covenant to Play

- Requires the Team to play all Home Games in Georgia Dome from Effective Date until Opening Day
- Leaves undisturbed the Club's other obligations under the Georgia Dome Stadium License Agreement
- Requires the Team to play all Home Games (with some narrow exceptions) at the Stadium from and after Opening Day through the end of the term of the SLA (as may be extended)
 - Permits play of 1 non-playoff game at another location at request of NFL
 - Does not require the Club to play “canceled” games in the event of NFL Labor Dispute
 - In the event of an untenable condition in either stadium, the Club is permitted to find a temporary facility to play its Home Games



Non-Relocation

- The Club is not permitted to relocate from the opening of the new Stadium through the end of the term of the SLA (as may be extended)
- Club also may not apply or seek approval from NFL to relocate outside of the Local Area
- Other Restrictions:
 - Third party negotiations concerning relocation are not permitted other than (i) during the last 5 years of the original 30-year term, or (ii) during any renewal term
 - Club must provide GWCCA with notice of intent not to renew the SLA at least three (3) years before the end of the original term



Defaults

- Customary Events of Defaults are covered in the Non-Relocation Agreement
 - Failures to keep, observe or perform any terms, covenants or agreements in the Non-Relocation Agreement
 - Material misrepresentations by the Falcons
 - Standard bankruptcy events



Remedies

- Customary Remedies for Events of Defaults are also covered in the Non-Relocation Agreement
 - Declaratory or injunctive relief (so long as SLA or StadCo's possession of Stadium is not terminated and GWCCA/Invest Atlanta have not recovered Liquidated Damages)
 - Recover Liquidated Damages (discussed below)
 - Exercise any other remedies available at law or in equity
 - Invest Atlanta vested with similar rights as GWCCA



Liquidated Damages

- Liquidated Damages are available to GWCCA and Invest Atlanta in the Event of Default. **Note: This amount of such damages remains under active negotiation.**
- GWCCA and Invest Atlanta must use their best efforts to first seek injunctive or declaratory relief before seeking Liquidated Damages
- **GWCCA and Invest Atlanta are in negotiations concerning the allocation of Liquidated Damages**



Club Guaranty Agreement



Guaranty of Payment and Performance

- The Club guarantees the full, faithful and punctual payment and performance of all StadCo obligations under the Project Documents, and is unlimited as to amount
- The Guaranty remains in full force and effect until the later of 2 years after the Scheduled Expiration Date (which is defined in the SLA) and payment and performance in full of the Guaranteed Obligations
- The Guarantee is absolute, irrevocable and unconditional (provided GWCCA performs its obligations under the SLA)
- The Guaranty is a direct, immediate and primary guarantee
- The Club has no right to terminate the Guaranty
- **The payment of legal fees in the event of a StadCo default remains an open issue**



Intellectual Property License Agreement



Ownership Rights and Related Licenses

- GWCCA owns the NSP Marks, NSP Images and Other GWCCA Images and Marks (the “Intellectual Property”) and associated goodwill
- GWCCA provides StadCo with an exclusive license in and to the NSP Marks and NSP Images, subject to the GWCCA Reserved Rights and a non-exclusive license in and to the Other GWCCA Images and Marks
- GWCCA Reserved Rights provide GWCCA with the flexibility to use the NSP Marks and NSP Images for television, film and other media productions as well as commercials, along with Historical Uses and signage
- Intellectual Property License Agreement addresses Quality Control requirements and Prohibited Uses
- StadCo sublicenses its rights and obligations under this agreement to the Club



QUESTIONS?



Staff Recommendation

On October 29, staff will recommend to the full Board approval of the preliminary schematic drawings (concept drawings, schematics and preliminary elevations) and budget update for the NSP.



Executive Session

