

**PARTICIPATION AGREEMENT
FOR
PUBLIC INFRASTRUCTURE IMPROVEMENT CONSTRUCTION**

THIS PARTICIPATION AGREEMENT (the "Agreement") is entered into by and between the Metropolitan Government of Nashville and Davidson County ("Metro"), acting by and through the Metropolitan Board of Fair Commissioners (the "Fair Board"), and MarketStreet Management, LLC, a Tennessee limited liability company ("MSM").

WHEREAS, Metro and MSM desire for public infrastructure improvements to be constructed within certain property and under such terms as are set forth in this Agreement; and

WHEREAS, in November 2017, the Metro Council approved Resolution RS2017-910 to authorize the use of revenue bonds for the construction of an MLS stadium to be located on the Metro Nashville Fairgrounds (the "Fairgrounds"), and such Resolution further called for a +/-10 acre portion of the Fairgrounds to be developed as a mixed use project pursuant to a 99-year ground lease and subject to the terms of a Specific Plan (SP) zoning designation to be approved by Metro Council for said +/-10 acre site to permit such development; and

WHEREAS, RS2017-910 further approved the construction of infrastructure within the Fairgrounds site, including roads and sidewalks, and authorized the issuance of General Obligation Bonds as part of a capital spending plan for improvements to the Fairgrounds, including \$25,000,000 to be used for public infrastructure improvements; and

WHEREAS, as contemplated by RS2017-910, Metro Council approved Substitute Ordinance BL2018-1290 (the "SP Ordinance") to adopt Specific Plan zoning for a 10 acre Mixed-Use District (the "Property"), which SP Ordinance divided the Property into three separate areas designated as "Block A," "Block B," and "Block C," and

WHEREAS, also as contemplated by RS2017-910, through Substitute Ordinance BL2018-1291, Metro Council approved the execution and delivery of a ground lease between Metro, by and through the Board of Fair Commissioners, and Nashville Soccer Holdings Development LLC (the "Ground Lease") for the construction of a mixed-use development on the Property; and

WHEREAS, pursuant to Substitute Resolution RS2020-442, Metro Council approved a revision to the Ground Lease in order to create an additional "Fair Plaza" public space between Block C and a proposed extension of Benton Avenue as approved per the SP Ordinance; and

WHEREAS, pursuant to BL2021-964, various planned roads within the Fairgrounds Project were dedicated by the Metro Council as public rights of way, including the extension of Benton Avenue and a proposed alley located between Block C and the Fairgrounds Speedway ("Speedway Alley");

WHEREAS, consistent with all of the foregoing approvals, and pursuant to a sublease of Block C from MSM as assignee of Nashville Soccer Holdings LLC, Fairgrounds Parcel C, LLC (“FPC”) has been issued permits for, and is in the process of constructing, a mixed-use building on Block C that will contain affordable and market rate residential units, commercial retail space, and a parking garage (the “FPC Mixed-Use Building”); and

WHEREAS, Metro has developed a concept plan for design and construction of public improvements within Fair Plaza and Speedway Alley, which concept plan is attached to this Agreement as Exhibit A (the “Site Plan”); and

WHEREAS, pursuant to RS2021-1201, Metro Council has approved the issuance of General Obligation Bonds in the amount of Five Hundred Sixty-Eight Million Eight Hundred Fifty-Five Thousand Dollars (\$568,855,000), which amount included Twenty-Two Million Dollars (\$22,000,000) to finance the design, development and construction of streets, roads and other necessary public infrastructure within the Fairgrounds; and

WHEREAS, completion of the public improvements as contemplated by the Site Plan will benefit both parties and the general community of Nashville and Davidson County, Tennessee.

NOW, THEREFORE, METRO and MSM agree as follows:

I. SCOPE OF WORK

- A. The scope of work for this Agreement consists of the “Infrastructure” as designated on Exhibit A attached hereto and incorporated herein.

II. TERMS AND CONDITIONS

- A. MSM shall engage an architect or engineer (“Designer”) to develop a set of construction plans and specifications for the Infrastructure as generally shown on the Site Plan (the “Final Plans”). Metro shall designate a representative (“Metro’s Representative”) to coordinate with the Designer during development of the construction plans and specifications. The Final Plans shall be subject to the approval of the Fair Board, such approval not to be unreasonably withheld.
- B. MSM shall promptly commence and diligently complete construction of the Infrastructure in accordance with the Final Plans. MSM shall initiate work on the Infrastructure within thirty (30) days after approval of the Final Plans. MSM shall complete the Infrastructure within twenty-four (24) months from commencement of the work, subject to extensions for a period of time equal to any delay in completion caused as a result of Excusable Delay. As used herein, the term “Excusable Delay” shall mean any delay in performance due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather as measured by Nashville weather records over the ten years preceding the initiation

of the work, moratorium or other unusual delay in obtaining necessary governmental inspections or approvals (with MSM using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of MSM.

- C. MSM shall be responsible for engaging a qualified contractor (the "Project Contractor") to perform the construction and installation the Infrastructure. MSM shall supervise the work performed and will bear full responsibility for any and all acts or omissions of those engaged in work on behalf of MSM. Metro's Representative shall have access to the work site at all reasonable times to inspect the work and assure compliance with the Final Plans.
- D. MSM shall require the Project Contractor to furnish payment and performance bonds (the "Bonds") covering the full cost of the Infrastructure project. The Bonds shall name Metro as an additional obligee. MSM shall further require the Project Contractor to obtain and maintain one or more policies of general liability insurance covering all work performed on the project site. Metro shall be named as an additional insured on such policies.
- E. To the extent caused by the negligence of MSM, or the negligence of contractors engaged by MSM, MSM shall indemnify, defend, and hold the Metropolitan Government harmless from any and all claims, liability, damages, loss, cost, and expense of every type whatsoever, including, without limitation, attorney fees and expenses.
- F. Pursuant to Section 4 of the Ground Lease, the Infrastructure shall include installation of public utilities to the Property Boundary within the Speedway Alley right of way.
- G. Upon completion of the construction and installation of the Infrastructure, and upon approval by Metro, MSM will convey ownership of the Infrastructure to Metro at no cost, and execute claim and lien waivers with respect to construction of the Infrastructure. Metro shall thereafter be responsible for the ongoing operation and maintenance of both Fair Plaza and Speedway Alley.

III. PAYMENT

- A. Pursuant to the conditions and process set forth in III.B., below, Metro agrees to pay MSM the actual costs of the Infrastructure work, but in no event more than a total of Eight Million Nine Hundred Seventy-Five Thousand Dollars (\$8,975,000) (the "Reimbursement") to reimburse MSM for all of its costs directly incurred by MSM for design of the Infrastructure and construction of the Infrastructure in accordance with the Final Plans.
- B. All substantive construction work shall be procured through a competitive bidding process approved by Metro and conducted by the Project Contractor. All project subcontractors and material suppliers shall be engaged with written contracts, which shall be available for inspection and copying by Metro at all reasonable

times. The Project Contractor shall not self-perform any of the substantive construction work. Substantive construction work shall be subject to a mark-up of Fifteen Percent (15%) for the Project Contractor's overhead and profit. No other costs shall be reimbursed.

- C. MSM shall pay contractors and vendors and submit to Metro for reimbursement monthly. Each reimbursement request shall include a description of the work performed, copies of invoices and supporting materials paid by MSM in connection with the work performed, evidence of payment, and any other information reasonably requested by Metro. Metro shall inspect the construction work and use good-faith efforts to pay MSM within thirty (30) days of submission of MSM's application for payment.

IV. MISCELLANEOUS:

- A. This Agreement may be modified, altered, amended, canceled, or terminated only by the written agreement of the parties hereto.
- B. Any material amendment to this Agreement must be approved via resolution of the Metropolitan Council.
- C. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors in interest and assigns. Venue for all matters arising under this Agreement shall be in the Circuit or Chancery courts of Davidson County, Tennessee, and the parties hereto hereby consent to the jurisdiction of such courts for any such legal proceedings.

V. COUNTERPARTS

- A. This Agreement or any amendments hereto may be executed simultaneously in two or more identical counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Counterparts hereof and amendments hereto may be executed and delivered via facsimile or by email. The parties agree to recognize electronic signatures.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by such party as set forth below.

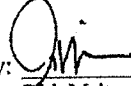
BUYER:

**METROPOLITAN BOARD OF FAIR
COMMISSIONERS**

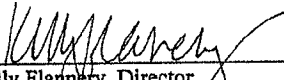
By: 
Dr. Sheri Weiner, Chair

SELLER:

MARKETSTREET MANAGEMENT, LLC,
a Tennessee limited liability company

By: 
Erik Melton, Development Director

APPROVED AS TO AVAILABILITY OF
FUNDS:


Kelly Flannery, Director
Department of Finance

APPROVED AS TO FORM AND
LEGALITY:


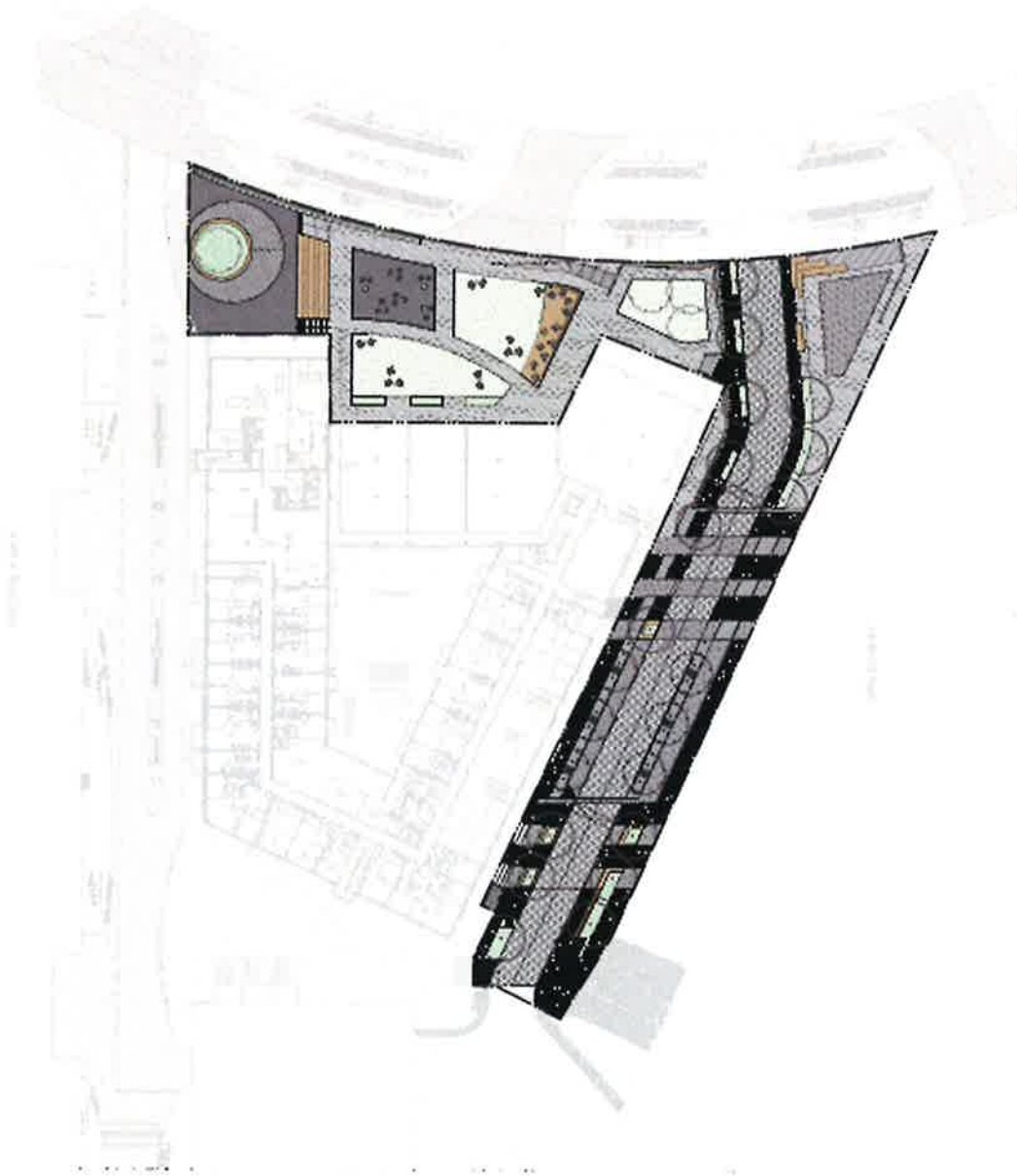

Metropolitan Attorney

EXHIBIT A

Site Plan



Fair Plaza / Speedway Alley Future Improvements Study Area