



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2024-258, **Version:** 1

An ordinance declaring surplus certain real property and authorizing the Metropolitan Government's execution and delivery of a master development agreement and ground lease agreements related thereto, an amended and restated site coordination agreement, a campus operations and use agreement, a declaration, and other documents and agreements relating to the development of a portion of the east bank stadium campus (Proposal No. 2024M-009AG-001).

WHEREAS, The Sports Authority of The Metropolitan Government of Nashville and Davidson County (the "Sports Authority") previously owned approximately 95 acres of land on the east bank of the Cumberland River in Nashville, Tennessee, as more particularly described in Exhibit A (the "Campus"), on which is located a multi-purpose outdoor stadium currently known as Nissan Stadium (the "Existing Stadium"), which is owned by the Sports Authority and leased to Cumberland Stadium, Inc., a Delaware corporation and the successor to Cumberland Stadium, L.P. ("Cumberland"), an affiliate of the National Football League's Tennessee Titans, operating as Tennessee Football, LLC (the "Team"), pursuant to that certain Stadium Lease, dated as of May 14, 1996, as amended, between the Sports Authority, as lessor, and Cumberland, as lessee (the "Existing Lease"); and

WHEREAS, the Metropolitan County Council (the "Metropolitan Council") of The Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") enacted Metropolitan Council Ordinance BL2023-1741 on April 25, 2023, approving, among other things:

(i) the construction of a new enclosed stadium (the "New Stadium") by the Sports Authority on the Campus for use by Tennessee Stadium, LLC, an affiliate of the Team ("StadCo") and (ii) the demolition of the Existing Stadium; and

(ii) the acquisition by the Metropolitan Government of a fee simple interest in the land comprising the Campus, with the exception of site of the Existing Stadium; and

(iii) the execution and delivery of an option agreement between the Metropolitan Government and the Sports Authority (the "Option Agreement") whereby, upon the demolition of the Existing Stadium, the Metropolitan Government has the right to purchase for \$100 the Sports Authority's fee interest in the site of the Existing Stadium; and

(iii) the execution and delivery of a site coordination agreement among the Metropolitan Government, the Sports Authority and StadCo (the "Site Coordination Agreement") governing the relative rights of the parties with respect to the construction and operation of the New Stadium and the development and operation of the Campus; and

WHEREAS, pursuant to Metropolitan Council Ordinance BL2023-1741, the Metropolitan Government has acquired a fee simple interest in the land comprising the Campus, with the exception of the site of the Existing Stadium, and entered into the Option Agreement and the Site Coordination Agreement; and

WHEREAS, in anticipation of the redevelopment of the 338 acres of public and private land located along the Cumberland River and immediately adjacent to the Metropolitan Government's downtown core (the "East Bank"), within which the Campus is located, the Metropolitan Government's Planning Department, in collaboration with expert consultants, undertook extensive technical analysis, urban design inquiry, and robust community outreach to shape a vision, Imagine East Bank, to better ensure high quality public and private

development on the East Bank; and

WHEREAS, the Metropolitan Council adopted Metropolitan Council Resolution RS2022-1828 on November 15, 2022, approving the solicitation, by a request for qualifications and proposals process by the Division of Purchases and the Planning Department, of a master developer to develop that portion of the Campus depicted on Exhibit A (the “Initial Development Area”) in a manner consistent with Imagine East Bank; and

WHEREAS, the Division of Purchases and the Planning Department have completed the request for qualifications and proposals process approved by the Metropolitan Council and recommended approval of The Fallon Company LLC, or one or more of its affiliates (“Fallon”) as master developer of the Initial Development Area; and

WHEREAS, the Site Coordination Agreement contemplates the completion of an open-air plaza to provide necessary ingress and agrees to the New Stadium and through the Campus, and the Metropolitan Government, Fallon and StadCo have determined that (i) such plaza (the “Second Street Plaza”) should be located as depicted on Exhibit A, and (ii) StadCo should bear the costs of completing the design and construction of the Second Street Plaza as a part of the costs of completing the New Stadium in accordance with the terms of the stadium development agreement related thereto; and

WHEREAS, the design of the New Stadium has been completed, and the Metropolitan Council wishes to memorialize the right of certain public access areas and loading egress areas related to the New Stadium to occupy portions of adjacent parcels within the Campus; and

WHEREAS, on Thursday, February 29, 2024, a community meeting was conducted at the Fifteenth Avenue Baptist Church, 1203 9th Avenue North, Nashville, Tennessee 37208, regarding the proposed lease by the Metropolitan Government of the Initial Development Area to Fallon as required by Metropolitan Code of Laws § 2.24.230; and

WHEREAS, the Metropolitan Council has been presented with the form of master development agreement between the Metropolitan Government and Fallon attached hereto as Exhibit B (the “Master Development Agreement”), which provides the terms and conditions for Fallon’s development of the Initial Development Area; and

WHEREAS, the Master Development Agreement contemplates that parcels of property within the Initial Development Area will be leased by the Metropolitan Government to Fallon prior to Fallon’s development thereof, pursuant to long-term ground lease agreements in the form exhibited to the Master Development Agreement (“Ground Lease Agreements”); and

WHEREAS, the Metropolitan Council has been presented with the form of a Campus Operations and Use Agreement among the Metropolitan Government, Fallon and StadCo attached hereto as Exhibit C, which more fully delineates the relative rights and responsibilities for the parties relative to the development and operation of the New Stadium and the Initial Development Area (the “Campus Operations Agreement”); and

WHEREAS, the Metropolitan Government, Fallon and StadCo have determined that it is necessary and appropriate for the Metropolitan Government to make and record a declaration of certain covenants, conditions and restrictions applicable to the Second Street Plaza and certain public access areas and loading egress areas related to the New Stadium to provide for the rights and responsibilities of the various parties thereto, and the Metropolitan Council has been presented with the form of such declaration attached hereto as Exhibit D (the “Declaration”); and

WHEREAS, the Site Coordination Agreement contemplated the future execution and delivery of a parking operations agreement to govern the operations of parking facilities that are reserved for StadCo’s use during

events at the New Stadium, and the Metropolitan Council has been presented with the form of a Stadium Parking Facilities Development, Operations and Use Agreement attached hereto as Exhibit E (the “Parking Agreement”); and

WHEREAS, the Metropolitan Council has been presented with the form of an amended and restated site coordination agreement between the Metropolitan Government and StadCo attached hereto as Exhibit F (the “Amended and Restated Site Coordination Agreement”), which amends and restates the Site Coordination Agreement to remove the Sports Authority as a party thereto and to more precisely define the relative rights of the parties thereto in light of the terms of the Master Development Agreement, the Campus Operations Agreement, the Declaration and the Parking Agreement.

NOW, THEREFORE, BE IT ENACTED BY THE METROPOLITAN COUNTY COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. The Metropolitan Council declares the Initial Development Area, owned in fee simple by the Metropolitan Government, to be surplus.

Section 2. The form, terms and provisions of the Master Development Agreement attached hereto as Exhibit B are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and deliver the Master Development Agreement in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as Exhibit B, with such changes and additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and delivery to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Master Development Agreement attached hereto as Exhibit B. From and after the execution and delivery of the Master Development Agreement, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Master Development Agreement as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the Master Development Agreement attached hereto as Exhibit B.

Section 3. The form, terms and provisions of the Ground Lease Agreements attached hereto as part of Exhibit B are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and deliver the Ground Lease Agreements from time to time in the manner contemplated by the Master Development Agreement, in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as part of Exhibit B, with such changes and additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and delivery to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Ground Lease Agreements attached hereto as part of Exhibit B. From and after the execution and delivery of each Ground Lease Agreement, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of such Ground Lease Agreement as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the form of Ground Lease Agreement attached hereto as Exhibit B.

Section 4. The form, terms and provisions of the Campus Operations Agreement attached hereto as Exhibit C are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and deliver the Campus Operations Agreement in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as Exhibit C, with such changes and additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and delivery to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Campus Operations Agreement attached hereto as Exhibit C. From and after the execution and delivery of the Campus Operations Agreement, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Campus Operations Agreement as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the Campus Operations Agreement attached hereto as Exhibit C.

Section 5. The form, terms and provisions of the Declaration attached hereto as Exhibit D are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and record the Declaration, or a memorandum thereof, in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as Exhibit D, with such changes and additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and recordation to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Declaration attached hereto as Exhibit D. From and after the execution and recordation of the Declaration, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Declaration as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the Declaration attached hereto as Exhibit D.

Section 6. The form, terms and provisions of the Parking Agreement attached hereto as Exhibit E are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and deliver the Parking Agreement in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as Exhibit E, with such changes and additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and delivery to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Parking Agreement attached hereto as Exhibit E. From and after the execution and delivery of the Parking Agreement, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Parking Agreement as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the Parking Agreement attached hereto as Exhibit E.

Section 7. The form, terms and provisions of the Amended and Restated Site Coordination Agreement attached hereto as Exhibit F are hereby approved, and the Metropolitan Mayor, Metropolitan Clerk, and Director of Law of the Metropolitan Government are hereby authorized, empowered and directed to execute and deliver the Amended and Restated Site Coordination Agreement in the name and on behalf of the Metropolitan Government in substantially the form attached hereto as Exhibit F, with such changes and

additions thereto and omissions therefrom as the Metropolitan Mayor shall approve as necessary or appropriate, such execution and delivery to be conclusive evidence of such approval; provided that such changes, additions and omissions do not have any material adverse effect on the terms of the Amended and Restated Site Coordination Agreement attached hereto as Exhibit F. From and after the execution and delivery of the Amended and Restated Site Coordination Agreement, the Metropolitan Mayor and such employees of the Metropolitan Government as he or she may designate from time to time, or any of them, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Amended and Restated Site Coordination Agreement as so executed, including without limitation providing any and all approvals, consents and waivers required thereby, and entering into such amendments thereto that do not have any material adverse effect on the terms of the Amended and Restated Site Coordination Agreement attached hereto as Exhibit F.

Section 8. All acts and doings of the Metropolitan Mayor, Metropolitan Clerk, Director of Finance, Director of Law and any other officer of the Metropolitan Government which are in conformity with the purposes and intent of this Ordinance shall be, and the same hereby are in all respects, approved and confirmed as may be necessary or appropriate in order for the Metropolitan Government to comply with the terms of the documents and agreements contemplated herein, including but not limited to the Master Development Agreement, the Ground Lease Agreements, the Campus Operations Agreement, the Declaration, the Parking Agreement, and the Amended and Restated Site Coordination Agreement.

Section 9. This Ordinance and any of the documents approved by this Ordinance may be amended by resolution adopted by the Metropolitan Council receiving a majority of the votes to which the Metropolitan Council is entitled.

Section 10. All ordinances in conflict or inconsistent herewith are hereby repealed insofar as any conflict or inconsistency exists.

Section 11. This Ordinance shall take effect from and after its adoption, the welfare of the Metropolitan Government requiring it.

Analysis

This ordinance authorizes the Metropolitan Government to execute a Master Development Agreement and related Ground Leases related to the development of the East Bank as well as execute a Restated Site Coordination Agreement, a Campus Operations and Use Agreement, a Declaration, and other related documents and agreements. The ordinance approves the form, terms, and provisions of all the agreements, described below. The ordinance also declares the Initial Development Area property as surplus.

This ordinance follows Ordinance BL2023-1741 approving agreements related to the construction of a new football stadium and the transfer of property on the East Bank from the Sports Authority to the Metropolitan Government. With fee title to the "Campus," an area consisting of approximately 95 acres on the East Bank, transferred to the Metropolitan Government, Council is now being asked to approve the development elements of the Initial Development Area ("IDA"), Exhibit A to the ordinance, which includes parcels A, B, C, D, E, F, and G.

The Master Development Agreement & Ground Leases *Exhibit B to the Ordinance*

The Master Development Agreement (“MDA”) is an agreement between the Metropolitan Government (“Metro”) and TFC Nashville Development LLC (“Fallon”) with The Fallon Company providing a Limited Guaranty guaranteeing payment and performance of all Fallon’s obligations. Fallon is to be the master developer of the IDA. The MDA includes the form of the Ground Leases that will be utilized for each parcel developed by Fallon. The form of the Ground Lease can be found as Exhibit C-1 to Exhibit B of the ordinance.

Fallon will be required to fund infrastructure costs related to streets and roads in the IDA, including a portion of the East Bank Boulevard, utilities in the IDA, and a portion of the pedestrian bridge (see Exhibit B-4 to Exhibit B). Fallon will be required to deliver at least 1,550 residential units in at least five buildings, of which two must be 100% affordable and the remainder to be 10% affordable. The affordability requirements must last for the 99-year duration of the ground lease. Fallon will also develop hotel uses, retail uses, and office uses, as well as public uses, like the Pedestrian Bridge extension.

If Fallon fails to meet its development milestones (residential construction, hotel construction, and pedestrian bridge extension construction) by the applicable dates for each, Metro will be entitled to either terminate the MDA or waive the delay and proceed in accordance with the terms of the contract. If Fallon meets the residential development milestones, it will have the option to develop Parcel B.

Metro will be required to fund the portion of the pedestrian bridge expected to span the East Bank Boulevard in addition to funding the relocation of the Colonial gas lines. Metro is obligated to work in good faith with Fallon to rezone the IDA in a manner both parties agree. A component of the zoning changes will include the limitation of bars and nightclubs to no more than 25% of retail space - excepting Parcel C located adjacent to the Stadium and excepting hotels. Legislation concerning zoning changes is expected to be before the Council later in 2024.

As Fallon finalizes specific development plans for each parcel, it will execute a 99-year ground lease for each parcel with Metro. Each executed ground lease will be in the form attached as Exhibit C-1 to the MDA. Each ground lease will follow the same formula for rent calculation: multiply the initial appraised property value, adjusting for annual CPI, by 4% for residential property and by 4.5% for other property classifications. The rent will increase by 2.5% annually. The parties will conduct a Consumer Price Index (“CPI”) “lookback” every 10 years to capture lost CPI adjustments that may have occurred during that period. Any adjustments will be limited to increases between 2.5% and 2.75%-in no event will the lookback result in a rent reduction. Metro will also receive “participation rent” which means that Metro will receive a percentage of the sale proceeds as properties are sold during the term of the ground lease. Residential properties will pay 0.75% and other property classifications will pay 1% of the sale proceeds. Fallon will not be able to sell or cash out of the ground lease until the property is developed. The ground lease tenants will be required to pay all *ad valorem* property taxes as if they were the owner. The ground lease tenants will be required to maintain the uses of the property in a manner consistent with the master development plan.

Campus Operations and Use Agreement

Exhibit C to the Ordinance

The Campus Operations and Use Agreement is an agreement between TFC Nashville Development LLC (“Fallon”), Tennessee Stadium LLC (“Titans”), and the Metropolitan Government (“Metro”) for the primary purpose of defining the relationships between the parties as it relates to the use of certain parcels within the Campus area, specifically Parcel B, Parcel C, and Parcel D of the IDA, including that portion of Parcel C to be

known as the Second Street Plaza Site. The term will commence upon execution and extend coterminous with any Ground Lease in effect and as long as the Stadium Lease is in effect.

The Titans will be obligated to fund the construction, operating, and maintenance costs of the Plaza site. Activation of the Plaza site on game days and other days will be overseen by the Titans.

The agreement governs the cooperation obligations of the parties with respect to the Campus. The parties will create a coordination committee which will keep the parties informed regarding Stadium activities, Plaza activities, and IDA activities. The agreement governs event planning related to the Plaza and creates a booking priority system and calendar. The agreement provides for data rights, commercial rights, and advertising limitations within the Plaza and the Campus. The Titans will have the naming rights, including related revenues, for the Plaza, subject to certain approvals by Fallon and Metro.

Declaration of Easements, Restrictions, and Covenants for Parcel B, The Stadium Plaza, Parcel C, East Bank
Exhibit D to the Ordinance

Metro, as the Declarant, will establish a series of easements and other rights and obligations on Parcel B, Parcel C, and the Stadium Parcel for the benefit of the Tennessee Stadium LLC (“Titans”) and Fallon. The declaration grants a non-exclusive easement for the Plaza to the Titans for construction of plaza improvements, utilization of the plaza, activation of the plaza, and operation of the plaza. The declaration establishes certain encroachments onto Parcel C for a loading ramp from the stadium to Interstate Drive. Additionally, the declaration establishes an easement on Parcel B for an extension of the stadium to accommodate stairs and ramps needed for stadium access.

Stadium Parking Facilities Development, Operations, and Use Agreement
Exhibit E to the Ordinance

The Parking Operations Agreement is an agreement between Metro and Tennessee Stadium LLC (“Titans”) to more fully set forth the parking agreements contained in their original Site Coordination Agreement. This agreement governs the development of stadium parking and staging facilities on Parcel B, adjacent to the Stadium, and parking throughout the Campus. Metro will be required to maintain at least 2,000 parking spaces within the Campus, outside of Parcel B, that will be available for use by the Titans during stadium events. In anticipation of development of the Campus and Parcel B, Metro will likely have to fund the construction of a structured parking facility to provide the parking spaces required by previous agreements.

Metro will be obligated to provide adequate ingress/egress to Campus parking spaces and maintain lighting and signage. Metro will also be required to perform all maintenance and capital repair work for the Campus parking spaces. Metro will be responsible for claims of personal injury or property damage in connection to the Campus parking spaces except for those arising during stadium event parking periods where the Titans will bear responsibility.

First Amended and Restated Site Coordination Agreement
Exhibit F to the Ordinance

The Site Coordination Agreement between Metro and Tennessee Stadium LLC is amended to remove the parking use and operations provisions that are more fully set forth in the Parking Operations Agreement, the Campus Operations and Use Agreement, and the Plaza Declaration.

At the April 2, 2024, Council meeting, amendments were added to make clarifications, set requirements for archeological studies, affirmative marketing of affordable housing units, complete streets, and workforce development and labor, and add language requesting that future day care facilities consider preferential admission for children of tenants in the residential building where the day care facility is located.