CITY OF KNOXVILLE, TENNESSEE

Amelia Parker
City Council, At-Large, Seat C

November 14, 2021

Dear members of City Council, County Commission, Mayors Kincannon and Jacobs, and members of the City and County Administration:

Over the past few days, I have had time to read through the Development and Lease Agreements associated with the proposed downtown multi-use sports and entertainment stadium that were shared with us on Monday, November 8, 2021 ahead of our workshop. I developed a list of questions and concerns regarding each agreement as well as the overall process for determining if, when, and how this development may move forward. I may have missed a few points as one weeks is not sufficient time to review, analysis and development questions on these very important documents that will have long lasting impacts in our community. I believe more time is needed to thoroughly review these documents so that Council and Commission are able to make an informed decision. I write to share my concerns with you and ask that you join me in requesting a postponement of the vote on an Interlocal Agreement.

All Costs to the Community Must Be Clear: Thus far, the workshops have focused on the costs related to constructing the stadium and paying off the debt incurred. However, we need a clearer picture of all of the costs to our community and to the city budget, including the projected costs of utility improvements, public infrastructure improvements, the financial implications of the redevelopment agreement, as well as the anticipated annual budget of the Sports Authority with projected revenue and expenses. The private development that is to produce revenue included in the financing plan should be more realized at this point. Before we commit to financially back this development, we need to see the full plan for all of the various parts of the stadium development and revenue sources needed to pay the stadium's debt service.

Another Workshop is Needed: Considering the number of questions and concerns I have raised in regards to the various agreements and the questions that other Council members must have, I cannot imagine that Tuesday's Council meeting will provide sufficient time to have a thorough discussion of all items raised. It seems prudent that we refer the Interlocal Agreement to a workshop for further study and discussion. The workshop should also include discussion of the Development, Lease, Public Infrastructure, Utility, and Redevelopment Agreements, understanding that the City is not party to each agreement but is charged with ensuring this development's costs to our city does not outweigh the benefits to our residents. Ultimately, we must be able to ensure that the Interlocal Agreement, to which we are a party, will protect the taxpayers and currently I have concerns that it does not.

Community Benefits Agreement is Needed: There has also been unclear information regarding what the standards would be for workers involved in the development, maintenance, and operations of the stadium. We owe the community more and we can negotiate more for the community in a manner that is fair for all parties involved. This project must have a Community Benefits Agreement in place to ensure good intentions

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and promises made today do not fail to translate into a real economic benefit for the community around the stadium experiencing one of the highest poverty rates, if not the highest poverty rate in the city.

As I was writing this letter, I received an article from Steve Davis, CEO Gem Development. The article included some staggering statistics. The U.S. has $19 million white-owned businesses and together they collect 88% of overall sales and control 86.5% of U.S. employment. Meanwhile, Black-owned businesses have 1.3% of total U.S. sales and 1.7% of the nation's employees. And Latino/s/x are responsible for 4% of U.S. sales and 4.2% of U.S. employment. In 2013, the top 1% of households had 62.8% of all business equity. (See here: https://www.chicagobusiness.com/equity/chicagos-black-owned-businesses-look-scale)

These numbers will likely not shift until those of us with the power to make real change decide to do so. We need a Community Benefits Agreement. We need guaranteed health care, pensions, and paid apprenticeships for folks in our community. We must take all actions within our power to address the staggering poverty rates in our community.

I hope County Commission and my colleagues on City Council will support my request for a postponement. If my motion for a postponement is successful, this letter serves as my formal request of a workshop on the various agreements. The workshop should take place before the Developer and the Sports Authority sign the Development Agreement, which is projected to take place in January 2022.

Thank you all for your attention to this matter and your commitment to the residents of Knoxville.

Sincerely,

Councilwoman Amelia Parker

Stadium Agreements:

Questions and Concerns of Councilwoman Amelia Parker

Submitted to City Council and County Commission
Monday, November 15, 2021

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Below are the questions and concerns that I have developed after reading through the agreements associated with the proposed multi-use sports and entertainment stadium to be financed and owned by the Knoxville/Knox County Sports Authority. Questions are highlighted in red.

Interlocal Agreement (City, County, & Sports Authority)

The purpose of the Interlocal Agreement is to create an agreement between the three bodies that addresses the issuance of Sports Authority bonds, the payment of debt service, the funding of the Capital Improvements Reserve Fund, and other agreements and rights related thereto.

1) Timeline Concerns

a) Whereas #9: Pledged Revenues

This section outlines all of the revenue sources for debt payments and included are tax increment revenues that would be generated if both the city and county approve a PILOT or TIF for the private development to surround the stadium. Members of city council/commission should not be asked to approve an Interlocal agreement for a stadium which has a financing plan dependent on a private development PILOT or TIF that has yet to be approved or even considered. If the projects are so interdependent, they should come before the City at the same time.

What is the plan for the private development? Is the private development projected to have any shared or adjoined structures to the stadium? Will party wall agreements be needed between the Authority and private development that could increase the risks to the Stadium? Will the private development provide the public benefit necessary to qualify for a PILOT/TIF? Are funding sources for the project so limited that such financial support is warranted?

If the stadium and private development are dependent upon each other, both should be considered at the same time. Stadium development should not be approved separate from private development, when the stadium's financing plan would be guaranteed by the City/County, putting each body's bond rating at risk.

Credit ratings companies will cut municipal bond ratings when the pledged revenues fail to materialize and the Sports Authority is forced to draw upon the debt service reserve. The City and County must have thorough information, concrete commitments, and see progressive motion occurring regarding the private development proposed so that both bodies may do our due diligence to limit risks to our bond ratings and ensure pledged revenues will be actualized.

2) Concerns re: Risks to the City

a) Whereas #11: Establishment of the Debt Service and Capital Improvement Funds

This section obligates the Sports Authority, through a trustee, to establish a debt service fund and a capital improvements reserve fund. The Interlocal Agreement outlines the funding plan for the reserve fund (1(d)). The Development Agreement identifies surplus Financing

Proceeds up to $1 million as potential seed money for the Capital Reserve fund (Dev Agmt Sec. 5.3). Section 1(e) of the Interlocal Agreement indicates that proceeds, including interest, from Sports Authority Bonds could be used to fund the Debt Service Fund but it does not include an amount that should be contributed as seed money and other uses of the Bond proceeds are also listed. $3.2 million/year is the projected debt service needed on $65 million of debt.

Is guaranteed seed money not needed for the Debt Service Fund?

Since no income is projected from this project in FY23, what would be the anticipated payment obligation of the City and County towards debt payments in FY24?

b) Whereas #14: In the Event of Pledged Revenues Shortfall

This section obligates the City and County to replenish the Debt Service Fund in any year in the event of a shortfall. The Interlocal Agreement and the plan for this development should clarify with what funds the Sports Authority will use to establish a debt service fund, especially if the proceeds and interest from the Sports Authority Bonds may be used in total to pay for the costs of the Stadium and associated redevelopment costs.

What funds will be used to establish a debt service fund and at what amount?

c) Section 1(c) Contributions to Debt Service Fund

As with the reserve fund, the Debt Service Fund should have limitations on the City and County's funding obligation. As written, the City/County are obligated to replenish the fund whenever it is drawn upon. Presumably, when the debt service fund is not in use it will earn interest as is projected for the capital reserve fund. 1(d)(i)

This section, or another more appropriate section, should state clearly that the Developer is responsible for cost overruns, as outlined in section 6.5 of the Development Agreement.

Will interest earned on the Debt Service Fund become a part of the Debt Service Fund?

What is the plan for surplus funds remaining in the Debt Service Fund once the Debt Service Obligation is met?

The Debt Service Fund requires the City/County to contribute to the fund "at such times as are provided in the indenture," which does not clearly outline how much notice the City/County would be given when funds are needed. 1(c)(i)

Why not structure the Debt Service Fund similar to the Capital Reserve Fund where City/County would be required to contribute to the Debt Service Fund no later than August 31 at the conclusion of each fiscal year in which the pledged revenues prove insufficient to pay the principal and/or interest on the Sports Authority Bonds?

Development Agreement (RR Land & Sports Authority)

1) Timeline Concerns

a) Section 3.1.1 MLB Approvals not secured yet for team's move to Knoxville

Page 3 of the Development Agreement outlines the conditions that must be met before construction can begin. Among those conditions is a requirement that MLB approvals are secured for the team's move to Knoxville. Although this clause prevents construction to move forward until MLB approvals are granted, the Developer would still be authorized to enter into contracts, Sports Authority bonds could be issued, and debt could incur before MLB approvals are obtained. This exposes the city and county to unnecessary risks.

b) Sections 3.2.1 and 3.2.2 Public Infrastructure and Utility Infrastructure Agreements

Before signing the interlocal agreement, the City and County should have all information related to the public and utility infrastructure agreements and associated costs to ensure the costs do not outweigh any potential benefits to the community. We would not be doing our due diligence if we sign the interlocal agreement before the details of the other agreements are reached and the source of revenue is identified for covering the costs of the agreements.

c) Section 3.2.4 Plans for Stadium Improvements and Stadium Budget

The Stadium Budget and the full Plans for Stadium Improvements must be presented to City Council, County Commission, and the Sports Authority before the Development, Lease, and Interlocal Agreements are signed. The Stadium Budget and Plans for Stadium Improvements should require the approval of all parties to the Interlocal Agreement. Review of the Stadium Budget and subsequent Plans is critical to being able to ensure the projected budget is sufficient to execute the plans for the Stadium that the community anticipates. We must do our due diligence.

What is the projected annual budget of the Sports Authority, including expenses and revenues as well as projected assets and liabilities?

d) Section 3.2.5 Financing to be secured by Feb 28, 2022, potentially before all agreements are signed

As stated above, the Development agreement requires the Sports Authority to secure financing by Feb 28, 2022; however, the MLB approvals may not be granted until 2024. This agreement should explicitly state that financing should not be secured until MLB approvals are obtained.

e) Section 3.4.2 Conditions to Commence Not Satisfied

If the City has not reached an agreement on public infrastructure by May 1, 2022, the Developer can terminate the development agreement. The public infrastructure agreement should be finalized before the interlocal, development, and lease agreements are signed.

f) Section 3.4.3 Effect of Termination

Upon termination of the Development Agreement pursuant to Article III (conditions for beginning construction), the Parties shall be released from future obligations under this

Agreement. However, this section poses the same risk as 3.4.2 and thus the agreements in 3.2.1 to 3.2.3 must be finalized before the interlocal, development, and lease agreements are signed. Also, if the termination of the development agreement is due to Developer default or negligence, the Developer should be responsible for a reasonable portion of Pledged Revenues from performance anticipated from the contract.

g) Section 5.1.4 Stadium Construction Schedule

This section and others require compliance with the Final Completion Date, which is set as May 1, 2024.

Should a Final Completion Date be set before the conditions for commencement of construction are met, conditions that rely on third party actors?

h) Section 5.1.8 Scheduled Infrastructure Improvements Start Date Milestone

This section calls upon the Authority to require the City and KUB to move forward with public infrastructure and utility improvements in a timely manner that allows for the Final Completion Date for stadium construction to be met. City council and KUB should be given time to contemplate a proposal without pressure to do so by a date housed in a document to which the City and KUB are not a party. The public infrastructure agreement should be finalized before the interlocal, development, and lease agreements are signed.

2) Public Review and Accountability Concerns

a) Section 3.2.4 Plans for Stadium Improvements and Stadium Budget

This section indicates that the plans and stadium budget must be approved by all parties pursuant to section 5.1.1. However, since the City and County are being asked to sign an interlocal agreement and cover any shortfalls of this project, potentially including shortfalls of the capital improvements fund which can be used throughout the 30 year period, the Stadium budget should require the approvals of both the City and County as well as any proposed material change to the stadium budget that would increase the overall costs or liabilities of the Sports Authority and ultimately the City and County (Section 5.1.3 Stadium Budget, Section 8.1.1 Stadium Improvements Work).

b) Section 3.2.3 Redevelopment Agreement

The public should be made aware of the details of the redevelopment agreement with KCDC. The Development Agreement defines the redevelopment agreement as pertaining to a potential commitment by KCDC to reimburse Developer for certain improvements on property owned by KCDC or adjacent to property owned by KCDC. We have public housing that needs to be prioritized for upgrades and maintenance over the stadium development.

How much is the developer requesting of KCDC and for what?
Would money for this project delay or diminish other KCDC redevelopments projects currently underway or projected for the future?

c) Section 14.2.4 Self Help

It is concerning that this section permits the Developer to enter into contracts of any size without Authority oversight. Similar to the process for Approved Capital Improvements in the

Lease Agreement (Lease Agmt Sec. 7.4), a threshold should be set for the size of contracts the Developer is able to award without Authority approval. In the Lease, contracts over $100,000 for Approved Capital Improvements go before the Authority. Note: the Lease only requires approval of the Authority Representative; however, these decisions should go before the full Authority for public review and accountability.

d) Section 16.4 Reporting Requirements

More needs to come before the full Authority for the Authority's approval rather than simply to inform and update. The full Authority must have the authority to approve large contracts over $100,000 and approve plans for achieving DBE goals in order to ensure the overall goals of the Stadium project are achieved.

3) Concerns re: Risks to City

a) Section 3.4.2 Conditions to Commence Not Satisfied

If the City has not reached an agreement on the public infrastructure by May 1, 2022 and the Developer terminates the development agreement, the City, through the Authority, may be forced to take on liabilities incurred up until that date.

b) Section 5.1.3 Stadium Budget

If Developer is responsible for stadium construction over runs (Section 6.5), what would be an occasion for the Sports Authority to approve increases to the stadium budget outside of change orders? Does increasing the stadium budget increase the liabilities of all parties? If so, all parties to the Interlocal Agreement should approve budget amendments.

Another concern is that under definitions, "stadium costs" would include costs for which the developer is liable, such as demolition, site preparation, fees of the Preliminary Architect, etc

How will Pre-Development Expenses be maintained separate from Stadium Costs, which as defined could include costs that originate before the Execution Date, to ensure the Developer remains liable for Pre-Development Expenses?

c) Section 6.5 Cost Overruns

For cost overruns, it is important to provide additional details regarding the liability KUB may assume versus the liability the Developer will maintain for cost overruns associated with the conditions of the site, including the site conditions that would impact the cost of utility improvements.

d) Section 9.2 Developer's Remedial Work

If Developer is responsible for remedial work, clearing and preparing the land, and will transfer property to the Authority before the foundation is dug, is Developer responsible for necessary remedial and corrective actions and related expenses necessary to remedy pre-existing conditions discovered throughout the implementation of Plans for Stadium Improvements?

e) Section 14.1.1 Developer Default and Section 14.2.2 Authority's Remedies

This entire agreement relies upon multiple pledged revenues, including sales tax from sales inside the stadium. If a developer default occurs, Developer should be held liable for pledged revenues to the extent legally practicable and necessary to resolve any debts incurred in relation to the stadium development.

f) Section 14.2(b) Developer's Remedies

If the Authority defaults on the Developer agreement, the Developer will be able to recover the Real Property under Section 17.2 and recover Pre-Development Expenses. Section 17.2 is not included in the draft Development Agreement received by the time this document was developed. Therefore, it is unclear whether the recoverable property would include boundaries beyond the original property boundary of the property donated by Developer.

4) Concerns re: Benefits to the Community v. Benefits to the Developer

a) Section 5.1.1 Plans for Stadium Improvements

Requiring the lowest cost/bid for the construction of the stadium conflicts with verbal community commitments to hire locally, pay a living wage, and commitments within the Development Agreement to meet DBE goals. This section must be revised to remove the lowest cost requirements and instead emphasize the DBE goals and the Stadium's role in monitoring compliance with the goals and actions to be taken if awarding contracts that meet DBE goals would increase the stadium budget.

Another concern under this section is that "either party may terminate this Agreement" if after negotiation the Developer and Authority are not able to reduce the cost of Stadium Improvements that exceed the Stadium Budget. The Stadium Budget must align with the DBE goals and the wage and workplace safety standards included in the finalized community benefits agreement under negotiation with area unions.

Who develops the Stadium Budget and when will detailed budget projections be shared?

b) Section 5.3 Financing Proceeds and Section 6.6 Pre-Development Expenses

This section states that in the event any financing proceeds remain after Final Completion of the Stadium, then such remaining financing proceeds shall be allocated between Developer and Authority (after the first $1 million goes to the Capital Improvements Fund). However, the Developer should not be reimbursed from these funds without first reimbursing the costs incurred by the City, KUB, and KCDC in relation to this project.

c) Section 6.9 Change Orders

Inappropriate to require Developer approval of Sports Authority-approved change orders that would be paid from available contingency funds, especially when Developer can use contingency funds to pay himself back.

d) Section 16.1 Utilization of Disadvantaged Business Enterprises

The definitions included in the Development Agreement Rather than the definitions proposed for DBE, the Development Agreement should adopt the definition of DBE found in the Federal Transit Administration's DBE Program Regulations (49 CFR Part 26). The federal definitions

clarify that disadvantaged businesses should be both socially and economically disadvantaged. DBEs should be small businesses. If we keep the current definitions, the Developer would be able to meet DBE goals even when contracting with large companies, owned by white male veterans. That should not be the goal of the DBE program. A separate goal could be created for Veteran-Owned Businesses but it should be separate from the DBE goals. See full definitions outlined in this document under Lease Agreements section (2)(g),

e) Section 16.3(a) Measures to Enhance DBE Participation

The focus of this section should change from "measures to enhance" and instead should be "Measures to Meet DBE Goals"

This section should direct the Developer to take race-neutral means to meet DBE goals in the first year. However, if Tenant is unable to meet DBE goals through race-neutral means, this section should direct Tenant to establish contract goals to meet any portion of the DBE goal that the Tenant projects not being able to meet using race-neutral means as required by federal regulations. For instance, a certain dollar amount of contracts can be set-aside for DBE small business owners to ensure their participation. If part way through Year 1, DBE awards or commitments are not at a level that would permit Tenant to achieve the overall goal for Year 1, Tenant should begin setting race-conscious DBE contract goals as early as Year 1 as part of Tenant's obligation to implement the DBE program in good faith.

Section 16.3(a)(v) recognizes that prices will not be the sole factor in determining awards; however, section 5.1.1 requires the lowest cost for the construction of the stadium to be the determining factor monitored by the Authority. See proposed changes for Section 5.1.1. above.

f) Section 16.3(b) Subcontractors under Prime Contractor

The prime contract must provide a provision requiring the prime contractor to include in subcontracts a provision requiring subcontractors to meet the same annual DBE goals and make race-conscious adjustments if goals are not met.

g) Section 16.6 Internships

The section develops an internship program for the Development Agreement, which, unlike the internships included in the Lease Agreement, the Development Agreement internships do not offer any compensation. These internships should definitely not be considered a Community Commitment/Benefit but rather a common business practice that often offers more benefits to the business than to the intern. If these interns were to receive a guaranteed living wage and contributions towards college scholarships (as interns, presumably students, would be placed each academic year), then this may be considered a community benefit. Because internships are listed under Community Commitments, the commitment and benefit to the community so go above and beyond normal business practices.

h) Section 16.7 Apprenticeships

This section is not included in the Development Agreement but it should be! The Developer should sign the Community Benefits Agreement with area unions so that our residents have access to life-changing, wealth-building career paths during the development of the stadium. To the degree that local apprenticeship programs would have offerings for those involved in the execution of the plans for stadium improvements, the Tenant should work with

local unions to take advantage of such offerings and commit to the wage and workplace safety requirements that would be required for participation in the program.

i) Section 16.8 Updates to DBE Goals

This is another section that should be added to the Development Agreement, allowing updates to the DBE goals. In particular, DBE goals for this project should be as aggressive as goals recommended by City and County Disparity Studies. Upon the occasion that an updated Disparity Study is conducted by the City or County, the DBE goals of this project should be evaluated to ensure they do not fall below the goals identified in the Study.

Lease Agreement (Boyd Sports & Sports Authority with the approval of MLB)

The purpose of the Lease Agreement is to outline the rights and responsibilities of both parties to the agreement: Boyd Sports (The Tenant) and the Sports Authority.

1) Concerns re: Public Accountability

a) Definitions "Stadium Standards"

As much as stadium standards are referenced in the Lease Agreement, the Standards must include the goals of the City that may exceed the MLB requirements a Qualified Operator would reasonably be expected to undertake such as maintaining a diverse workplace, meeting DBE goals, requiring a certain percentage of zero waste events, and creating overall sustainability standards for the Stadium that requires the use of recyclable and reusable containers.

b) Section 4.2(b) Use Agreements

More public scrutiny should be allowed for the selection of other potential regular users of the stadium. The Sports Authority's review and approval should be required for Use Agreements to ensure culturally diverse programming.

c) Section 4.3(e) Rent-Free Civic Events

How much rent will be charged to the City for an event once the free-rent days have all been claimed?

Will the City use Civic Event days for revenue-generating events, managed through Visit Knoxville or other, or will Civic Event days be used for events that are free to the public?

d) Section 4.5 Prohibited Uses

This section states that the Tenant must seek Authority approval for Stadium uses that are not a Stadium Event. However, as noted above, Stadium Event is defined as any for-profit event as defined in 4.1(g). As written, it does not appear that any event would be prevented outside the items listed in this section and therefore there would be no need for an event to go before the Authority for approval.

e) Section 4.6 Operator

The Sports Authority should approve and help develop the policies of the stadium, ensuring the values of the City are upheld from inclusivity to sustainability. Any management agreement between the Tenant and a Third-Party Operator must ensure that the values of the City are upheld through the operation and implementation of the policies of the Stadium. Section 4.6(i) should read "require the Operator to comply with the terms of this Agreement as to the use, operation, and *policies* of the Stadium."

f) Section 7.6 Improvements Arbitrator

Authority should have final say in decisions regarding the Capital Improvements Plan. If a forum for appeal is needed, that forum should be both the City Council and County Commission or a joint committee of representatives, which would be the Sports Authority. Representatives of the people of the City/County should determine the best use of public dollars, not the market or industry leaders, and the Improvements Arbitrator would present an additional cost for the Sports Authority to cover which has limited sources of revenue.

g) Section 10.1(d) Tenant and Authority

This section should read Tenant and Authority, rather than Tenant and Stadium.

h) Section 16.2(c) External Agreements that Constitute a Default

If the Tenant defaults on a third-party agreement associated with this project, such as between area unions or the Urban League, such default should have consequences for this agreement, including potentially resulting in default.

i) Section 22.3(c) Diversity Coordinator

This position should not be considered an oversight mechanism for the Authority, City or County. As described, this would be a hire the Developer would make to ensure their own compliance with carrying out a DBE program. As this is a publicly-funded project that will include federal dollars, maintaining a DBE program and making good faith efforts to reach goals is a requirement.

2) Concerns re: Risks to the City

a) Section 4.2(c) Stadium Event Dates

In addition to providing the Sports Authority with a schedule of events, the Tenant should be required to provide projected sales tax revenue from scheduled events that meets the Pledged Revenues promised by Tenant. Also, reports by the Tenant at the Authority board meetings should include updates on projected sales tax revenue from stadium events and potential shortfalls (low attendance trends, etc). Reports could be similar to bus ridership reports presented to the Knoxville Transportation Authority.

Are the pledged revenues promised by the Tenant or the Developer? Can the Tenant be held liable for the pledged tax revenues in the stadium finance plan that are to be generated from within the stadium? What if the Tenant underperforms?

b) Sections 5.1 and 5.2 Parking

This section clarifies that there is no dedicated parking facility for the Stadium and requires a strategic plan be developed to address parking. This section acknowledges that the City and County are under no obligation to construct additional parking. However, the (not-yet-developed) strategic plan may conclude that additional parking infrastructure is needed. This section also requires the City and County help Tenant negotiate agreements with owners of nearby parking lots for access to parking spaces at reduced rates for Stadium attendees.

Will the activities of this section, the execution of the parking strategic plan, come from the Authority's budget or will expenses be covered jointly by the Tenant and Authority?

Will the City need to hire an additional staff position to fulfill the City's obligations under this agreement?

Will the City be obligated to pay for the priorities identified in the strategic plan? If not, how will these priorities be funded?

c) Section 6.2 (b) Authority Maintenance Items

This section requires the Authority to agree to a list of maintenance items to be maintained in order to minimize the cost of future Capital Improvements. As of the date of the agreement, the Parties had not agreed on a list of items.

Why would this work not be covered by the Capital Improvements Reserve Fund? What are the projected costs of Authority Maintenance Items over the first term of the Agreement?

d) Section 6.4 Security and Staff

This section states that if the City and/or County determine that an emergency public safety issue exists at any event, the City shall have the right to provide additional police or emergency personnel to staff the Event at the City's expense. The City should not bear the burden of ensuring the proper security staffing of Stadium Events. This section should require the Tenant to hire additional security, medical, and emergency staff when a foreseeable public safety issue may arise and the City should be reimbursed for additional personnel needed to staff an Event in an emergency situation. In emergencies where the City must respond to an incident rather than staff an Event, the Tenant will not be charged.

e) Section 7.3 Capital Improvement Plans

This section requires significant modifications to the five-year capital improvement plan that require more funds than is held in the Reserve Fund to go before City Council and County Commission for approval. However, modifications or updates requested by Major League Baseball are not required to go before the two bodies. This is concerning.

What are the consequences of the City not approving an appropriation for a capital improvement required by the MLB? See section 7.8

f) Section 7.4 Approved Capital Improvements

The lease agreement authorizes the Tenant to use the Capital Improvements Reserve Fund for any amounts under $100,000 without Sports Authority approval. For amounts over $100,000

the Tenant is tasked with carrying out a competitive bid process and submitting one recommendation to the Authority Representative for approval, meaning *public deliberation will not be required of the Tenant's use of any Capital Improvement Reserve Funds*.

In addition, the Authority Representative is given 15 days to approve or deny the bid. As written, the Authority Representative does not have explicit access to all bids submitted. This process provides no true oversight of the Tenant's spending of the Reserve Fund or Capital Improvements Contracting process. This process needs to be changed to give authority to the full Authority.

Although the City and County have a structured payment plan for contributions to the Capital Improvement Reserve Fund, the five-year capital improvements plan presents ongoing opportunities for requests to come from the Authority for additional appropriations to address updates to the plan. The City must ensure the spending of the Capital Reserve Fund is done in a transparent and manner accountable to the public.

What criteria will the Authority Representative use to determine whether a Capital Improvements Contract should be approved or rejected?

Is the Authority Representative a paid position or a member of the Authority?

g) Section 7.7 Completion of Approved Capital Improvements

This section provides that in the case that the Tenant does not complete Approved Capital Improvements, the Authority is authorized to complete the improvements themselves. The approach to Capital Improvements in this Lease Agreement, where the Tenant takes the lead but is not obligated to, poses the risk of creating a situation where the Authority will need additional resources to ensure Approved Capital Improvements are completely within the timeframe required by the lease.

h) Section 7.8 Funding of Capital Improvements

This section states that the Tenant may terminate the Agreement with 180 days' notice if any Capital Improvement required by the MLB is not approved by the Authority.

i) Section 10.1(c)&(e) Condemnation that results from negligence

These sections protect the Tenant in the case the property is taken by eminent domain, condemned or sold. However, a provision should be included to protect the Authority that would hold the Tenant liable for Rent Obligations and Pledged Revenues if the reason for condemnation was due to Tenant's own negligence or fault.

j) Section 11.2(i) Authorities Remedies

Upon the occasion of any Tenant default, the Authority must also be able to recover a portion of the pledged sales tax revenue from sales inside the Stadium. The Tenant's liability could be reduced if Tenant identifies a replacement Tenant capable of producing the pledged tax revenue included in the financing plan for the Stadium.

k) Section 15.5 Premium Seating

Should luxury suites, boxes, and club seating be built with public funds for the exclusive for-profit use in a public-owned stadium?

l) Section 16.1(h) MLB License Termination not considered Tenant Default

The Tenant should default on this lease agreement if the MLB lease is revoked, terminated, or not renewed. The City, through the Authority, must be able to decide whether Tenant should be replaced with another team owner or whether the City should invest in a team that continues independent of the MLB.

m) Section 21.1 Remedial Work and Hazardous Materials

This section should clarify that neither the Tenant nor the Authority are responsible for corrective or remedial actions needed to address an Environmental Event originating at, in, on, or under the Stadium that is found to be a pre-existing site condition that is the responsibility of the Developer.

n) Section 24.8 Non-Appropriation

This section states that if the Authority fails to receive adequate Appropriations (from City or County) to undertake or perform any obligation under this agreement, other than Capital Improvements, the Tenant may terminate the agreement with 180 days' notice if the failure to obtain an appropriation would materially interfere with Tenant's use of the Stadium.

How will it be determined whether an unobtained appropriation materially interferes with Tenant's use of the Stadium?

o) Section 24.10 Review by MLB

If MLB amendments to this lease are not approved, then the Agreement is rescinded.

3) Concerns re: Benefits to Community v. Benefits to the Developer

a) Section 3.6 Fixed Rental

This section establishes the fixed rental fee at $1 million per year for the duration of the initial term of the agreement, which is 30 years. This section acknowledges that a fixed rental fee was established taking into consideration the use and occupancy of the tenant as well as the costs incurred by the Authority to construct the Stadium. However, the fixed rental releases the Tenant from any obligation to share in the shortfalls of Tenant's own Projected Revenues, upon which the entire financing plan depends. The fixed rental provision should be conditioned upon the annual realization of projected revenues. If there is a shortfall in projected revenues, Tenant should be required to increase the rent payment, with certain exceptions considered.

b) Section 4.1 Stadium Events in Lease Agreement

The lease agreement states that the Tenant shall be entitled to exclusive and absolute priority use of the stadium for stadium events, which includes much more than "baseball games and practices" as represented in the Summary of Agreements shared at the 11/5/21 joint workshop. The definition of stadium events in the lease agreement includes:

i) All home games of the Team

ii) Practices of the team
iii) Concerts and other entertainments events
iv) Weddings, meetings, and banquets
v) Soccer, football, lacrosse, baseball (including high school, college, semi-professional and professional) and other sporting events
vi) Community-oriented events
vii) Any other for-profit events
viii) Time for event set up/break down, field protection, recovery, and repair
ix) Routine maintenance and capital improvements

Presumably, the events listed above could fill an entire calendar year. However, limitations must be put on the ability of the Tenant to profit from this public endeavor. The fixed rental agreement combined with Boyd Sports' absolute priority use of the Stadium for for-profit events allows Boyd Sports to prioritize its profit over the public use of the Stadium. The good faith effort included in section 4.2(b) is insufficient.

If Stadium Events do not fill a calendar and fail to produce sufficient revenue, protections should be in place for the Authority, City, and County that require Boyd Sports to guarantee Pledged Revenues from sales tax revenues pledged to be generated from inside the stadium. To avoid defaulting on the Lease, Boyd Sports should be required to demonstrate an ability to deliver an annual schedule of stadium events that generate sufficient revenue to meet Pledged Revenues.

What is the projected total annual revenue inside the stadium?

Section 4.4 outlines that Tenant retains all revenues generated from: Stadium Events, ticket sales, Concessions, Merchandise, suite, loge box and club seat rentals, interior and exterior Stadium advertising and signage [including billboards?], sponsorships, any and all naming rights, and other advertising, sales of broadcasting and telecast rights, internet rights, expansion fees and team fundraising, and any other sources of revenue.

What is the projected annual operating budget of the stadium?
Will Boyd Sports be required to maintain a routine maintenance fund at a certain level?

c) Section 4.2(e) Restricting Access to the Stadium

Outside of Stadium Events, and other private or ticketed event, clear policies must be in place for the occasions upon which someone could be banned from the stadium. The language included in 4.2(e) is too vague. It reads "in the event the public enters areas at the stadium other than the spaces available for public use, Tenant make take measures reasonably required to restrict access to such areas, including but not limited to restricting access to such spaces available for public use other than the main concourse."

To ensure that the Stadium is operated as a public facility as much as reasonably possible, the Sports Authority should oversee any restrictions of access to the Stadium, and an appeal process with an opportunity for secondary review should be implemented.

d) Section 4.3(c) Concessions and Merchandise Agreements

The Tenant should not have the sole option of selling concessions or merchandise at Civic Events. It is a publicly-owned stadium. Civic Events should be able to bring in other vendors for an event if that is what is needed to best serve the residents of our community. The Tenant is a for-profit entity that should not be able to ensure their own profit at Civic Events.

e) Section 15.2 Naming Rights

The Tenant to the Stadium should not be given the naming rights to the Stadium. Naming rights have too much potential monetary and cultural value to the City to allow them to be among the many sources of revenue that are exclusive to the Tenant.

This section also permits Tenant to install permanent signage related to their naming rights in various areas including pedestrian walkway and concourse areas outside.

Will all public spaces in and outside of the stadium be authorized for for-profit activities exclusive to the Tenant?

f) Section 15.6(e-f) Plastic Cup and Bottle Policy and Use of Biodegradables

The lease agreement includes a provision allowing plastic cup and bottle use while limiting glass bottle use. The agreement also includes that Tenant shall use biodegradables to the extent practicable. The agreement, however, should hold Tenant to a higher standard, as is the standard at Neyland Stadium where football games aim to be zero waste events, where 90 percent of waste produced on game day is diverted away from landfills and into recycling or compost bins.

g) Section 22.2 Definitions Related to DBE

Rather than the definitions proposed for DBE, the Lease Agreement should adopt the definition of DBE found in the Federal Transit Administration's DBE Program Regulations (49 CFR Part 26). The federal definitions clearly state that disadvantaged businesses should be both socially and economically disadvantaged. DBEs should be small businesses. If we keep the current definitions, the Tenant would be able to meet DBE goals even when contracting with large companies, owned by white male veterans. That should not be the goal of the DBE program. A separate goal could be created for Veteran-Owned Businesses but it should be separate from the DBE goals.

Disadvantaged business enterprise or DBE means a for-profit small business concern -
1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i)"Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

h) Section 22.3 Measures to Enhance DBE Participation

The focus of this section should change from "measures to enhance" and instead should be "Measures to Meet DBE Goals"

As required by federal regulations, this section should direct the Tenant to take race-neutral means to meet DBE goals in the first year. However, if Tenant is unable to meet DBE goals through race-neutral means, this section should direct Tenant to establish contract goals to meet any portion of the DBE goal that the Tenant projects not being able to meet using race-neutral means as required by federal regulations. For instance, a certain dollar amount of contracts can be set-aside for DBE small business owners to ensure their participation. If part way through Year 1, DBE awards or commitments are not at a level that would permit Tenant to achieve the overall goal for Year 1, Tenant should begin setting race-conscious DBE contract goals as early as Year 1 as part of Tenant's obligation to implement the DBE program in good faith.

i) Section 22.3(b) Subcontractors under a Prime Contractor

The prime contract must provide a provision requiring the prime contractor to include in subcontracts a provision requiring subcontractors to meet the same annual DBE goals and make race-conscious adjustments if goals are not met.

j) Section 22.6 Internships

Internships should not be considered a Community Commitment/Benefit but rather a common business practice that often offers more benefits to the business than to the intern. If

these interns were to receive a guaranteed living wage and contributions towards college scholarships for youth interns, then this may be considered a community benefit. More information is needed regarding the compensation interns will receive.

k) Section 22.7 Apprenticeships

This section is not included in the Lease Agreement but it should be! To the degree that local apprenticeship programs would have offerings for those involved in the operations and maintenance of the stadium, the Tenant should work with local unions to take advantage of such offerings and commit to the wage and workplace safety requirements that would be required for participation in the program.

l) Section 22.8 Updates to DBE Goals

This is another section that should be added to the Lease Agreement, allowing updates to the DBE goals. In particular, DBE goals for this project should be as aggressive as goals recommended by City and County Disparity Studies. Upon the occasion that an updated Disparity Study is conducted by the City or County, the DBE goals of this project should be evaluated to ensure they do not fall below the goals identified in the Study.

Public Infrastructure Agmt (City & Sports Authority with approval of RR Land)

Why must the Developer approve the Public Infrastructure Agreement when it is not party to the agreement as outlined in Section 3.2.1? When the agreement must be satisfactory to the Developer, it gives the Developer veto power over an agreement they are not party to.

Does public infrastructure include the outdoor museum that Mr. Boyd has discussed as a key component of this project? Was that not intended as a community benefit to be paid by the Developer?

The Public Infrastructure Agreement must be finalized before the Interlocal, Development, and Lease Agreements are signed.

Utility Infrastructure Agmt (Sports Authority & KUB with approval of RR Land)

Why must the Developer approve the Utility Infrastructure Agreement when it is not party to the agreement as outlined in Section 3.2.2?

If bonds must be issued for the work, would City Council not need to approve the issuance of bonds before an agreement could be executed?

The Utility Infrastructure Agreement must be finalized before the Interlocal, Development, and Lease Agreements are signed.

Redevelopment Agmt (Sports Authority & KCDC with approval of RR Land)

Why must the Developer approve the Redevelopment Agreement when it is not party to the agreement as outlined in Section 3.2.3?

Would money for this project delay or diminish other KCDC redevelopments projects currently underway or projected for the future?

The Redevelopment Agreement must be finalized before the Interlocal, Development, and Lease Agreements are signed.