



Minnesota Ballpark Authority Meeting Minutes – January 18, 2008

Chair Cramer called the meeting of the Minnesota Ballpark Authority for January 18, 2008 to order at 1:00 PM. The roll was taken. All Commissioners were present. Kathleen Lamb, Legal Counsel, was also present.

Commissioner John Wade moved approval of the agenda, seconded by Commissioner Joan Campbell and approved unanimously – 5 YEAS, 0 NAYS.

APPROVED

Commissioner Campbell moved approval of the December 21, 2007 minutes, seconded by Commissioner Barb Sykora and approved unanimously – 5 YEAS, 0 NAYS.

APPROVED

PUBLIC COMMENT

- None

CHAIR REPORT

Chair Cramer reported the following:

- The Construction Executive Committee will meet the week of January 21st to receive an update on the project. Next week Chair Cramer and Dan Kenney along with representatives from the Twins will be visiting adjoining property owners around the ballpark to discuss goals related to the area around the ballpark.

EXECUTIVE DIRECTOR REPORT

Executive Director Kenney reported the following:

- The ABC Ramps Working Group met on January 7th regarding modifications to design work to the ramps next to the ballpark.
- The MBA and City of Minneapolis have begun meeting to discuss development of the transportation management plan around the ballpark and the Cedar Lake Bike Trail design. These meetings will occur bi-monthly and continue into next year.

ACTION ITEMS

08-MBA-01 Resolution: To authorize the Chair and Executive Director to enter into Amendment No. 1 to Professional Services Agreement BP-070952 with **American Engineering Testing, Inc.**, 550 Cleveland Avenue North, St. Paul, MN 55114 (“AET”) for ongoing services associated with site soils inspections, environmental testing and oversight, hot-spot removals, vibration and settlement monitoring, and pre- and post-construction surveys.

Background:

In the spring of 2007, the Minnesota Ballpark Authority (MBA) issued a Request For Proposal for a variety of consultant testing and inspection services. On May 22, 2007, after due diligence and consideration, MBA staff presented to the Board Resolution No. 07-MBA-10 to enter into a consultant services agreement with AET for the services described above, in a contract amount of \$530,090, to be billed on a time and materials basis, which was adopted. Subsequently, MBA Contract BP-070952 was executed for this work. Within the next two months, costs incurred against that contract will total the previously authorized amount.

AET has been instrumental in the testing of soils on the ballpark, in terms of structural characteristics, and in terms of contamination. Further, additional services have been utilized as follows:

- Pre-construction surveying of adjacent properties, and the monitoring (vibration and settlement) of those properties for damages that might result from ballpark construction;
- Assessment of soils associated with BNSF track relocation;
- Removal of unforeseen hazardous materials from the site;
- Stabilization of the electrical vault at the Ford Center;
- Design review and soils analyses associated with retaining walls at 3rd Ave and 7th St.

With their history on the project, and the efforts completed to date, MBA staff recommends that AET’s contract scope and budget be extended until these efforts are complete.

Presently, MBA’s ballpark project staff estimates that AET’s services will likely need to be retained to some degree through the end of 2009.

Staff Recommendation:

It is the recommendation of staff that the existing MBA Contract BP-070952 be amended via Amendment No. 1 in the amount of \$219,910, at which point the new total contract amount shall equal \$750,000, to be billed against on a time and materials basis. All billing rates pursuant to the existing contract shall apply.

Costs for this work fall within the current ballpark infrastructure budget.

BE IT RESOLVED that the MBA’s Chair and Executive Director are authorized to enter into Amendment No. 1 with AET, Inc., for services described above, in an amendment amount not to exceed \$219,910 without further board action.

Commissioner Vekich moved to approve the amendment. Commissioner Sykora seconded the motion. The motion was approved unanimously – 5 YEAS, 0 NAYS

APPROVED

08-MBA-02 Resolution: Pursuant to Article 5 of the Ballpark Lease Agreement between the Minnesota Ballpark Authority and Twins Ballpark, LLC, dated as of April 26, 2007 (the “Ballpark Lease”), and Article 6 of the Parking Lease Agreement between the Minnesota Ballpark Authority and Twins Ballpark, LLC, dated as of September 30, 2007 (the “Parking Lease,” and together with the Ballpark Lease, the “Leases”) to (a) acknowledge receipt of notice of proposed Leasehold Mortgages as required under Section 5.3(c) of the Ballpark Lease and Section 6.3(c) of the Parking Lease, together with drafts of the documents evidencing and

securing such financing (the “Proposed Credit Documents”), (b) approve the Proposed Credit Documents and the financing transaction contemplated thereby (the “Proposed Financing Transaction”), (c) consent to certain collateral assignments to facilitate the Proposed Financing Transaction and (d) authorize the Chair and Executive Director to execute a recognition agreement necessary to facilitate the Proposed Financing Transaction and certain other agreements relating thereto.

Background:

The Minnesota Legislature enacted Laws 2006, Chapter 257 (the “Act”) establishing the Minnesota Ballpark Authority (the “Authority”) and providing for the financing, construction and operation of a new ballpark (the “Ballpark”) and related infrastructure (the “Infrastructure”).

The Act provides that the Ballpark will be owned by the Authority primarily as a venue for Major League Baseball and operated by the Minnesota Twins. The Act requires that the Minnesota Ballpark Authority enter into a long-term lease and/or use agreement with the Twins.

On April 26, 2007, the Authority adopted Resolution 07-MBA-06R1 which included the approval of the Baseball Playing and Use Agreement with the Minnesota Twins, the Ballpark Lease with Twins Ballpark, LLC, a wholly-owned subsidiary of the Minnesota Twins, and the Parking Lease with Twins Ballpark, LLC for the Surface Parking Lot (as defined therein).

The Ballpark will be operated by Twins Ballpark, LLC, and subleased to the Minnesota Twins for the staging of MLB Events. Under the Ballpark Lease, Twins Ballpark, LCC, leases the Ballpark from the Authority for an Initial Term (30 years), with two potential Renewal Terms of 10 years each. The term of the Parking Lease, under which Twins Ballpark, LLC will operate the Surface Parking Lot, is similar.

The Act provides the public will contribute \$350 million (\$90 million for Infrastructure, and \$260 million for Ballpark construction). The Minnesota Twins are obligated to contribute \$130 million for Ballpark construction costs, plus payment for all Ballpark cost overruns.

On May 7, 2007 the team deposited the initial \$45 million of its required Ballpark funding contribution with the Ballpark Construction Funds Trustee. The team has posted collateral for the remaining \$85 million of the team’s contribution. Since the legislation was adopted in 2006, the team also committed to contributing an additional \$15 million for non-land infrastructure expenses, and this additional commitment has also been collateralized.

Article 5 of the Ballpark Lease and Article 6 of the Parking Lease outline the permitted mechanism for Twins Ballpark, LLC to mortgage its leasehold interests in the Ballpark and the Surface Parking Lot. These Articles (the “Lease Financing Articles,” which are substantially identical) provide that the Authority must consent to any assignment, transfer or subletting of rights and obligations unless otherwise provided for in the respective Leases. The Tenant may assign its leasehold interest to a purchaser of the Franchise which has been approved by MLB, and may assign or sublet to its Affiliates. The Tenant may mortgage the Leases and/or leasehold interests in the Ballpark (or Surface Parking Lot) or assign revenues from the Ballpark (or Surface Parking Lot) as security for financing.

The Authority is being asked to enter into a Recognition Agreement (in substantially the form on file with the Authority on the date hereof, the “Recognition Agreement”), which relates to the team’s financing and consent to collateral assignments of the team’s right, title and interest in and

to the Construction Funds Trust Agreement, Disbursing Agreement, Construction Management Agreement, and Architectural Services Agreement and Plans.

As a condition of entering into the Recognition Agreement and consenting to these assignments, the Authority has requested and the team has agreed to provide an additional \$25 million in collateral for the Authority's use, to cover unanticipated contingencies that could potentially impact the project's schedule, in the highly unlikely event of a team default with its lender.

The team advises that the type of financing structure being proposed here has been used successfully in other public/private professional sports and Major League Baseball transactions and it offers distinct advantages:

- The team remains fully responsible for the terms, commitments and obligations of the Leases and use agreement.
- Protects the Authority's stewardship of the ballpark by preventing the Authority's interest in the Ballpark from being encumbered by a team borrowing.
- Creates a mutuality of interest between the Authority and the lender in assuring the team remains in compliance with the Leases.
- Provides a flexible and efficient lending structure for the team.

The proposed leasehold mortgage financing is consistent with what the Authority negotiated in the Ballpark Lease and it confirms the team's financial commitments and long-term obligations to the project. The financing will protect the public's investment in the ballpark and it will also provide the team with the best opportunity for long-term competitiveness.

The documents related to this transaction and the team's financing terms have been reviewed in detail by the Authority's Counsel, McGrann Shea, as outlined under the nonpublic data provisions in Section 3.2(d) of the Ballpark Lease and Section 3.4(c) of the Parking Lease, and the materials are in conformance with the provisions contained in Article 5 of the Ballpark Lease and Article 6 of the Parking Lease.

Action Requested:

BE IT RESOLVED, that the Authority approves the Recognition Agreement in substantially the form on file with the Authority on the date hereof, and authorizes the Chair and Executive Director to execute such agreement with such changes as the Chair and Executive Director deem necessary or appropriate as further authorized below.

BE IT FURTHER RESOLVED, that the Authority approves the collateral assignments permitted under and in accordance with the terms of the Recognition Agreement as approved hereby, including without limitation the Conditional Assignment of Agreement and Declaration of Trust and Ballpark Disbursing Agreement, the Conditional Assignment of Construction Management Agreement, the Conditional Assignment of Architectural Services Agreement and Plans, the Collateral Assignment of CFTA Assignment and the Collateral Assignment of Construction Assignments, in substantially the forms on file with the Authority on the date hereof.

BE IT FURTHER RESOLVED, that the Authority approves the Construction Risk Pledge Agreement and Pledged Account Control Agreement in substantially the forms on file with the

Authority on the date hereof, and authorizes the Chair and Executive Director to execute such agreements with such changes as the Chair and Executive Director deem necessary or appropriate as further authorized below.

BE IT FURTHER RESOLVED, that the Chair and Executive Director are authorized to execute all such agreements substantially in the form on file with the Authority on the date hereof, with such necessary and appropriate modifications, variations, omissions, and insertions as are consistent with the Lease Financing Articles as the Chair and Executive Director in their reasonable discretion shall determine, provided that the execution thereof by the Chair and Executive Director shall be conclusive evidence of such determination; and authorizes the Executive Director to take all such actions as may be necessary to fulfill and satisfy the Authority's rights and obligations there under; provided further that the separate and additional approval of this Board shall be required for any actions on the part of the Executive Director in case of a default by the team or Twins Ballpark, LLC under the financing.

Discussion: Bob Starkey, Starkey Sports Consulting, Minnesota Twins Finance Advisor: Mr. Starkey said that last April, the Twins and the MBA consummated the Ballpark Lease Agreement and this Agreement contained a very specific provision, Article 5, which was highly negotiated and in contemplation of when we are ready to go to market on the financing. This Agreement today is the culmination of what was originally contemplated a year ago.

Mr. Starkey summarized a few points:

1. This financing is in accordance with the Ballpark Lease. The Twins are not asking for an amendment to the Lease but rather this separate Agreement to give recognition to certain facts and agreements not just between the Twins and MBA but also to the financing institutions.
2. Any financing proceeds that are raised as part of this financing Agreement can only go to the ballpark for financing costs and costs of issuance. None of the financing proceeds can leave the system and can only be used to enhance the ballpark.
3. In contemplating the leasehold mortgage and assignments in the Lease, the Authority has requested certain protections and revisions which were not in the Lease. The MBA and Twins have spent several weeks negotiating these items and the Twins have agreed to post additional collateral of \$25 million which can only be used by the MBA in the event that there would be a default under the financing. This is a prudent move on the part of the MBA and the Pohlada family has agreed to provide that additional protection.
4. The MBA and Twins have agreed that the current or a mutually agreed upon Project Manager would be available in the unlikely event of a default scenario to continue running the project in a seamless and timely manner. In the event that a financing party does step in to complete construction, this party would have no greater rights than the Twins currently have and they would follow the existing controls and parameters of the Development Agreement and Lease in terms of approving changes orders and other documents of this type.

Mr. Starkey said that when the transaction is ready to go to market, the Twins will provide the documents to the MBA so that they are aware of the final transaction. He said that this type of private financing is common in the sports industry and this is a market structure which has already been used by a variety of national sports lending institutions.

Commissioner Sykora moved the resolution. It was seconded by Commissioner Campbell.

Commissioner Vekich moved an additional resolving clause:

BE IT FURTHER RESOLVED, that the collateral requirements of the Development Agreement and the Pledge Agreement relating to cost overruns will be fulfilled at the time and to the extent required in connection with establishment of the final Guaranteed Maximum Price and accompanying amendment of the Development Agreement.

Commissioner Campbell seconded the motion. The amendment 08-MBA-01R was approved unanimously – 5 YEAS, 0 NAYS

The resolution as amended was approved unanimously – 5 YEAS, 0 NAYS

APPROVED

DISCUSSION ITEMS

A. Construction and Planning Update – Dan Mehls, Mortenson Construction: Mr. Mehls said that there are now three phases of construction overlapping. The three phases are design, procurement and construction of the building. Phase I, the design phase, has received public approval and the design team is wrapping up final design details. There are two bid packages yet to complete. Bid Package 6, which is due at the end of February, will finish up design documents for the exterior closure of the building as well as focus on some of the core and shell areas for the mechanical and electrical components. Core and shell areas include bathrooms, public concourses and elevator lobbies. Bid Package 7, which is the final design package, will wrap up the rest of the details of the interior and is due in May. Phase II, the procurement phase, finalizes the contracts for the electrical, mechanical, and structural steel systems. Mortenson is currently taking bids for glass through end of this month. Phase III, the construction phase, is moving along with the driving of piles currently 71% complete and should be finished in two months. The placement of concrete is 10.5% complete. The first main concourse will be poured near 7th street on Wednesday, January 23rd and the Twins have invited the media to observe this milestone. Construction activity on the exterior closure of the building will be visible in August.

B. Community Participation – Mr. Mehls reported on the business side, the SWMBE project goal is 30% and currently there is SWMBE participation of 31% so they are now exceeding that goal. On the workforce participation side, the goal of 30% is subdivided into two categories: 25% minority and 5% female. The minority category is presently 14% mainly because the current work load is being done by heavy equipment operators and there is not a lot of minority or women operators in that market right now. More carpenters and laborers will be hired in the spring which should increase the percentage. The female category is over the goal at 8%.

Commissioner Vekich asked Mr. Mehls what construction risks existed right now. Mr. Mehls replied because of the cold temperatures there are some good and bad things. The muddy surface conditions are frozen so the working conditions related to the surface are better. They are expecting a worse than normal winter so some risks in slowing down may occur but Mortenson has made provisions for that in the schedule. Commissioner Vekich inquired as to the percentage of bids that are locked down at this time. Mr. Mehls replied that two-thirds of bid packages are committed on a dollar scale. On a risk scale it is much higher. The dollars that have been locked in and committed are high risk items such as mechanical, electrical, structural and concrete which are all guaranteed prices. The last \$100 million or so that is yet to lock in are the finishes, scoreboards, seats, etc. and are decisions that we can make and not so controlled by the market. Ed Hunter added that they will be reaching some milestones next week when they begin installing girders over the BNSF railroad and laying deck girders on the opposite side over 394.

C. MBA Financial Report – Colleen Livermore reported that we are at year end and are in the midst of making some year end adjustments. During December the second transfer of money came in from Hennepin County to cover operating costs of \$1.499 million. Another financial statement will be submitted to the MBA Board for year end when all of the adjustments are complete. Ms. Livermore said that we are now gearing up for the Audit and are in discussions with both the State Auditor’s office and Virchow Krause.

Next Meeting:

- February 15, 2008

There being no further business, Commissioner Wade moved to adjourn. Commissioner Campbell seconded the motion. The motion was approved unanimously - 5 YEAS, 0 NAYS. The meeting of the Minnesota Ballpark Authority for January 18, 2008 was adjourned at 1:40 P.M.