

CONSTRUCTION ADMINISTRATION AGREEMENT

BETWEEN

**THE SPORTS AUTHORITY OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

AND

WALSH MANAGEMENT LLC

AND

NASHVILLE SOCCER HOLDINGS, LLC

DATED AS OF JULY ____, 2020

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CONSTRUCTION ADMINISTRATION AGREEMENT

THIS CONSTRUCTION ADMINISTRATION AGREEMENT (this “**Agreement**”) is made and entered into this ___ day of July, 2020 (the “**Effective Date**”), by and between THE SPORTS AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (the “**Authority**”) and WALSH MANAGEMENT LLC, a Tennessee limited liability company (“**StadiumCo**”), and solely with respect to Section 7.19, Nashville Soccer Holdings, LLC, (“**NSH**”) a Tennessee limited liability company.

RECITALS

A. Nashville Team Holdings LLC (“**NTH**”) is the operator of the Nashville MLS expansion club (“**Team**”), a Major League Soccer (“**MLS**”) club. StadiumCo (an Affiliate of NTH) and the Authority entered into that certain Development Agreement, dated as of the date hereof (the “**Development Agreement**”).

B. The Development Agreement contemplates that StadiumCo will administer and manage the construction and design of the Stadium Project (as defined below) on behalf of the Authority.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINED TERMS

1.1 **Definitions.** As used in this Agreement, the following terms have the following meanings:

“**Affiliate**” of a specified Person shall mean any corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with the Person specified. The terms “control”, “controlled by”, or “under common control” mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

“**Agreement**” shall mean this Construction Administration Agreement.

“**Applicable Law**” shall mean any and all laws (including all statutory enactments and common law), constitutions, treaties, statutes, codes, ordinances, charters, resolutions, orders, rules, regulations, guidelines, orders, standards, governmental approvals, authorizations, or other directives or requirements of any Governmental Authority enacted, adopted, promulgated, entered, implemented, ordered or issued and in force or deemed applicable by or under the authority of any Governmental Authority.

“**Application for Payment**” shall have the meaning set forth in the Stadium Construction Management Agreement.

“**Approvals**” shall have the meaning set forth in the Development Agreement.

“**Architect**” shall mean Populous, Inc., or any approved successor thereto as may be approved by StadiumCo and the Authority.

“**Architect Agreement**” shall mean that certain Architectural Services Agreement by and between Authority and Architect, as the same may be amended, modified or supplemented from time to time.

“**Authority**” shall mean the term set forth in the introductory paragraph hereto.

“**Authority Parties**” shall mean, collectively, the Authority, the Metropolitan Government of Nashville and Davidson County, and the Metropolitan Government Board of Fair Commissioners.

“**Authority Project Manager**” shall mean shall mean the outside consulting persons/firms retained by the Authority as its representative with respect to the design, development, construction, management of the Stadium Project Improvements.

“**Authority Representatives**” shall have the meaning set forth in the Development Agreement.

“**Authority Parking Areas**” shall have the meaning set forth in the Development Agreement.

“**Bonds**” shall have the meaning set forth in the Development Agreement.

“**Bond Documents**” shall mean the Trust Indenture and the documents utilized in connection with the Bond Transaction.

“**Bond Indenture**” shall have the meaning set forth in the Development Agreement.

“**Bond Transaction**” shall mean the issuance of the Bonds and the matters related to the Bonds so long as they remain outstanding and until the discharge of the Bond Indenture.

“**Business Day**” shall mean any day other than a Saturday, Sunday, or any federal holiday. If any period expires on a day that is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

“**Change Order**” shall have the meaning set forth in the Construction Contract.

“**Change Order Documentation**” has the meaning set forth in Section 3.2(b) of this Agreement.

“**Claim**” shall mean any claim, demand or dispute among the Parties relating to this Agreement or the Stadium Project.

“**CM at Risk**” shall mean the Construction Manager at Risk retained by the Authority and managed by StadiumCo pursuant to a guaranteed maximum price contract for the construction of the Stadium Project as contemplated by this Agreement.

“**Construction Agreements**” shall have the meaning set forth in the Development Agreement.

“**Construction Contract**” shall have the meaning set forth in the Development Agreement.

“**Construction Schedule**” shall have the meaning set forth in the Construction Contract.

“**Contract Documents**” shall have the meaning set forth in the Development Agreement.

“**Cost Overrun(s)**” shall have the meaning set forth in the Development Agreement.

“**Design Professionals**” shall mean any architectural, engineering (other than provided through the CM at Risk), or other design professionals providing design, engineering or consulting services for to the Stadium Project.

“**Development Agreement**” shall mean the term set forth in the introductory paragraph hereto.

“**Development Committee**” shall have the meaning set forth in the Development Agreement.

“**Development Committee Process**” shall mean the collaborative process of the Development Committee as described and set forth in the Development Agreement.

“**Effective Date**” shall mean the date set forth in the introductory paragraph hereto.

“**Event of Default**” shall have the meaning set forth in Section 6.1 of this Agreement.

“**Excusable Delay**” shall have the meaning set forth in the Development Agreement.

“**Final GMP**” shall mean the absolute not-to-exceed limit, or guaranteed maximum price, for the cost of the Stadium Project Improvements Work for the Stadium Project as agreed to by the Authority, StadiumCo and CM at Risk pursuant to the Construction Contract

“**Final GMP Design Documents**” shall mean the documents accompanying the Final GMP.

“**Final GMP Qualifications and Assumptions**” shall mean the written statement of qualifications and assumptions for the Final GMP prepared by CM at Risk and approved by the Authority and StadiumCo, based on the Final GMP Design Documents.

“**Final Plans**” shall have the meaning set forth in the Development Agreement.

“GMP Amendment” shall mean the amendment to the Construction Contract establishing the Final GMP.

“GMP Documents” shall mean, as the context may require, the Final GMP Design Documents, Prose Statement and Final GMP Qualifications and Assumptions.

“Governmental Authority(ies)” shall have the meaning set forth in the Development Agreement.

“Indemnified Parties” shall have the meaning set forth in Section 5.1 of this Agreement.

“Intergovernmental Project Agreement” shall have the meaning set forth in the Development Agreement.

“Lease” shall have the meaning set forth in the Development Agreement.

“Loss” shall have the meaning set forth in Section 5.1 of this Agreement.

“Major League Soccer” or **“MLS”** shall mean, collectively, the Commissioner of Major League Soccer, the Major League Soccer clubs and/or any other Person appointed by any of the foregoing, or any successor association or entity and which engages in professional soccer in a manner comparable to Major League Soccer.

“NSH” shall mean Nashville Soccer Holdings, LLC, a Tennessee limited liability company, an Affiliate of StadiumCo.

“Party” shall mean any party to this Agreement, and **“Parties”** shall mean all parties to this Agreement, collectively.

“Person” or **“Persons”** shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

“Project Claims” shall have the meaning set forth in Section 3.5.

“Program Manager” shall mean ICON Venue Group, LLC d/b/a CAA ICON or other entity designated by StadiumCo. The designated representatives for ICON Venue Group, LLC d/b/a CAA ICON for purposes of this Agreement is Marc Farha and Michael Schwan or such other persons as designated by StadiumCo.

“Program-Related Change Order” shall mean any Change Order that results in a material deviation from the Final Plans.

“Project Milestone Schedule” shall mean the Project Milestone Schedule attached as **Exhibit A**, which has been prepared by Program Manager and approved by the Authority or one of the Authority Representatives. Such schedule shall be updated as set forth in this Agreement.

“Prose Statement” shall mean, as the context may require, Architect’s description of all material incomplete design elements of the Final GMP Design Documents, and Architect’s statement of intended scope (including anticipated qualities and quantities) with respect to such incomplete elements.

“Punch List” shall mean the punch-list items and/or punch-list work as described and provided for in the Construction Contract.

“Reasonable and Prudent Project Manager” shall mean a project manager of projects similar in scope, size, and complexity to the Stadium Project Improvements seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced project manager of facilities similar to the Stadium Project Improvements complying with all Applicable Laws and engaged in the same type of undertaking.

“Risk Management Plan” shall mean the term set forth in Section 14.2 of this Agreement.

“Site” shall have the meaning set forth in the Development Agreement.

“Stadium” shall mean the multipurpose stadium to be constructed on the Stadium Site suitable for MLS soccer and a broad range of other civic, community, recreational, athletic, educational, and cultural activities, which stadium is to be used and operated by the StadiumCo Parties pursuant to the Lease.

“StadiumCo” shall mean the term set forth in the introductory paragraph hereto.

“StadiumCo Parties” shall mean StadiumCo, NTH and NSH, collectively.

“StadiumCo Personnel” shall have the meaning set forth in Section 7.5 of this Agreement.

“Stadium Project Budget” shall mean the budget prepared by StadiumCo and approved by the Authority in the form attached hereto as Exhibit B representing the current estimate of the total costs and expenses to perform the Stadium Project Improvements.

“Stadium Project Improvements” shall have the meaning set forth in the Development Agreement.

“Stadium Project Improvements Work” shall have the meaning set forth in the Development Agreement.

“Substantial Completion” shall have the meaning set forth in the Construction Contract.

“Team” shall have the meaning set forth in the introductory paragraph hereto.

1.2 **Other Terms.** Capitalized terms not defined herein shall have the meaning set forth in the Development Agreement. Unless otherwise defined herein (or in the Development Agreement), words that have well known construction industry meanings are used in this Agreement with such recognized meanings.

ARTICLE II OBLIGATIONS OF STADIUMCO

2.1 **Obligations of StadiumCo to Design and Construct Stadium Project.**

(a) StadiumCo shall cause the Architect and CM at Risk to design and construct the Stadium Project in accordance with the Architect Agreement, Construction Contract and such other third-party agreements as may be deemed necessary by the Authority and StadiumCo to complete the Stadium Project, as well as the other Definitive Documents, all in accordance with the Stadium Project Budget and Project Milestone Schedule. However, notwithstanding anything to the contrary in this Agreement or any of the other Definitive Documents, StadiumCo will not perform the actual design or construction of the Stadium Project Improvements Work or otherwise provide design or construction labor or building materials for the Stadium Project. StadiumCo acknowledges that the Authority will execute the Construction Contract and Architect Agreement. Accordingly, in furtherance of the foregoing, the Authority hereby designates and appoints StadiumCo as its authorized representative solely for the management and administration of the design, construction and completion of the Stadium Project in accordance with this Agreement and the other Definitive Documents.

(b) The financial obligations of the parties with respect to the Project are set forth in the Development Agreement.

(c) The Authority acknowledges that StadiumCo has retained Program Manager as an independent contractor and consultant to assist StadiumCo in the performance of StadiumCo's duties and obligations as set forth in this Agreement; provided, however, StadiumCo shall remain fully responsible for all obligations of StadiumCo under this Agreement and the other Definitive Documents and all acts and omissions of Program Manager. The Authority shall, unless otherwise directed by StadiumCo, in writing, communicate with StadiumCo through the Program Manager, acting as StadiumCo's authorized representative for purposes of, and as described in, this Agreement. Unless otherwise indicated by StadiumCo in writing, Program Manager has no authority (in writing or by course of conduct) to bind StadiumCo to a change to this Agreement or to any changes in any of the other Contract Documents, which may only be modified in writing signed by StadiumCo and the Authority.

2.2 **Acceptance and Undertaking.** StadiumCo hereby accepts the appointment made by the Authority in Section 2.1 hereof, and undertakes, for the benefit of the Authority, to cause the Architect and CM at Risk to design and construct the Stadium Project, and to otherwise manage and administer the Project, in accordance with this Agreement and the other Definitive Documents, as an independent contractor for the Authority and in each case acting as a Reasonable and Prudent Project Manager. StadiumCo shall cause the Program Manager to provide sufficient personnel to appropriately assist StadiumCo in carrying out the requirements of this Agreement and shall take actions with such reasonable promptness as to cause no

unreasonable delay to the Stadium Project in each case acting as a Reasonable and Prudent Project Manager.

2.3 **Performance.** StadiumCo shall, and shall cause Program Manager to provide its services to StadiumCo to appropriately assist StadiumCo to, perform the services required by this Agreement with due care and as expeditiously and economically as reasonably possible within the Stadium Project Budget consistent with the standards of a Reasonable and Prudent Project Manager.

2.4 **Term.** StadiumCo's duties under this Agreement shall commence on the Effective Date and shall terminate or expire (except for those obligations that are stated to survive the termination or expiration of this Agreement) upon the completion and expiration of all of the CM at Risk's obligations and liabilities under the Construction Contract and the completion and expiration of all of the Architect's obligations and liabilities under the Architect Agreement.

2.5 **Scope of Authorizations and Duties of StadiumCo.**

(a) **Management and Control of Construction Property.** StadiumCo shall manage and administer the design and construction of the Stadium Project and shall cause the Architect and CM at Risk to design and construct the Stadium Project in accordance with the approved design documents for the Stadium Project as further set forth herein, all in consultation with the Authority Representative and Authority Project Manager in accordance with this Agreement and the other Definitive Documents. As between the Authority and StadiumCo, StadiumCo shall have management responsibility for and control over (i) the Stadium Site, and (ii) the means, methods, sequences and procedures with respect to the construction of the Stadium Project, in each case acting as a Reasonable and Prudent Project Manager. As further provided in this Section 2.5, StadiumCo shall regularly consult with the Authority and consider in good faith the advice and opinions of the Authority Representative and Authority Project Manager in the management of the Stadium Project construction in accordance with the Development Committee Process.

(b) **Design Professionals.** StadiumCo shall coordinate and supervise the performance of all Design Professionals for the Stadium Project and shall cause such Design Professionals to perform their services in accordance with the terms of the Architect Agreement and all other design and engineering agreements acting as a Reasonable and Prudent Project Manager. StadiumCo will only be responsible for the payment of obligations due under the Architect Agreement in excess of the Authority Contribution Amount.

(c) **Construction Contract; CM at Risk.**

(i) The Authority shall enter into a Construction Contract with a CM at Risk in accordance with Applicable Law. The CM at Risk will be a nationally or internationally recognized CM at Risk experienced in the construction of professional sports and entertainment venues and related facilities of the nature contemplated by this Agreement. StadiumCo will only be responsible for the payment of obligations due under the Construction Contract in excess of the Authority Contribution Amount.

(ii) The StadiumCo Parties, and such other Affiliates of the StadiumCo Parties as the Parties may agree, shall be third-party beneficiaries to the Construction Contract.

(iii) The form of the Construction Contract and the Architect Agreement shall be acceptable to StadiumCo and the Authority, such acceptance not to be unreasonably withheld, conditioned, or delayed. The Authority agrees that completion of the Stadium Project Improvements Work on time is of great importance to StadiumCo and the Authority and that the parties will suffer damages in the event this work is not completed on time.

(iv) The Parties agree that completion of the Stadium Project Improvements Work on time is of great importance to the StadiumCo Parties and that the StadiumCo Parties will suffer substantial damages in the event the Stadium Project Improvements Work is not completed on time. As such, the Parties agree that the Construction Contract with the CM at Risk shall contain a provision that if the Stadium Project Improvements Work is not substantially complete on or before the date(s) in the Construction Contract the CM at Risk agrees to compensate the Authority Parties and StadiumCo Parties through late delivery liquidated damages in an amount acceptable to the Authority Parties and StadiumCo Parties and to be set forth in the Construction Contract for each home game for which the Stadium is not available for the Team to play its home games, and to compensate other Parties through other liquidated damages as deemed appropriate by the Parties and set forth in the Stadium Construction Management Agreement.

(d) Contracts Generally. StadiumCo shall recommend to the Authority in writing the terms of any contract necessary for the construction of the Stadium Project to be entered into by the Authority, which shall be executed by them in compliance with Applicable Law. Subject to the provision of Section 3.2 of this Agreement regarding Change Orders, the Authority shall have the right to approve all drafts and changes of the Construction Contract and any other contract to be entered into by the Authority.

(e) General Duties Pertaining to the Stadium Project. StadiumCo is hereby authorized to and shall, as representative of the Authority and for its benefit (and for the benefit of StadiumCo and its Affiliates, as third-party beneficiaries), enforce the terms of the Construction Contract and take all actions necessary for the design and construction of the Stadium Project on behalf of the Authority and as its representative pursuant to this Agreement and the Development Agreement, and in accordance with the other Definitive Documents and in each case acting as a Reasonable and Prudent Project Manager. StadiumCo's obligations include generally, but without limitation, the obligations to:

(i) review, monitor and enforce the Stadium Construction Documents produced by the Architect;

(ii) negotiate and make recommendations to the Authority as to the execution of contracts to be entered into by the Authority for the provision of labor,

materials, equipment and services necessary for the design, construction, testing and commissioning of the Stadium Project;

(iii) deliver to the Authority copies of all contracts and subcontracts relating to the construction of the Stadium Project and all amendments thereto;

(iv) develop a Project Milestone Schedule, which Project Milestone Schedule shall be updated at reasonable intervals and delivered to the Authority Representative and Authority Project Manager;

(v) manage and administer the performance of the obligations (other than any obligation requiring the payment of money) of the Authority under contracts and arrangements relating to the construction of the Stadium Project;

(vi) confirm the development by the CM at Risk of a process by which the CM at Risk shall award subcontracts, as permitted by and in compliance the Tennessee law and other Applicable Law and require the CM at Risk to award subcontracts only in accordance with such process, or as otherwise approved in writing by StadiumCo and the Authority;

(vii) obtain the Approvals;

(viii) update the Stadium Project Budget at reasonable intervals and delivered to the Authority Representative and Authority Project Manager;

(ix) monitor Stadium Costs in relation to the Stadium Project Budget and Final GMP. StadiumCo shall maintain current records showing actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with the Stadium Project Budget;

(x) review the amounts due the CM at Risk, and authorize for payment the costs due to the CM at Risk under the Construction Contract or other Definitive Documents in accordance with the terms and conditions of the Development Agreement and the other Definitive Documents;

(xi) conduct and coordinate Stadium Project team meetings with knowledgeable supervisory representatives of the Program Manager, CM at Risk, the Architect, the Authority Representative and Authority Project Manager and other key Stadium Project participants to discuss the progress of the Stadium Project construction;

(xii) monitor and instruct the Architect to perform interim and final inspections and in monitoring corrective work completion;

(xiii) monitor and instruct the Architect and CM at Risk to develop a comprehensive Punch List and to complete and monitor the completion of all Punch List items;

(xiv) monitor and instruct the CM at Risk, Architect, and any other Design Professionals to provide necessary and appropriate equipment and building startup activities;

(xv) monitor and cause the completion of all Stadium Project closeout activities including submittal of operation manuals, warranties, and as-built drawings;

(xvi) perform such other acts as may be reasonably necessary in connection with the construction of the Stadium Project in accordance with the Definitive Documents as contemplated by this Agreement and the Development Agreement;

(xvii) deliver to the Authority copies of all notices of claims or disputes from the Architect, CM at Risk or any subcontractors or material suppliers;

(xviii) take all actions reasonably required to comply with all Applicable Law in connection with the performance of its obligations under this Agreement;

(xix) notifying promptly the Authority of any suit, proceeding or action that is initiated or threatened in writing against a StadiumCo Party or the Authority in connection with the Stadium Project; and

(xx) assist the Authority as reasonably necessary in maintaining complete and accurate books and records regarding the design and construction of the Stadium Project, including the Design Documents, shop drawings, Change Orders, Applications for Payment, permits, insurance policies, bills, vouchers, receipts, lien waivers, customary periodic reports, inspector daily reports, bonds, estimates, correspondence and bid calculation sheets.

(f) Specific Duties Pertaining to Development of Final GMP. StadiumCo is hereby authorized to and shall, as representative of the Authority and for the benefit of the Authority, in consultation with the Authority Representative and Authority Project Manager in accordance with the Develop Committee Process, take all actions necessary or desirable for the development and finalization of the Final GMP pursuant to this Agreement and in accordance with the other Definitive Documents, provided that both StadiumCo and the Authority shall approve the GMP Amendment. StadiumCo's obligations include generally, but without limitation, the obligations to do the following within the time frames provided in the Construction Contract:

(i) cause the Architect to deliver the Final GMP Design Documents, and Prose Statement, as required for the CM at Risk to develop the Final GMP;

(ii) cause the CM at Risk to prepare and deliver the proposed Final GMP and the Final GMP Qualifications and Assumptions for StadiumCo's review and approval;

(iii) following receipt of the proposed Final GMP, meet with the CM at Risk, Architect and the Architect's consultants, to reconcile any questions, discrepancies or disagreements relating to the above and document the reconciliations by addendums to

the foregoing qualifications and assumptions that shall be approved in writing by StadiumCo (after consultation with the Authority Representative and Authority Project Manager), Architect and the CM at Risk; and

(iv) StadiumCo, with the assistance of Program Manager and on behalf of the Authority and in consultation with the Authority Representative and Authority Project Manager, shall negotiate the terms of the GMP Amendment, which shall be consistent with the approved, reconciled GMP Documents and the Stadium Project Budget. StadiumCo shall recommend execution of the GMP Amendment to the Authority in writing, which shall be signed by and in the name of the Authority, not StadiumCo. StadiumCo shall cause the Architect to produce Stadium Construction Documents based on the approved, reconciled GMP Documents as set forth in the GMP Amendment.

(g) Approval of Applications for Payment. StadiumCo and the Program Manager shall receive, review and, with Program Manager's recommendation, StadiumCo shall approve, all Applications for Payment from the CM at Risk under the Construction Contract. StadiumCo shall cause the Architect to perform all obligations under the Architect Agreement relating to each Application for Payment, including but not limited to, any inspections of the Stadium Project Improvements Work and approval of such Application for Payment as required. StadiumCo shall cause the CM at Risk to perform all obligations under the Construction Contract relating to each Application for Payment. StadiumCo shall provide copies of all Applications for Payment to the Authority and Authority Project Manager for review and approval; provided, however, in no event shall the Authority Project Manager's approval of any Application for Payment relieve StadiumCo from any obligation under this Agreement or under any of the other Definitive Documents. StadiumCo shall assemble all Applications for Payment, and upon the Authority's approval thereof, coordinate the inclusion thereof into each Construction Fund Requisition.

2.6 Authority Representative and Authority Project Manager. StadiumCo and Program Manager shall collaborate with the Authority Representative and Authority Project Manager regarding the progress of the Stadium Project construction and any material issues that arise that may impact the Stadium Project or schedule for its completion all in accordance with the Development Committee Process. All communications required to be given to the Authority or Authority Representative may be sent through the Authority Project Manager. StadiumCo shall develop with the Authority a schedule for regular meetings to discuss the Stadium Project's progress accordance with the Develop Committee Process.

ARTICLE III CONSTRUCTION

3.1 Schedule, Commencement, and Completion.

(a) Subject to the terms and conditions set forth in the Definitive Documents, the Parties agree to use their collective best efforts to cause the commencement of construction of the Stadium Project no later than July 1, 2020, and to cause Substantial Completion of the construction, in the case of the Stadium office space, clubhouse and associated storage areas for

occupancy by StadiumCo, on or before July 31, 2022 and in the case of the entire Stadium on or before July 31, 2022; provided that the Stadium Project Improvement Improvements shall have received all necessary Approvals including, without limitation, regulatory, MLS and StadiumCo approval, such that the Stadium Project Improvements can be used for the intended purpose of the Team playing its home games at the Stadium commencing July 31, 2022.

(b) StadiumCo shall provide to the Authority Representative and Authority Project Manager the Construction Schedule for the Stadium Project Improvements Work issued by the CM at Risk and all updates to such Construction Schedule.

(c) StadiumCo shall update the Project Milestone Schedule to reflect changes to the milestone dates reflected in the Construction Schedule relating to the Stadium Project Improvements Work. Copies of the monthly updates shall be provided to the Authority Representative and Authority Project Manager.

(d) The Authority Representative shall have the right to approve all material elements of the Stadium Construction Documents in accordance with Section 2 of the Development Agreement.

3.2 **Change Orders.**

(a) **Change Order Acceptance and Approval.** All Change Orders shall be subject to the approval of StadiumCo and/or the Authority in accordance with the Development Committee Process, regardless of the party requesting such change. Subject to the provisions of this Section 3.2, StadiumCo shall be entitled to undertake and effectuate such Change Orders unilaterally in accordance with the CM Agreement.

(b) **Change Order Documentation.** Before entering into or approving any Change Order (where appropriate), the party requesting such Change Order shall deliver to the Authority Representative and Authority Project Manager, or the Program Manager (as the case may be), the following: (i) a description of the proposed change to the Stadium Project Improvements Work; and (ii) a calculation of the additional costs, if any, resulting from implementing such Change Order, together with reasonable documentation supporting such calculation (collectively, the “Change Order Documentation”). StadiumCo shall assist the Authority in the preparation of all Change Orders desired to be initiated by the Authority, including the assemblage and delivery of all Change Order Documentation.

(c) **Program-Related Change Orders.** StadiumCo shall not enter into or approve all or any portion of a Program-Related Change Order until such Program-Related Change Order is approved or deemed approved by the Authority pursuant to this Subsection 3.2(c). Within seven Business Days following the Authority’s receipt of the Change Order Documentation related to a Program-Related Change Order, the Authority shall deliver written notice either approving or disapproving such Program-Related Change Order and specifying the reasons for such disapproval, including any supporting documentation. The Authority shall not unreasonably withhold, delay, or condition such approval. If the Authority fails to deliver any such written notice within such seven Business Day period, then the Authority shall be deemed to have approved such Program-Related Change Order. Once the Program-Related Change

Order is approved or deemed approved by the Authority, StadiumCo shall be permitted to enter into or approve such Program-Related Change Order.

(d) Change Order Funding. For Change Orders requested by StadiumCo, Change Orders shall be paid for first from any project contingency set forth in the Stadium Project Budget, and thereafter with funds from the StadiumCo Parties outside Stadium Project Budget unless such change is part of the Stadium Project Budget. The Authority shall pay for any Change Orders it requests in writing executed by the Authority with funds outside the Stadium Project Budget unless such change is part of the Stadium Project Budget.

3.3 **Punch List.** In consultation with the Authority Representative and Authority Project Manager, StadiumCo shall cause Punch List items to be completed by the CM at Risk as required by the Construction Contract or shall otherwise cause such Punch List items to be satisfactorily resolved. StadiumCo shall provide the Authority Representative and Authority Project Manager with a copy of the list of Punch List items.

3.4 **Third Party Disputes.**

(a) The Authority shall not expressly waive, forego, settle, or otherwise resolve any claim or dispute by or against any third party (including but not limited to the CM at Risk) arising out of or related to the development, design or construction of the Stadium Project (“**Project Claim**”) without the prior written approval of StadiumCo, which shall not be unreasonably conditioned, delayed or withheld. If the Authority fails to obtain StadiumCo’s prior written approval before waiving, foregoing, settling, or otherwise resolving any Project Claim, then the StadiumCo Parties shall not be responsible for payment of any resulting cost, damage, expense or other loss, regardless of whether such cost, damage, expense or other loss results in Cost Overruns. In addition, if the Authority fails to obtain StadiumCo’s prior written approval before waiving, foregoing, settling, or otherwise resolving any Project Claim that results in a waiver of any of the StadiumCo Parties’ rights to damages, the Authority shall, to the extent permitted by Applicable Law, indemnify the StadiumCo Parties for any and all such damages.

(b) The Authority shall promptly notify StadiumCo in writing of any Project Claim. Upon request, the Authority shall allow one or more of the StadiumCo Parties (at their choice) to participate in the prosecution or defense of such the Project Claim and make determinations on whether to settle such Project Claim. The Authority shall also cooperate and coordinate with the StadiumCo Parties to allow them to enforce their rights as third-party beneficiaries under any Project Agreement.

(c) Notwithstanding anything to the contrary in this Agreement or the Development Agreement, or any of the other Definitive Documents, the Program Manager has no authority on behalf of StadiumCo to grant written approval to the Authority to waive, forego, settle, or otherwise resolve any Project Claim as contemplated by Section 3.4(a). The only person with such authority on behalf of the StadiumCo shall be such individual as may be designated in writing by StadiumCo.

**ARTICLE IV
INTENTIONALLY OMITTED**

**ARTICLE V
INDEMNIFICATION**

5.1 **Indemnification**. To the extent permitted by Applicable Law, StadiumCo undertakes and agrees to indemnify, hold harmless and defend each of the Authority Parties and their respective elected and appointed officials, officers, employees, attorneys, representatives, agents, and instrumentalities (the “**Indemnified Parties**”), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney’s fees and costs of litigation and litigation-related matters, damage or liability (“**Loss**”) to the extent arising out of the following: (a) the material breach or failure of any obligation under this Agreement by StadiumCo under this Agreement; and (b) any personal or bodily injury, including death, to any person or destruction of property resulting from the negligent performance by StadiumCo or Program Manager of StadiumCo’s obligations under this Agreement, except to the extent caused by the negligent or willful misconduct of Authority or its respective elected and appointed officials, officers, employees, attorneys, representatives, agents, and instrumentalities.

5.2 **Intentionally Omitted**

5.3 **Intentionally Omitted**

**ARTICLE VI
DEFAULT; TERMINATION**

6.1 **Event of Default**. Each of the following events constitutes a “Event of Default” of the defaulting Party:

(a) the Development Agreement has been terminated as a result of a default thereunder; or

(b) a Party breaches a material provision of this Agreement.

6.2 **Notice and Cure Procedure; Remedies**. Upon the occurrence of an Event of Default under Section 6.1(a) above, the non-defaulting Party may terminate this Agreement upon written notice to the other Party and pursue the remedies in Subsections (2) and (3) below. Upon the occurrence an Event of Default under Section 6.1(b) above, the non-defaulting party shall first notify the defaulting Party in writing of its purported breach or failure, giving the Party 30 days from receipt of such notice to cure such breach or failure, or if it cannot be cured within such 30-day period, then giving it the obligation to commence and continue curing such default within the 30-day period. In the event such default is not cured (or the defaulting Party does not continue curing such default, as applicable) within such 30-day period, then the notifying Party shall be entitled to any rights afforded it at law or in equity by pursuing any or all of the following remedies:

(a) terminating this Agreement upon ten days prior written notice to the other party;

(b) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for an Event of Default; or

(c) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If a Party elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

6.3 **Termination by the Authority**. In the event of termination of the Development Agreement due to the material breach of StadiumCo thereunder, the Authority may immediately terminate this Agreement by written notice to StadiumCo and NSH.

ARTICLE VII MISCELLANEOUS

7.1 **Notices**. Any notice, consent or other communication under this Agreement shall be in writing and shall be considered given when delivered in person or sent by electronic mail (provided that any notice sent by electronic mail shall simultaneously be sent via personal delivery, overnight courier or certified mail as provided herein), one (1) Business Day after being sent by a reputable overnight courier, or three Business Days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other Party hereto):

To StadiumCo: Walsh Management LLC
4400 Harding Road
Nashville, TN 37205
Attn: Ian Ayre, Chief Executive Officer

with a copy to: Nashville Soccer Holdings, LLC
4400 Harding Road
Nashville, TN 37205
Attn: Mary K, Cavarra, Vice President

and a copy to: Nashville Soccer Holdings, LLC
4400 Harding Road
Nashville, TN 37205
Attn: Eleanor G. McDonald, Vice President
and Secretary

To Authority: Executive Director
PO Box 196300
Nashville, Tennessee 37219

with a copy to: Director of Law
Metropolitan Department of Law
108 Metropolitan Court House
PO Box 196300
Nashville, Tennessee 37219

Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between StadiumCo and the Authority Representative and Authority Project Manager may be given (and shall be considered given when provided) by any of the means set forth above.

7.2 **Amendment.** This Agreement may not be amended or modified except in a writing signed and duly executed by the Parties.

7.3 **Binding Effect.** This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Authority and StadiumCo, subject to the limitations on assignment set forth in Section 7.7 below. Where each term “Authority” or “StadiumCo” is used in this Agreement, it means and includes the respective successors and assigns of each applicable entity.

7.4 **Waiver.** Waiver by any Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement. Any waiver must be in writing and signed by all Parties whose interests are being waived.

7.5 **Nonrecourse Liability of StadiumCo Parties Personnel/Authority Parties Personnel.** (a) Notwithstanding and prevailing over any contrary provision or implication in this Agreement and except for their criminal acts with respect to this Agreement (i.e., acts which would constitute felonious crimes where they were prosecuted for and convicted of such acts), the officers, directors, partners, shareholders, members (other than its parent company, NSH), employees and agents of StadiumCo (the “**StadiumCo Personnel**”) shall not in any way be liable under or with respect to this Agreement; no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of StadiumCo Personnel with respect to liability under or with respect to this Agreement; no judgment with respect to liability under or with respect to this Agreement shall give rise to any right of execution or levy against the assets of any of StadiumCo Personnel.

(b) Notwithstanding and prevailing over any contrary provision or implication in this Agreement, no member, elected or appointed official, officer, employee, agent, volunteer, independent contractor or consultant of the Authority Parties shall be liable to any of the StadiumCo Parties, or any successor in interest to StadiumCo Parties, in the event of any default or breach by the Authority Parties for any amount which may become due the StadiumCo Parties or any successor in interest to under this Agreement, or on any other obligation under the terms of this Agreement, except for their criminal acts with respect to this Agreement (i.e., acts which would constitute felonious crimes where they were prosecuted for and convicted of such acts).

7.6 **No Indirect Damages.** In no event shall any Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from, breach of contract, tort, the sole or concurrent negligence or intentional acts of such Party or any of its Affiliates or related parties, and the parties hereby waive any claims against each other for such damages. The provision shall survive the expiration or earlier termination of this Agreement.

7.7 **Assignment.** Neither Party shall assign this Agreement or any of its rights under this Agreement without the express consent of the other Party, which consent shall not be unreasonably withheld or delayed, and any such purported assignment shall be void.

7.8 **Headings.** The headings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or of its provisions.

7.9 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with Applicable Law, (b) does not alter any of the substantive rights, obligations or liabilities of any Party under this Agreement or any of the other Definitive Documents, and (c) confers upon the Parties the benefits intended to be conferred by the invalid provision; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.

7.10 **Absence of Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement or in a Project Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

7.11 **Governing Law.** This Agreement and the interpretation of its terms shall be governed by the internal laws of the State of Tennessee, without application of conflicts of law principles.

7.12 **Jurisdiction.** Venue and jurisdiction for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall be exclusively in the state and federal courts sitting in Davidson County, Tennessee. The Parties irrevocably submit to such jurisdiction.

7.13 **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

7.14 **Relationship of Parties.** No partnership or joint venture is established among the Parties under this Agreement. Except as expressly provided in this Agreement, no Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants

shall be considered employees or agents of any other Party or to have been authorized to incur any expense on behalf of any other Party or to act for or to bind any other Party. No Party shall be liable for any acts, omissions or negligence on the part of the other Parties or their employees, officials, agents, independent contractors, licensees and invitees. StadiumCo is an independent contractor of the Authority.

7.15 **Context.** As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation,” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or”.

7.16 **Incorporation by Reference.** All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

7.17 **Calculation of Time.** Unless otherwise stated, all references to “day” or “days” shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

7.18 **Counterparts.** This Agreement may be executed in any number of counterparts (including via facsimile transmission or pdf format via email) with the same effect as if all Parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

7.19 **NSH Liability.** NSH agrees to guaranty the obligations of StadiumCo under this Agreement. NSH shall be liable to the Authority for the portion of any final, non-appealable judgment obtained by the Authority against StadiumCo on account of a breach by StadiumCo of this Agreement that StadiumCo fails to satisfy in accordance the terms of such judgment.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the Effective Date.

**THE SPORTS AUTHORITY OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

Chair

Attest By:

Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WALSH MANAGEMENT LLC, a Tennessee limited liability company

By: Nashville Soccer Holdings, LLC, a Tennessee limited liability company, its sole Member

By: _____

Name: _____

Title: _____

And solely with respect to Section 7.19

NASHVILLE SOCCER HOLDINGS, LLC, a Tennessee limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

PROJECT MILESTONE SCHEDULE

[See Attached]

EXHIBIT B

STADIUM PROJECT BUDGET

[See attached]