

From: Lamb, Brian <Brian.Lamb@[REDACTED]>
Sent: Friday, January 30, 2015 2:13 PM
To: 'Ted Mondale'
Subject: Agreement Edits

Ted:
As we discussed, here are the edits to the overall agreement. This may be easily resolved if we both agree that we have a pre-existing permanent easement with the transit platform area and that nothing in this agreement can endanger the permanence of that easement. The problem with the way this has been drafted is that it would appear that if Metro Transit somehow failed to comply with any element of the O&M agreement that the MSFA could cancel the agreement and with it the easement. That has to change. Here are our thoughts:

Paragraph in Term Sheet at Issue (With MC edits shown):

“Council shall at all times obtain and comply with all permits, laws, ordinances, orders, rules, regulations and restrictions of any governmental authority or other agreement relating to the use, condition or occupancy of the LRT Improvements, Pedestrian Bridge or Stadium Plaza. ~~Council shall be responsible for all costs and liabilities which may arise out of transit operations.~~ Council shall not use or permit the ~~Transit Areas LRT Improvements~~, Pedestrian Bridge, Stadium Plaza, or any part thereof to be occupied or used in a manner: (i) which is unlawful, disreputable or creates a nuisance or fire hazard, (ii) ~~which would invalidate or increase the rate of insurance coverage on the Stadium or Stadium Plaza, or its contents,~~ (iii) ~~which would interfere with, annoy, or disturb any employee or occupant of the Stadium or Stadium Plaza,~~ or (iv) which would be contrary or inconsistent with the provisions of the O&M agreement.”

First Edit: ~~Council shall be responsible for all costs and liabilities which may arise out of transit operations~~

- Change was not made because MC is unwilling to pay for transit operations, as Jay states. It was made because:
- In the meeting the parties agreed to defer any commitments on risk allocation (i.e. insurance or indemnity) to the O&M agreement. The proper allocation of risk needs to involve the respective risk managers. This sentence is about risk allocation not transit operations.
- Both the Team and the Authority acknowledged MC has a concern about waiving its tort cap limits. The above sentence is so broad that OGC believe that it contractually waives MC tort caps.
- In addition, the first deleted sentence above is so broad that MC would arguably be liable for everything on the Stadium Plaza, LRT Improvements, Ped Bridge and possibly even the Stadium – if they can show some sort of nexus with Transit. Any such obligation should be limited geographically.
- A suggested revision for this Term Sheet would be “Council shall be responsible for all costs related to transit operations”. This addresses their purported concern.

Second Edit: Council shall not use or permit the ~~Transit Areas LRT Improvements~~, Pedestrian Bridge, Stadium Plaza, or any part thereof to be occupied or used in a manner: (i) which is unlawful, disreputable or creates a nuisance or fire hazard, (ii) ~~which would invalidate or increase the rate of insurance coverage on the Stadium or Stadium Plaza, or its contents,~~ (iii) ~~which would interfere with, annoy, or disturb any employee or occupant of the Stadium or Stadium Plaza,~~ or (iv) which would be contrary or inconsistent with the provisions of the O&M agreement.”

- Lindgren’s email suggests that the parties actually discussed the highlighted and accepted it. We didn’t.
- The existing LRT Improvements has an easement that defines the parties relationship. We thought they acknowledged that. MC paid \$5.5M dollars for the existing easement. If the stricken language is applied to the Existing Easement area then they have operational control over the LRT system, which MC has a statutory obligation to provide.
- Since we didn’t talk about this, we don’t know what their concern is related to our actions and increases in

insurance.

- Their language about annoying a stadium tenant and applying that to the LRT Improvements is over reaching. And not in the Target Field Station deal.
- A general issue with this paragraph and other areas in both the Term Sheet and the O&M Agreement is that the Council has an existing exclusive easement for the LRT improvements (purchased for \$5.5M) that defines the parties relationship. MSFA took the property subject to that Easement. Any agreement the MSFA enters into with the Team is subject to this agreement. This is a major difference between this Agreement and the Target Field model, where we had no land rights. What the Team and the Authority are trying to do is flip the relationship entirely. Our current exclusive rights in the easement area and their lack of rights in the LRT envelope are flipped. Our rights become use rights vis-à-vis the O&M Agreement. The Team or the Authority can terminate our rights if we default. They can suspend transit operations (if we breach). All of our rights are completely subject to all the rights of the Team and the Authority. This show up throughout the O&M Agreement. It is a wholesale rewrite of the parties relationship. It basically replaces the existing easement with the O&M agreement. Our understanding was that we agreed the existing easement would be subject to certain restrictions: advertising, naming rights, operating covenants such as crowd control, security, etc., as defined in the O&M agreement but that's it. They think for the promotional support package we agreed to flip the power dynamics. There is a major disconnect here.

Thanks,
Brian