INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: Building a Sports Facility in Your Community

Title: Top Ten Practical Suggestions For Local Governments Negotiating Professional Sports Facility Projects In Major Urban Markets

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KEEPING YOUR EYE ON THE BALL…

TOP TEN PRACTICAL SUGGESTIONS FOR LOCAL GOVERNMENTS NEGOTIATING PROFESSIONAL SPORTS FACILITY PROJECTS IN MAJOR URBAN MARKETS

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1. **It Takes A Village – And A Stadium.** The trend in developing new professional sports venues is for local governments to plan stadium facilities as a catalyst for neighborhood revitalization and downtown economic development. In this type of project, the local government should ensure that the stadium facility is the product of good urban design: that it is sited in the context of a more comprehensive revitalization plan; that the stadium is designed to fit into the surrounding urban environment with careful planning; and that the stadium uses are integrated programmatically with other complementary uses, such as retail, restaurant, entertainment, hotel and residential that are viable all year long, including on non-game days. The stadium design should also allow for year-round activity by multiple users, while minimizing impacts on the surrounding neighborhood (e.g., traffic, noise, light, etc.)

2. **Play To Home Field Advantage.** There is much debate about the net economic impact new stadium facilities have on local communities and in particular the assumptions that underlie such studies. The local government should tailor the stadium project to public policy goals and objectives that extend beyond fiscal benefits (e.g., civic pride and quality of life, jobs and job training programs, open space, affordable housing, school programs, etc.) At the outset of the project, the local government should clearly articulate those policy goals and objectives and create a formal process to build community support. If the voters adopt a ballot measure for the project, that measure can set forth policies that frame the goals and objectives and provide initial political support for the project. In addition, a term sheet, development memorandum or other similar non-binding agreement can serve as a public vehicle for testing whether the project is feasible, financially and politically, in light of the local government's policy goals, relatively early on in the process, before the parties invest the substantial resources required for final agreements and approvals.

3. **All The Players Must Work In Sync As A Team.** If the sports stadium project is a catalyst for a larger urban revitalization project, the local government should make certain that the team has an experienced development partner and the agreements with the team and its developer include appropriate contractually binding commitments that the complementary mixed-use development will be built in accordance with an agreed

upon scope of development and schedule of performance. While the scope of development and schedule of performance should generally allow some flexibility for the developer to respond to the market, they should specify the minimum development program, including phasing principles, that the local government expects. The remedies for failure to adhere to the scope of development and schedule of performance are critical and must be consistent with the requirements of any public and private financing. Those remedies may include, for example, liquidated damages (backed as appropriate by a guarantee or other assurance of payment), or a right to terminate the development agreement and recover title to any mixed-use parcels that the local government has conveyed and reconvey those parcels to another developer.

4. **Make The Other Team Work Harder Than You.** The local government should strive to limit any financial contribution to the stadium project that it may make to new revenues generated by the project itself, such as an allocation of net available property tax increment from the stadium project and any ancillary development. If the project includes any public financing, the public agency should prudently cap its contribution and insulate its general fund against liability, including, for example, limiting recourse on the debt to the new revenues, obtaining bond insurance, and receiving guarantees from the team or other third parties sufficient to cover any shortfall in debt payments (guarantees may affect otherwise tax exempt status of public debt). To assess the need for, and maximum amount of, any public financing, the local government should carefully analyze a pro forma for the development project and in doing so use expert independent consultants as needed. The local government should also ensure that there will be an appropriate ratio of the sum of private financing to the amount of any public financing. In that regard, it may wish to look for opportunities through the transaction structure to maximize private financing and any financial assistance from the League. These opportunities could entail negotiated tradeoffs, such as a reduced participation by local government in stadium revenues.

5. **Play Solid Defense.** The local government should protect itself against responsibility for construction cost overruns though careful peer review of construction cost estimates and contractual protections in the lease with the team. The contractual provisions may include, for example, requirements for evidence of adequate funding for construction before delivering possession of the site to the team, evidence of an appropriate guaranteed cost construction contract with a qualified third-party contractor, indemnification agreements and receipt of an appropriate third-party guarantee or other financial assurance.

6. **Building Strong Fundamentals Pays Off At Game Time.** The construction of adequate transportation improvements and other public infrastructure is a key to success of the project. The improvements need to provide for adequate vehicular and pedestrian access, including parking, without negatively impacting the surrounding neighborhood. They should also include facilities that promote alternative modes of access, such as public transportation. Generally, most if not all of these improvements need to be completed before the stadium opens.

7. **If It Ain't Broke Don't Fix It.** The local government should endeavor to transfer to the team or development entity all responsibility for operation, maintenance and repair of the sports stadium facility, or at least limit the government's own responsibility to the extent possible. It can do so by assigning such obligations to the tenant through the lease of the facility. The local government should also ensure that the team is adequately funding maintenance and repair on a regular basis throughout the entire term of the lease. While the private lenders financing construction of the stadium may require covenants in their loan documents that help ensure adequate maintenance and repair, the local government may also wish to consider including similar covenants in its lease agreement, such as a provision that the tenant establish a reserve to fund capital improvements and repairs.

8. **Don't Let Another Team Steal Home.** The local government should negotiate a stand-alone non-relocation agreement that ensures the team will play at the new stadium (and be identified with the home local government) for the longest possible term. That term should be at least as long as the greater of the term of any public debt (plus an appropriate cushion) or the initial term of the lease with the team (often 20-30 years). For the non-relocation agreement to be meaningful, the local government needs to address bankruptcy risk of the team as well as the rights of any private lenders that have a security interest in the team franchise, and the local government may need to have an inter-creditor agreement with such lenders. The local government may also wish – or need – to get the League's endorsement of the non-relocation agreement. Before entering into the stadium lease and incurring any contractual obligations, the local government should perform appropriate due diligence as to the profitability of the team franchise and the condition of the League to help ensure that the team will be economically viable over the term of the lease.

9. **What You Get Out Of The Game Depends On What You Put In.** Generally the local government owns or acquires the land that comprises the site for the stadium and related parking area and ground leases the site to the team (or the team's development entity) for construction and operation of the sports facility, or it leases the completed facility to the team for games and related events. In either scenario, structuring the rent can be complex, depending, among other things, on the respective contributions of the parties to the project, the apportionment of rights and obligations, the market, and legal requirements. Base rent under the lease should at a minimum cover any ongoing obligations of the local government with respect to the facility. If the local government is relying on base rent for such purposes or the rent otherwise plays a significant role in the local government's budget, it should obtain appropriate protections against interruption in rent payments due to a strike, damage to the facility or other event, through insurance or other similar financial assurances. To achieve other objectives, such as minimizing or eliminating any public financing and any responsibility for operation, maintenance and repair of the facility, the local government may wish to consider a below-market rent lease. The local government should contemplate providing for an appropriate participation in net revenues from the project, after taking into account requirements for the team to pledge contractually obligated income (e.g., naming rights, pouring rights, seat and box licenses, etc.) in connection with private financing, and after taking into account the allocation of risk between the public agency and the team relative to the

overall development and operation of the facility.

10. It's Not Over Until It's Over. The local government should address up front what happens to the sports stadium at the end of the lease term. Modern stadiums generally have a useful economic life of about 30 years and the initial terms of leases typically do not extend beyond that period. As a result, the local government needs to plan for possible obsolescence of the stadium at the end of the lease term. It should consider providing for a demolition obligation on the part of the team, or other tenant entity, and requiring the establishment of a sinking fund or other appropriate financial assurance to secure the cost of demolition.

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