

City Council – Action Request Form

Date: September 13, 2021

To: Mayor, Mayor Pro Tempore, and Members of the City Council

From: Ben Rowe, Assistant City Manager

Council Action Requested:

1. Public Hearing
2. Resolution Authorizing Amendments to the Truist Stadium Lease Agreements with WS Dash, LLC (f/k/a Sports Menagerie, LLC) and its Affiliates and Amendments to the Companion Amended and Restated Incentives Agreement (Northwest Ward)

Strategic Focus Area: Economic Vitality and Diversity

Strategic Objective: Promote Travel and Tourism

Strategic Plan Action Item: No

Key Work Item: Yes



Summary of Information:

On February 1, the Mayor and City Council approved a new lease agreement with the Winston-Salem Dash for Truist Stadium. The new agreement established a new 25-year lease, reduced the annual lease payment by 50%, eliminated the ticket surcharge, and set a common due date of June 1 for the lease payment and economic incentive payment. The annual lease payment was reduced from \$1,545,000 to \$750,000, a reduction of \$795,000. This reduction, along with the elimination of the ticket surcharge (-\$175,000), brings the total amount of relief to \$970,000. The exhibit provided with the approved resolution noted that all other provisions, including responsibilities for stadium maintenance and improvements, remained the same.

After that approval, the City’s legal counsel drafted changes to the agreement to reflect the modifications approved by the City Council. Subsequently, the Dash’s legal counsel requested several changes to the lease agreement that were not approved by the Council. These changes included base rent adjustments resulting from government restrictions or other factors beyond the team’s control (in addition to the rent reduction approved by the Mayor and City Council), reduction in the required letter of credit, change in the due date from June 1 to October 1, compliance with MLB standards for both baseball facilities and health and safety upgrades,

Committee Action:

Committee	<u>Finance 9/13/2021</u>	Action	<u>Approval</u>
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For	<u>Unanimous</u>	Against	<u></u>
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Remarks:

change in certain facility replacement responsibilities, and required approval of the lease and any amendments by MLB.

City management instructed the City's legal counsel to inform Dash officials that these changes would require the approval of the Mayor and City Council. After the team's legal counsel presented their requested changes, City staff were informed that Major League Baseball would not approve the lease agreement in its current form. Subsequently, Major League Baseball submitted their requested changes to the lease agreement.

At the May meeting of the Finance Committee, City staff briefed the Mayor and Council Members on the requested changes and presented a table that highlighted the differences between the three versions of the lease agreement. City staff subsequently reached out to officials with Durham, Fayetteville, and Kannapolis to see whether MLB was requiring similar changes to the lease agreements with their teams. Durham and Kannapolis responded that they had not made any changes to their agreements like those requested by the Winston-Salem Dash.

Over the last three months, City staff and outside counsel have been working with the team's counsel to draft final modifications to the new agreement. Based on these additional discussions, City staff recommend amending the City's new lease agreement with the WS Dash, LLC to reflect the following changes:

- Reduces the required letter of credit from \$1,200,000 to \$900,000 by the effective date; subsequently reduces the letter of credit to \$750,000 if no "disqualifying event" on 1/1/26.
- States City is subject to comply with Baseball Facility Standards established by *Professional Development League (PDL) Rules and Regulations*, subject to the approval of the appropriations for the improvements by the City Council.
- States City is subject to comply with Health and Safety Facility Upgrades required because of COVID-19 or other epidemics, subject to the approval of the appropriations for the improvements by the City Council.
- With respect to insurance, changes the team's Commercial General Liability Insurance coverage limits from not less than Two Million and No/100 Dollars (\$2,000,000.00) for each person and Three Million and No/100 Dollars (\$3,000,000.00) for each occurrence and One Million and No/100 Dollars (\$1,000,000.00) for property damage for each occurrence to not less than Two Million and No/100 Dollars (\$2,000,000) each occurrence and Four Million and No/100 Dollars (\$4,000,000) general aggregate; updates and modifies certain other insurance provisions.
- Notes the landlord (i.e., City) is self-insured for commercial general liability, automobile liability, and workers compensation coverage through the Risk Acceptance Management Corporation (RAMCO).
- Clarifies the indemnification provision and does not require the landlord and tenant to indemnify the other for losses caused by the negligence or willful misconduct of the party seeking to be indemnified.

- Requires the team to receive advanced approval by the Professional Development League for any waivers, alterations, or modifications.
- Regarding any delays related to the performance of the duties and obligations of the lease, the term “Unavoidable Delay” is replaced with “Force Majeure” and adds pandemics and epidemics as events of Force Majeure.
- Adds a new section that establishes definitions, subordinates the lease to PDL Rules and Regulations, requires approval by MLB PDL, and limits liability of MLB PDL and requires City to release MLB PDL from any claims, except those arising from fraudulent acts or willful misconduct. Includes a provision that, if the City terminates the lease and the tenant’s PDL license agreement is terminated, the City will work with MLB PDL to identify a replacement club.
- Except for other technical changes, all other provisions, including the annual due date for the lease payment (June 1) and responsibilities for stadium maintenance and improvements, would remain the same.

While efforts have been made to consolidate the Stadium Land and Improvements Lease and the Stadium Improvements Lease into one agreement, legal counsel on both sides have determined that both leases will need to be amended. The modifications outlined above will be reflected in both lease agreements.

In addition, the Amended and Restated Incentives Agreement is amended to reduce the letter of credit requirement to \$900,000 in line with the modification to the lease agreement noted above.

Pursuant to General Statute 160A-457 and 160A-458.3, the attached resolution authorizes the City to modify the new lease agreements with WS Dash, LLC to reduce the letter of credit requirement, require the City’s compliance with MLB facility standards and health and safety upgrades, adjust insurance coverage requirements, note the City’s self-insurance, clarify the agreement’s indemnification provision, require the team to receive advance approval from the PDL for any changes to the agreement, and add language required by MLB. Pursuant to General Statute 158-7.1, the attached resolution also authorizes an amendment to the Amended and Restated Incentives Agreement to reduce the letter of credit requirement to \$900,000 in line with the modification to the lease agreements noted above.

Because the lease agreement is part of a downtown and economic development project, the City Council will hold a public hearing prior to approval of the proposed amendments to the new lease agreement. That public hearing will take place on Monday, October 4, 2021.

Under MLB’s facility upgrade requirements, minor league stadiums must comply with these new standards within three years, or minor league teams will risk losing their licenses. Winston-Salem Dash officials recently informed City staff that Truist Stadium has been selected to receive a facility audit from MLB-contracted consultants. This audit, at no cost to the City or team, will provide an accurate “needs list” in accordance with the new PDL guidelines. Architects from Ewing Cole and engineers from Bright View Engineering will conduct the audit this summer.