# MINUTES OF THE 16th MEETING OF THE CONVENTION CENTER AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY

The 16th meeting of the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County (CCA) was held on November 18, 2010 at 8:02 a.m., in Room 209-10 at the Nashville Convention Center, Nashville, Tennessee.

**AUTHORITY MEMBERS PRESENT:** Mark Arnold, Marty Dickens, Darrell Drumwright, Willie McDonald, Luke Simons, Mona Lisa Warren, Leo Waters, and Vice-Mayor Diane Neighbors, Ex-Officio

**AUTHORITY MEMBERS NOT PRESENT:** Ken Levitan and Vonda McDaniel

**OTHERS PRESENT:** Rich Riebeling, Charles Robert Bone, Larry Atema, Charles Starks, Barbara Solari, Gary Schalmo, Terry Clements, Ryan Johnson, Scott Black, Debbie Frank, Mark Sturtevant, Mark Swann, Roxianne Bethune, Stacey Garrett, Butch Spyridon, Eileen McGinn, Seab Tuck, Natasha Blackshear, Bill Phillips, Kim McDoniel, Mike Garcia, Kristen Heggie, Peter Heidenreich, Joe Barker, Randy Clark, Kyle Young, Jim Caldwell, Mike Deitemeyer, Gary Cooper, Michael Cass, Andrew Law, Holly McCall, Brian Tibbs, Bill Marcel, Dan Broadbeck, Darrell Grant, Johnny Horton, Martin Patterson, and Joey Garrison. In addition other members of the general public and media were present.

The meeting was opened for business by Chairman Marty Dickens who stated that a quorum was present. The Appeal of Decisions was shown.

**ACTION:** Appeal of Decisions from the Convention Center Authority of the Metropolitan Government of Nashville and Davidson County – Pursuant to the provisions of § 2.68.030 of the Metropolitan Code of Laws, please take notice that decisions of the Convention Center Authority may be appealed to the Chancery Court of Davidson County for review under a common law writ of certiorari. These appeals must be filed within sixty days after entry of a final decision by the Authority. Any person or other entity considering an appeal should consult with private legal counsel to ensure that any such appeals are timely and that all procedural requirements are met.

It was announced that the next scheduled meeting of the Authority is Thursday, January 6, 2011 at 8:00 a.m. However, Chairman Dickens noted that an additional meeting in December may need to be called.

**ACTION:** Leo Waters made a motion to approve the 15th Meeting Minutes of October 7, 2010. The motion was seconded by Luke Simons and approved unanimously by the Authority.

Rich Riebeling was asked to discuss the hotel agreement. Mike Deitemeyer was then introduced to talk about the Omni hotel and Kyle Young spoke on behalf of the Country Music Hall of Fame.

Charles Robert Bone discussed the amendment to extend the decision deadline for the Omni hotel design to December 31, 2010.

**ACTION:** Leo Waters made a motion to approve the FIRST AMENDMENT TO THE DEVELOPMENT AND FUNDING AGREEMENT with Omni Nashville, LLC to extend the Decision Deadline until December 31, 2010 and authorizing Mr. Dickens to execute the Amendment and take any actions necessary or appropriate to formalize that amendment. The motion was seconded by Willie McDonald and after discussion was approved unanimously by the Authority.

Scott Black then introduced Eileen McGinn to report on the KPMG external audit. (Attachment #1)

**ACTION:** Mark Arnold made a motion to accept the audit results from KPMG for fiscal year ending June 30, 2010. The motion was seconded by Willie McDonald and approved unanimously by the Authority.

Mark Swann was introduced to discuss the Metro audit. (Attachment #1) There were questions and discussion.

Charles Robert Bone was asked to give an update on the Nashville Convention & Visitors Bureau Memorandum of Understanding.

**ACTION:** Leo Waters made a motion to approve Amendment No. 1 to the Interlocal Agreement between the Metropolitan Government and the Authority and authorizing Mr. Dickens and Mona Lisa Warren to execute the Amendment and take any actions necessary or appropriate to formalize that amendment. The motion was seconded by Willie McDonald and approved unanimously by the Authority. (Attachment #2)

**ACTION:** Leo Waters made a motion to rescind the approval of the Memorandum of Understanding with the Nashville Convention & Visitors Bureau approved on October 7, 2010; approving the revised Memorandum of Understanding with the Nashville Convention & Visitors Bureau; and authorizing Mr. Dickens to execute the Memorandum of Understanding and take any actions necessary or appropriate to formalize that agreement. The motion was seconded by Darrell Drumwright and approved by the Authority with Mark Arnold abstaining. (Attachment #3)

Charles Starks was asked to report on the MCC and hotel tax collections through September. (Attachment #1)

Larry Atema shared information on the project and Gary Schalmo was introduced to give a project update. (Attachment #1) There was discussion and questions.

Scott Black was asked to give a Financial update. (Attachment #1) There were questions and discussion.

There were additional questions and discussion including discussion for Mark Arnold, Charles Starks, and Larry Atema to meet and work on a consolidation of the information reported to the CCA.

With no additional business a motion was made to adjourn, with no objection the CCA adjourned at 9:40 a.m.

Respectfully submitted,

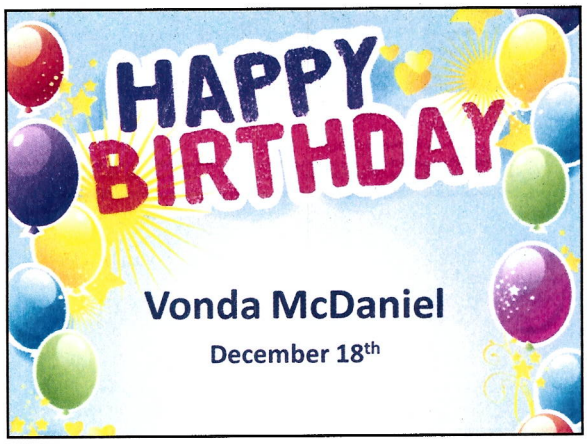
Charles L. Starks
Executive Director
Nashville Convention Center

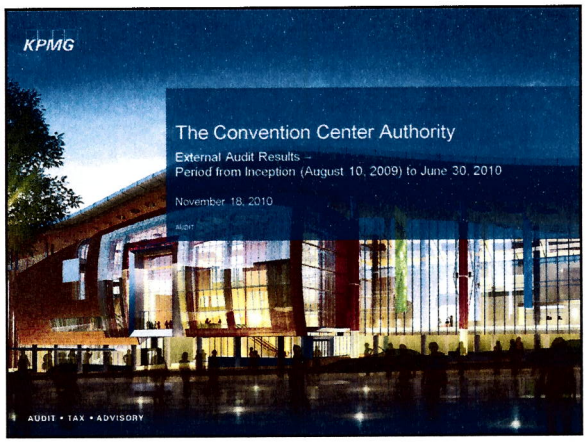
Approved:

Marty Dickens, Chairman
CCA 16th Meeting Minutes
Of November 18, 2010

## Appeal of Decisions

**Appeal of Decisions from the Convention Center Authority** – *Pursuant to the provisions of § 2.68.030 of the Metropolitan Code of Laws, please take notice that decisions of the Convention Center Authority may be appealed to the Chancery Court of Davidson County for review under a common law writ of certiorari. These appeals must be filed within sixty days after entry of a final decision by the Authority. Any person or other entity considering an appeal should consult with private legal counsel to ensure that any such appeals are timely and that all procedural requirements are met.*





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## KPMG's Client Service Team

## KPMG's Audit Responsibility

- We have a responsibility to conduct our audit in accordance with professional auditing standards.
  - AICPA
  - *Government Auditing Standards*
- In carrying out this responsibility, we plan and perform the audit to obtain reasonable – not absolute – assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.
- We have no responsibility to obtain reasonable assurance that misstatements that are not material are detected.



## KPMG's Independence

- KPMG has established an integrated and comprehensive system of quality control over independence that includes a framework of detailed policies and procedures supported by sophisticated, web-based, electronic systems and a dedicated group of experienced professionals to provide technical guidance and support.
- Our system seeks to ensure compliance with all guidelines established by the AICPA Independence Standards Board and Government Accountability Office including:
  - Restrictions on financial interests in the debt securities of the Convention Center Authority
  - Restrictions on consulting and information technology services, as well as placing restrictions on the types of "non-audit" services that can be provided by KPMG to the Convention Center Authority
  - Annually, report to the Audit Committee the status of KPMG's independence with respect to the Convention Center Authority
- KPMG is compliant with all established independence guidelines.



## Approach to Fraud Risks – How KPMG Addresses Fraud Risks in the Audit

Identification of fraud risks

- Perform risk assessment procedures to identify fraud risks, both at the financial statement level and at the assertion level
- Discuss among the engagement team the susceptibility to fraud
- Inquire of management, internal audit, audit committee, and others
- Evaluate broad programs/controls that prevent, deter, and detect fraud



## Audit Scope, Reports, and Other Deliverables

| | Audit Scope |
|---|---|
| Applicable financial reporting framework | • Accounting principles generally accepted in the United States of America |
| Scope of work | • Audit of financial statements and issuance of other deliverables as of and for the period from Inception (August 10, 2009) to June 30, 2010 |
| Applicable auditing standards | • Auditing standards generally accepted in the United States of America as issued by the Auditing Standards Board of the American Institute of Certified Public Accountants.<br>• Generally accepted *Government Auditing Standards* |

| Audit Report | Status |
|---|---|
| • Auditors' report on the consolidated financial statements of the Convention Center Authority | • Unqualified opinion issued |
| **Other Deliverables** | |
| • Material written communications between KPMG and management<br>• Letter regarding internal control | • Report issued<br>• No Material Weaknesses Identified |

## Required Communications

| | |
|---|---|
| KPMG's responsibility under generally accepted auditing standards and *Government Auditing Standards* | • Express our opinion on the financial statements based on our audits<br>• Assess risk that financial statements may contain a material misstatement<br>• Consider internal control structure/secure understanding of accounting systems |
| Accounting Policies | Policies adopted in first year of Convention Center Authority are customary for industry and scope of activities – described in Note 1 to financial statements |
| Consideration of Internal Control Structure | • No material weaknesses in internal controls were noted during the period from inception (August 10, 2009) to June 30, 2010<br>• Scope of work performed on internal controls not sufficient to render an opinion on effectiveness of internal controls |
| Disagreements with Management | There were no disagreements with management on financial accounting and reporting matters that, if not satisfactorily resolved, would have caused a modification of our report on the Authority's financial statements. |
| Consultation with Other Accountants | To the best of our knowledge, management has not consulted with or obtained opinions, written or oral, from other independent accountants during the period from inception (August 10, 2009) to June 30, 2010 |
| Major Issues Discussed with Management Prior to Retention | Retention was pursuant to a competitive bid proposal effort. There were no preconditions to retention. |



## Required Communications (continued)

| | |
|---|---|
| Risks Requiring Extensive Audit Procedures | Risks requiring extensive audit procedures were as follows:<br>• Existence and valuation of invested bond proceeds held for future Convention Center construction expenditures<br>• Completeness and accuracy of capitalization of construction work-in-progress<br>• Litigation accruals and disclosures<br>• Self-insurance exposure related to property, builder's risk, worker's compensation, automobile, and general liability claims and other expenses |
| Difficulties Encountered in Performing the Audit | We encountered no difficulties in dealing with management and appreciated their cooperation while performing our audit. |
| Significant Written Communications Between KPMG and Management | In accordance with the communications requirements of SAS No. 115, copies of the following material written communications between management and KPMG are included as Appendices to this presentation (Management Representation and Engagement Letters). |
| Review of other Information | • Our responsibility for other information in documents containing the Convention Center Authority's financial statements and our report thereon does not extend beyond the financial information identified in our report, and we have no obligation to perform and procedures to corroborate other information contained in these documents.<br>• We have read the other information included in the Convention Center Authority's financial statements.<br>• No matters came to our attention that cause us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation, appearing in the financial statements. |



## Required Communications (continued)

**Audit Differences**

Corrected

- To reclassify $4.9 million from land to deposits in order to properly to reflect the appropriate status of the Greyhound land acquisition as of June 30, 2010. This amount was placed into escrow in October of 2009; however, as the actual transfer of possession of the land to the Convention Center Authority did not actually occur until July 14, 2010, this was still a "deposit" at June 30, 2010 (considered a balance sheet reclassification only with no impact on total net assets).

Uncorrected

- None identified.

**Internal Control Recommendations Communicated to Management**

- No material weaknesses noted.



## Subsequent Events

- In accordance with Ordinance Number BL2010-690 passed by the Metropolitan Council on June 15, 2010, effective July 1, 2010 the Authority began to manage, operate and maintain the existing convention center, accounted for as an enterprise fund of the Metropolitan Government at June 30, 2010.
- On July 15, 2010, the Authority and the owner of a parcel of land needed for the Music City Center that was pending condemnation proceedings reached an agreement out of court. In addition to the $4,906,708 deposited for the land, the Authority agreed to pay up to an additional $1,400,000, plus up to $900,000 to be applied to operating costs associated with the previous owner's temporary move.
- On October 7, 2010 the Authority Board authorized agreements to facilitate the development of a premier headquarters hotel adjacent to the Music City Center. Under the terms of the development and funding agreement, the Authority will pay the hotel owner annual economic development payments and incentives from excess tourism tax revenues collected from the hotel over a period of twenty years. These payments will not begin until after both the Music City Center and the hotel are constructed and operating.



## KPMG Ethics and Compliance Hotline 1-877-576-4033

Hotline Purpose – To provide a confidential, non-retaliatory, and anonymous hotline for the good faith reporting of concerns about possible violations of law, professional and ethical standards, and KPMG policy.

Hotline Scope – The Hotline is available to all firm partners and employees, as well as clients, contractors, vendors, and others in a business relationship with KPMG, including other KPMG member firms whose partners and employees may be working with the U.S. firm on engagements with U.S. clients.



## KPMG Contact Information

**KPMG Audit Partner contact details:**

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# Audit of the Music City Convention Center Construction Project

Music City CENTER

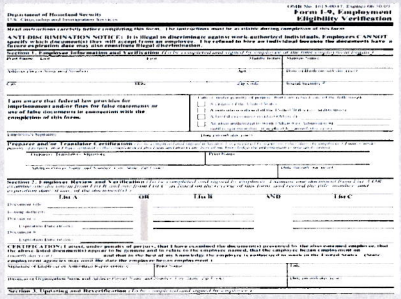
INTERIM REPORT

AUGUST 1, 2010 THROUGH OCTOBER 31, 2010

## LABOR AUDIT OBJECTIVES

- Eligible Employment
- Health Insurance
- Prevailing Wages

## ELIGIBILE EMPLOYMENT



Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which documents they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last | First | Middle Initial | Maiden Name

Address (Street Name and Number) | Apt. # | Date of Birth (month/day/year)

City | State | ZIP Code | Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #)
- An alien authorized to work until (expiration, if applicable, month/day/year)

Employee's Signature | Today's Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature | Print Name

Address (Street Name and Number, City, State, ZIP Code)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).)

List A | OR | List B | AND | List C

Document title:
Issuing authority:
Document #:
Expiration Date (if any):

Document #:
Expiration Date (if any):

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name and Address (Street Name and Number, City, State, ZIP Code) | Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

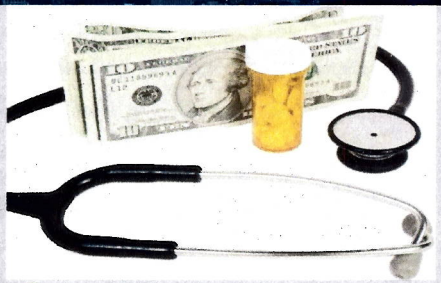
## INTERNAL AUDIT FORM I-9 REVIEW

| Subcontractor | Employees Reviewed | Employees Verified | Employees Hired Prior November 6, 1986 | Employees Resigned Within Three Days |
|---|---|---|---|---|
| Tuck-Hinton | 13 | 13 | | |
| Mountain States | 105 | 103 | 2 | |
| CCK | 32 | 31 | | 1 |
| CECO Concrete | 234 | 228 | 6 | |
| Totals | 384 | 375 | 8 | 1 |

## RECOMMENDATION

E-Verify

## T.C.A. § 7-4-205 – Health Insurance



Reviewed 355 workers with no exceptions observed, 291 or 78% of workers were using the Symetra benefit program

## TN 2009-2010 BUILDING PREVAILING WAGE

| CLASSIFICATION | REGIONS | 12 |
|---|---|---|
| Boilermaker | 01 | 16.05 |
| Bricklayer | 02 | 20.00 |
| Carpenter | 03 | 17.21 |
| Cement Finisher, Plaster | 04 | 16.45 |
| Class "A" Operator | 05 | 16.60 |
| Class "B" Operator | 06 | 11.73 |
| Class "C" Operator | 07 | 12.26 |
| Electrician | 08 | 21.81 |
| Low Voltage Electrician <70 Volts | 09 | 17.23 |
| Elevator Constructor | 10 | 25.18 |

## INTERNAL AUDIT PREVAILING WAGE

| Subcontractor | Number of Payroll Periods Reviewed | Number of Transaction s Reviewed | Number of Payroll Transaction Exceptions |
|---|---|---|---|
| Mountain States: | 3 | 65 | 21 |
| - Jones Brothers, Incorporated | 3 | 49 | 6 |
| - Jones Brothers, LLC | 3 | 16 | 5 |
| - HMA | 3 | 25 | 0 |
| CECO Concrete | 4 | 275 | 1 |
| CCK | 4 | 54 | 0 |
| Totals | N/A | 484 | 33 |

## RECOMMENDATION

- Establish protocol on how to classify unique job positions.
- Current and new subcontractors to classify each covered worker according to the building or highway construction schedule.
- Subcontractors correct previous errors in pay and classification

## Hotel Tax Collection

As of September 30, 2010

| | 5% Tax FY 09-10 | 5% Tax FY 10-11 | 5% Tax % Change | Additional Net MCC Taxes FY 09-10 | Additional Net MCC Taxes FY 10-11 | Additional Net MCC Tax % Change |
|---|---|---|---|---|---|---|
| July | $1,850,177 | $1,743,065 | -5.79% | $1,205,046 | $1,269,821 | 5.38% |
| August | $1,709,551 | $1,429,925 | -16.36% | $1,142,065 | $1,059,765 | -7.21% |
| September | $1,767,539 | $1,591,690 | -9.95% | $1,124,542 | $1,160,519 | 3.20% |
| October | $2,155,206 | | | $1,303,494 | | |
| November | $1,826,381 | | | $1,097,561 | | |
| December | $1,758,126 | | | $1,086,713 | | |
| January | $1,460,766 | | | $924,269 | | |
| February | $1,552,217 | | | $1,051,840 | | |
| March | $2,039,964 | | | $1,259,798 | | |
| April | $1,989,241 | | | $1,207,303 | | |
| May | $1,796,739 | | | $1,297,854 | | |
| June | $1,900,515 | | | $1,325,112 | | |
| YTD Total | $5,327,267 | $4,764,680 | -10.56% | $3,471,653 | $3,490,105 | 0.53% |

These numbers are still subject to change by Metro/Division of Accounts Auditors.

## Music City Center Tax Collection

August 2009 vs. 2010

| | 2009 | 2010 | Variance |
|---|---|---|---|
| Gross 1% Occupancy Tax | $341,910 | $285,985 | -16.36% |
| Secondary TDZ 1% | ($64,141) | ($0) | -100.00% |
| Net 1% Occupancy Tax | $277,770 | $285,985 | 2.96% |
| $2 Room Tax | $748,197 | $650,374 | -13.07% |
| Contracted Vehicle | $27,130 | $27,345 | 0.79% |
| Rental Vehicle | $88,968 | $96,061 | 7.97% |
| Total Net MCC | $1,142,065 | $1,059,765 | -7.21% |

These numbers are still subject to change by Metro/Division of Accounts Auditors.

## Music City Center Tax Collection

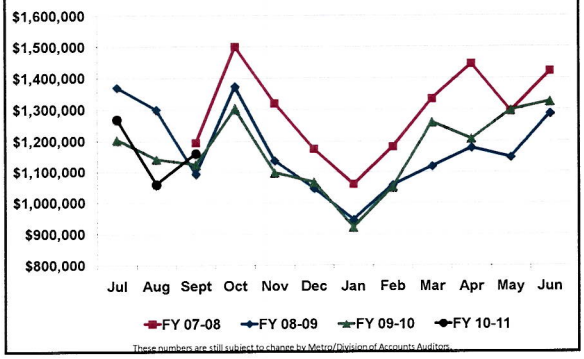
September 2009 vs. 2010

| | 2009 | 2010 | Variance |
|---|---|---|---|
| Gross 1% Occupancy Tax | $353,508 | $318,338 | -9.95% |
| Secondary TDZ 1% | ($83,786) | ($0) | -100.00% |
| Net 1% Occupancy Tax | $269,722 | $318,338 | 18.02% |
| $2 Room Tax | $736,913 | $718,508 | -2.50% |
| Contracted Vehicle | $32,748 | $31,177 | -4.80% |
| Rental Vehicle | $85,159 | $92,496 | 8.62% |
| Total Net MCC | $1,124,542 | $1,160,519 | 3.20% |

These numbers are still subject to change by Metro/Division of Accounts Auditors.

## MCC Net Tax Collections

As of September 30, 2010

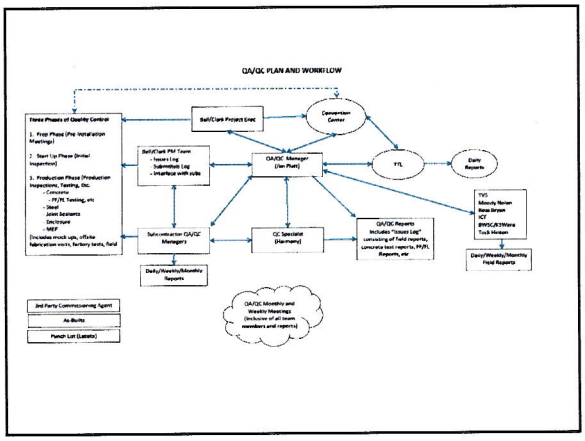



These numbers are still subject to change by Metro/Division of Accounts Auditors.

BELL CLARK CONSTRUCTION
A JOINT VENTURE
in Association with harmony

## GENERAL UPDATE

- Target Procurement Completion 12/31/10.
- Doors/Hardware selection completed.
- Waterproofing in progress.
- Value Engineering (VE)
  – re-bids due 11/19/10.
- Safety.
- QA/QC.



BELL CLARK CONSTRUCTION A JOINT VENTURE
In Association with harmony

## CONSTRUCTION

*(Approx. 480 workers on site)*

- **Foundation Work:** nearing completion (12/1/10).
- **Concrete (Ceco)**
  - 40,000 cubic yards (30%).
  - Level 1: 90% complete (meeting rooms).
  - Level 2: 100% complete (mezzanine & parking).
  - Level 3: 75% complete (parking & meeting rooms).
  - Level 4: 50% complete (mezzanine & parking).
  - Level 5: 10% complete (exhibition floor).

BELL CLARK CONSTRUCTION A JOINT VENTURE
In Association with harmony

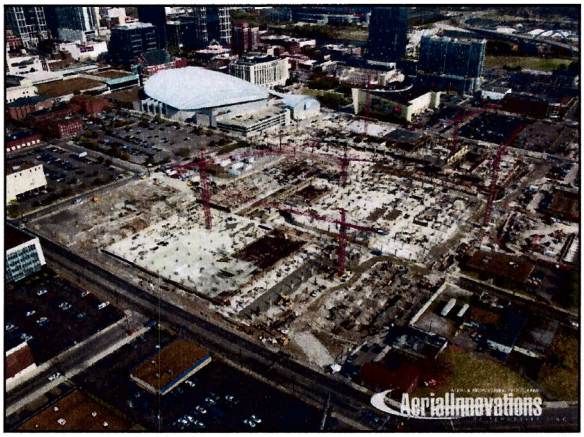
## CONSTRUCTION Cont.

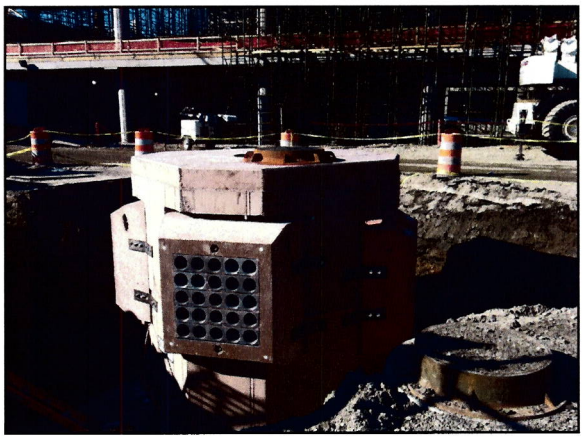
- **Plumbing (Foley)**
  - Building A: underground 75% complete.
- **Electrical (Conti)**
  - Underground: Buildings A & B.
  - "in-deck" rough-in ongoing.
  - 250 out of the 370 floor boxes received.
  - 20 floor boxes cast-in-place.

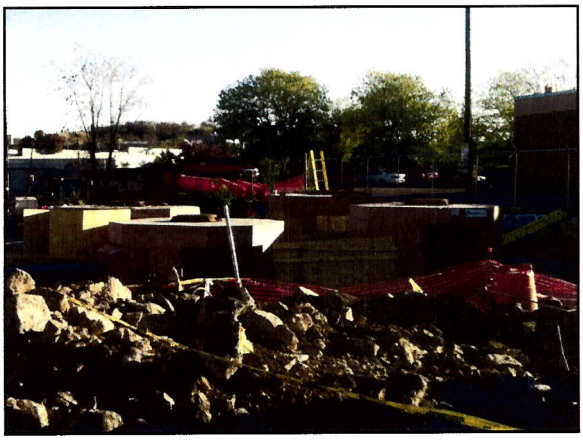
BELL CLARK CONSTRUCTION A JOINT VENTURE
In Association with harmony

## CONSTRUCTION Cont.

- **Utilities (NES)**
  - 4th and 5th Avenues: 50% complete.
  - Korean Veterans Blvd. (KVB): 100% complete.
  - New Substation : 60% complete.
- **Utilities (DES)**
  - Scheduled for mid-November.

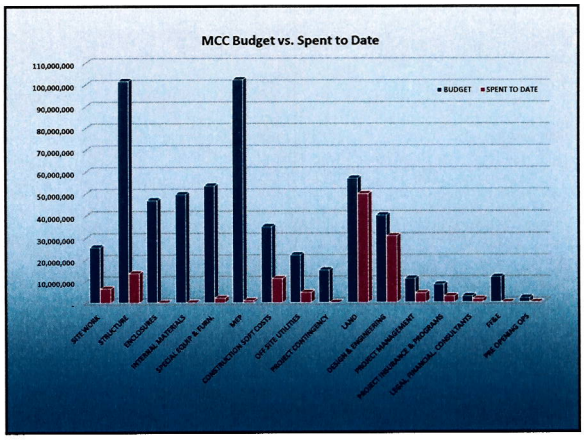






## MUSIC CITY CENTER BUDGET SUMMARY

| MCC MASTER BUDGET | BUDGET | SPENT TO DATE | REMAINING BUDGET | COST TO COMPLETE | VARIANCE |
|---|---|---|---|---|---|
| BUILDING SITE WORK | 25,674,997 | 6,479,096 | 19,195,901 | 19,195,901 | - |
| BUILDING STRUCTURE | 101,683,944 | 13,546,693 | 88,137,251 | 88,137,251 | - |
| BUILDING ENCLOSURES | 47,026,252 | - | 47,026,252 | 47,026,252 | - |
| BUILDING INTERNAL MATERIALS | 49,678,665 | - | 49,678,665 | 49,678,665 | - |
| BUILDING SPECIAL EQUIPMENT | 53,609,929 | 2,810,284 | 50,799,645 | 50,799,645 | - |
| BUILDING MEP | 102,324,850 | 898,818 | 101,426,032 | 101,426,032 | - |
| BUILDING SOFT COSTS | 35,001,363 | 10,363,928 | 24,637,435 | 24,637,435 | - |
| **CONSTRUCTION SUBTOTAL** | **415,000,000** | **34,098,818** | **380,901,182** | **380,901,182** | **-** |
| | | | | | |
| OFF SITE UTILITIES | 22,044,757 | 4,636,413 | 17,408,344 | 17,408,344 | - |
| PROJECT CONTINGENCY | 15,000,000 | - | 15,000,000 | 15,000,000 | - |
| LAND | 57,000,000 | 49,932,992 | 7,067,008 | 7,067,008 | - |
| DESIGN & ENGINEERING | 40,189,684 | 30,815,193 | 9,374,491 | 9,374,491 | - |
| PROJECT MANAGEMENT | 10,993,758 | 4,260,932 | 6,732,826 | 6,732,826 | - |
| PROJECT INSURANCE & PROGRAMS | 8,252,322 | 2,838,263 | 5,414,059 | 5,414,059 | - |
| LEGAL, FINANCIAL, CONSULTANTS | 2,869,480 | 1,608,106 | 1,261,374 | 1,261,374 | - |
| FF&E | 11,650,000 | - | 11,650,000 | 11,650,000 | - |
| PRE OPENING OPS | 2,000,000 | - | 2,000,000 | 2,000,000 | - |
| TOTAL | 585,000,000 | 128,190,717 | 456,809,283 | 456,809,283 | - |



## DBE PROGRESS REPORT

| As of: September 30th, 2010 | Forecasted DBE % (1) | ACTUAL DBE % (2) |
|---|---|---|
| DIRECT CONSTRUCTION | 28.0% | 14.9% |
| LAND (Relocation and Legal Costs) | 9.3% | 11.6% |
| DESIGN & ENGINEERING | 31.7% | 30.8% |
| PRE DEVELOPMENT PROJECT MGMT | 9.9% | 9.9% |
| INSURANCE BROKERAGE & PROGRAMS | 46.4% | 56.3% |
| LEGAL, FINANCIAL, CONSULTANTS | 29.2% | 38.3% |
| TOTAL | 28.3% | 22.7% |

(1) Forecasted DBE % is calculated based on contracts awarded to date.
(2) Actual DBE % is calculated based on amounts paid to date.

Convention Center Authority
November 18, 2010

**AMENDMENT NO. 1**
**TO THE**
**INTERLOCAL AGREEMENT**
**BETWEEN**
**THE METROPOLITAN GOVERNMENT OF NASHVILLE**
**AND DAVIDSON COUNTY**
**AND**
**THE CONVENTION CENTER AUTHORITY OF**
**THE METROPOLITAN GOVERNMENT**

This Amendment is entered into on this _____ date of _____ 2010, by and between the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government"), and the Convention Center Authority of The Metropolitan Government of Nashville and Davidson County "the Authority").

**WITNESSETH:**

WHEREAS, the Nashville Convention & Visitors Bureau (the "NCVB") brands, sells, and markets Nashville, Tennessee, and Music City to the world as a premier entertainment destination for travelers who seek authentic and unique leisure and convention experiences; and

WHEREAS, as a result of the flood experienced throughout the area of the Metropolitan Government and its surrounding areas in May 2010; the closing of the Opryland Hotel; and damage to the Music Valley area, the NCVB has worked tirelessly [i] to relocate conventions and hotel bookings within Nashville; [ii] to mitigate the loss of tourism tax revenues; and [iii] to assist in post-flood tourism development and promotion efforts; and

WHEREAS, the Authority and Metropolitan Government officials assisting with economic recovery after the flood recognize the importance of the post-flood efforts undertaken by the NCVB, including facilitating planned conventions by providing resources such as shuttles to and from the convention site, and hotel accommodations arranged at the last minute; and

WHEREAS, as a result of these efforts, the NCVB has incurred significant unbudgeted expenses that were essential to the immediate post-flood operation of the current Nashville Convention Center and are necessary to the continued future operation of the current Nashville Convention Center; and

WHEREAS, the parties hereby agree to modify the terms and conditions of the Interlocal Agreement dated June 15, 2010, in the manner set forth below:

Section I.2.d is hereby amended by adding the following provision at the end thereof:

"The existing fund balance may also be used to provide a donation or loan to the Nashville Convention & Visitors Bureau (NCVB), pursuant to a contract approved by the Authority Board, to assist with the expenses incurred by NCVB as part of its post-flood efforts described above. Any such contract providing for a loan of funds to the NCVB shall stipulate that no hotel occupancy taxes received by the NCVB through an agreement with the Metropolitan Government for tourism promotion and marketing shall be used for repayment of the funds."

Except for the foregoing, the remaining terms and conditions of the Interlocal Agreement remain in full force and effect.

This Amendment shall not be effective until approved by the governing bodies of both parties, fully executed and filed with the Metropolitan Clerk.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers as of the date first written above.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY:

_____
Karl F. Dean, Metropolitan Mayor

APPROVED AS TO
AVAILABILITY OF FUNDS:

_____
Richard M. Riebeling
Director of Finance

APPROVED AS TO FORM
AND LEGALITY:

_____
Sue B. Cain
Director of Law

ATTEST:

_____
Metropolitan Clerk

CONVENTION CENTER AUTHORITY
OF THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY:

_____
Chairman

ATTEST:

_____
Secretary

# MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Agreement") is made and entered into effective this 18th day of November, 2010 by and between THE CONVENTION CENTER AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (the "Convention Center Authority") and THE NASHVILLE CONVENTION & VISITORS BUREAU (the "NCVB"). (The Convention Center Authority and NCVB are collectively referred to herein as the "Parties.")

## WITNESSETH

**WHEREAS**, the Convention Center Authority is a public, nonprofit corporation and a public instrumentality of The Metropolitan Government of Nashville and Davidson County, Tennessee ("Metropolitan Government") and is authorized under Title 7, Chapter 89, Part 1, Tennessee Code Annotated, as amended, to plan, promote, finance, construct, acquire, renovate, equip and enlarge convention center facilities along with associated hotel accommodations in order to promote and further develop tourism, convention and employment opportunities in the State of Tennessee and thereby provide a means to attract conventions, public assemblies, conferences, trade exhibitions or other business, social, cultural, scientific and public interest events to the State, enhance the State's image as a convention destination, and encourage and foster economic development and prosperity and employment within the State; and

**WHEREAS**, NCVB brands, sells and markets Nashville, Tennessee, and Music City to the world as a premier entertainment destination for travelers who seek authentic and unique leisure and convention experiences; and

**WHEREAS**, as a result of the flood experienced throughout the area of the Metropolitan Government and its surrounding areas in May, 2010; the closing of the Opryland Hotel; and damage to the Music Valley area, the NCVB has worked tirelessly [i] to relocate conventions and hotel bookings within Nashville; [ii] to mitigate the loss of tourism tax revenues; and [iii] to assist in post-flood tourism development and promotion efforts. As a result of these efforts, NCVB has incurred significant expenses (the "Post-Flood Expenses"), which were unforeseen and, therefore, not budgeted; and

**WHEREAS**, the Convention Center Authority and officials of the Metropolitan Government working with economic recovery after the flood recognized the importance of the post-flood efforts undertaken by the NCVB including facilitating planned conventions by providing resources such as shuttles to and from the convention site from and to hotel accommodations arranged at the last minute; and

**WHEREAS**, the efforts of the NCVB and their related costs were essential to the immediate post-flood operation of the current Nashville Convention Center and are necessary to the continued future operation of the current Nashville Convention Center; and

**WHEREAS**, the Convention Center Authority recognizes the importance of tourism tax revenues to the Metropolitan Government, tourism revenues to the local economy and the immediate need after the flood to prevent further loss of those revenues; and

**WHEREAS**, the Convention Center Authority recognizes the need now to assure the continued collection of these revenues and to promote economic recovery by continuing to promote and further develop tourism and convention opportunities; and

**WHEREAS**, in order to assure the continuation of these efforts by the NCVB, the Convention Center Authority believes it is necessary to advance to the NCVB funds to allow the NCVB to be able to continue these efforts.

**NOW THEREFORE,** for good and valuable consideration, receipt of which is hereby acknowledged and the mutual promises contained herein, the Parties agree as follows:

1. Advancement and Repayment of Post-Flood Expenses.

a. As a result of NCVB incurring the Post-Flood Expenses for services essential to the operation of the Nashville Convention Center, and for the purposes and reasons set forth herein, the Convention Center Authority agrees to advance $300,000.00 from the funds of the previous Convention Center Commission that were transferred to the Metropolitan Government pursuant to Ordinance No. BL2010-690, effective July 1, 2010.

b. Accordingly, NCVB agrees to repay the advancement as follows: $100,000.00 on or before September 30, 2011; $100,000.00 on or before September 30, 2012; and $100,000.00 on ore before September 30, 2013.

c. NCVB agrees that no hotel occupancy taxes received by it through an agreement with the Metropolitan Government for tourism promotion and marketing shall be used for repayment of the advancement.

d. To the extent that interest is owed or required on this advancement, it shall be charged and/or incurred at the minimum rate required to avoid imputed interest

2. Default. In the event either party shall fail to perform any of its obligations hereunder or shall become unable to perform by reason of bankruptcy, insolvency, receivership or other similar event, then the non-defaulting party, so long as said party is not itself in default hereunder, may seek specific performance, mandamus or other extraordinary relief to compel the defaulting party to perform hereunder.

3. Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not

be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

5. Entire Agreement. This Agreement contains the entire understanding among the Parties with respect to the matters contained herein, and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. Notwithstanding the foregoing, to the extent this Agreement or any of the terms hereof shall conflict with the terms of any of the other documents or agreements referenced herein, the terms of said documents or agreements shall control.

6. Headings. The paragraph headings are inserted only as a matter of convenience and for references and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

7. Assignment. The rights and obligations of the Parties may not be assigned, except to parties under the direct control and ownership of a Party hereto.

8. Notice. Any and all notices, offers or other communications provided herein shall be given in writing and delivered in person, by facsimile transmission and confirmed by mail or hand delivery, or by nationally recognized overnight courier, or by registered or certified mail, return receipt requested, which shall be addressed as follows:

*To NCVB:*
Butch Spyridon, President
One Nashville Place
150 4th Avenue North
Suite G-250
Nashville, Tennessee 37219

*To The Convention Center Authority:*
Charles Starks, Executive Director
Nashville Convention Center
601 Commerce Street
Nashville, Tennessee 37203

9. Authorized Representatives; Approval. Any action required of or permitted to be taken by any of the Parties hereto may be performed by an authorized representative of the respective party without further action by the governing body of such party. Notwithstanding the foregoing, this Agreement and/or the respective obligations under this

Agreement are subject to approval by the Boards of NCVB and the Convention Center Authority. Further, each party shall cooperate with the other party and provide such assistance as reasonably necessary or requested in connection with the fulfillment of each party's respective obligations under this Agreement. Such cooperation shall include, without limitation, the best efforts of both parties to cause the cooperation and assistance of each party's respective employees, agents, consultants, contacts and principals.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

THE CONVENTION CENTER AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

By: _____
Marty G. Dickens, Chair of the Board

Date: 11-18-10

NASHVILLE CONVENTION CENTER & VISITORS BUREAU

By: _____
Butch Spyridon, President

Date: 11-18-10

Approved as to Form and Legality:

_____
Legal Counsel
Convention Center Authority