

SPEEDWAY DEVELOPMENT AGREEMENT

This Speedway Development Agreement (this “**Agreement**”) by and among **The Metropolitan Government of Nashville and Davidson County** (the “**Metropolitan Government**”), acting by and through the **Metropolitan Fair Board of Commissioners** (the “**Fair Board**”), and **Bristol Motor Speedway, LLC**, a Tennessee limited liability company (“**Bristol**”), is entered into this ___ day of _____, 2022 (the “**Effective Date**”). The Metropolitan Government and Bristol collectively are referred to herein as the “**Parties**” and individually as a “**Party**.” This Agreement is attached to and made a part of that certain Speedway Lease Agreement (the “**Speedway Lease**”) between the Fair Board and Bristol, dated as of the date hereof. In the event of a conflict between any provision of the Speedway Lease and this Agreement prior to Completion of the Speedway, the terms and provisions of this Agreement shall govern and control. In consideration of the mutual covenants and promises contained herein and in the Speedway Lease, the Parties agree as follows:

1. **Definitions.** Capitalized terms used but not defined herein shall have the meanings set forth in the Speedway Lease. In addition, the following terms used in this Agreement shall have the meanings hereinafter set forth:

“**Applicable Law**” shall mean any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, award, permit, license, authorization, or requirement of any court, board, agency, commission, office, division, subdivision, department, body or authority of the United States, the State of Tennessee, or Metropolitan Government.

“**Authority**” means The Sports Authority of The Metropolitan Government of Nashville and Davidson County.

“**Authority Bonds**” means the Authority’s Federally Taxable Public Improvement Revenue Bonds (Speedway Project), Series 2023, the terms and structure of which are described in **Exhibit H**.

“**Authority Contribution**” shall have the meaning set forth in Section 6(a) below.

“**Authorized Representatives**” shall have the meaning set forth in Section 3(b) below.

“**Bond Construction Proceeds**” has the meaning set forth in **Exhibit H**.

“**Bond Indenture**” means the Trust Indenture by and between the Authority, and the Bond Trustee, to be dated on or about the issue date of the Authority Bonds, as it may be hereafter amended or restated, pursuant to which the Authority Bonds may be issued from time to time.

“**Bond Trustee**” means Regions Bank, the trustee under the Bond Indenture, or any successor trustee appointed under the terms of the Bond Indenture.

“**Bristol Contribution**” shall have the meaning set forth in Section 6(a) below.

“**Bristol Representatives**” shall have the meaning set forth in Section 3(b) below.

“**Commencement Contingencies**” has the meaning set forth in Section 10 below.

“**Completion**” shall mean that (i) the Project Improvements have unconditionally received all Approvals necessary to permit occupancy and use of the Speedway and all material facilities therein for Motorsports Events at full capacity and (ii) the Speedway has been constructed, equipped and fixtured in accordance with the Final Plans.

“**Construction Agreement(s)**” shall mean the contracts, agreements, and other documents entered into by Bristol for the coordination, design, development, construction, and furnishing of the Project Improvements including the Design-Build Contract.

“**Contamination**” shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

“**Correction Work**” shall have the meaning set forth in Section 5(n) below.

“**Cost Overruns**” shall have the meaning set forth in Section 5(a) below.

“**CVC**” means the Nashville Convention & Visitors Bureau, a Tennessee nonprofit corporation d/b/a Nashville Convention and Visitors Corp.

“**CVC Contribution**” means an unconditional contribution from the CVC in the amount of Seventeen Million Dollars (\$17,000,000), to be made available to Bristol for (i) the Pre-Development Expenses, in an amount not to exceed Four Million Dollars (\$4,000,000), and (ii) the costs of designing and constructing the Project Improvements.

“**CVC Tourism Promotion Agreement**” means the [Tourism Promotion Agreement] by and between the Bristol and CVC in the form attached hereto as **Exhibit F**.

“**CVC Use Payments**” means the obligation of CVC under the CVC Tourism Promotion Agreement, upon Completion of the Speedway, to make an annual use payment to Bristol of \$650,000 per year as compensation for certain promotional and use rights granted by Bristol to CVC in the Speedway, as described therein.

“**Declaration**” means the declaration of covenants attached as **Exhibit C**.

“**Design-Build Contract**” shall have the meaning set forth in Section 5(d) below.

“**Designer of Record**” shall mean an employee of the Design-Builder who on the date the Design-Build Contract is effective, and at all times until Completion, satisfies all of the following criteria:

- (a) licensed or otherwise in compliance with all Applicable Laws to do business and act as an architect in the State of Tennessee and in Davidson County, Tennessee for the type of work proposed to be performed by such architect;
- (b) well experienced as an architect in comparable work; and
- (c) neither such architect nor any of its Affiliates is in default under any material obligation to the Metropolitan Government under any other contract between such architect or any of its Affiliates and the Metropolitan Government.

“**Effective Date**” shall have the meaning set forth in the preamble of this Agreement.

“**Environmental Law**” shall mean all Applicable Laws, including, without limitation, any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (i) pollution or pollution control; (ii) protection of human health or the environment; (iii) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (iv) the presence of Contamination; or (v) the protection of endangered or threatened species.

“**Excusable Delay**” shall have the meaning set forth in Section 5(j) below.

“**Final Plans**” shall mean a substantially final set of all designs, plans, drawings, schematics and similar documents relating to the design and construction of the Project Improvements, and which are fully-integrated and compatible with the overall Fairgrounds site plan developed by the Fair Board and Metropolitan Government.

“**Design-Builder**” shall mean the entity engaged by Bristol responsible for design and construction of the Project Improvements.

“**Governmental Authority**” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

“**Guaranteed Maximum Price**” shall have the meaning set forth in Section 5(d) below.

“**Intergovernmental Project Agreement**” means the Intergovernmental Project Agreement dated as of [_____, 2022], between the Metropolitan Government and the Authority relating to the financing and development of the Project, as it may be amended or restated.

“**LEED**” means the Leadership in Energy and Environmental Design rating system devised by the United States Green Building Council.

“**Master Lease**” shall have the meaning set forth in Section 2 below.

“**Metro Representatives**” shall have the meaning set forth in Section 3(b) below.

“**Metropolitan Government**” shall mean the Metropolitan Government of Nashville and Davidson County.

“**Minimum Design Standards**” shall have the meaning set forth in Section 5(b)(i) below.

“**Motorsports Events**” shall have the meaning set forth in the Lease.

“**NASCAR**” means NASCAR Event Management, LLC, a Florida limited liability company.

“**Non-Tax Revenues**” shall mean all income and revenues of the Metropolitan Government which according to generally accepted accounting principles promulgated by the Governmental Accounting Standards Board and normal and customary accounting practices of the Metropolitan Government are deposited to and become assets of the General Services District General Fund of the Metropolitan Government, derived from any source other than income and revenues derived from the exercise by the Metropolitan Government of its powers to levy and collect taxes of any kind. The term "Non-Tax Revenues" does not include: ad-valorem property taxes; sales taxes; State-shared taxes; revenues of any agency or instrumentality of the Metropolitan Government; revenues which according to generally accepted accounting principles promulgated by the Governmental Accounting Standards Board and the normal and customary accounting practices of the Metropolitan Government, are deposited to and become assets of any proprietary fund or enterprise fund of the Metropolitan Government; payments made by the Department of Water and Sewerage Services of the Metropolitan Government in lieu of ad valorem taxes pursuant to Resolution No. R96-177 adopted by the Metropolitan County Council on February 29, 1996; or lease payments payable to the Metropolitan Government or the Authority for the use of any sports facilities now or hereafter owned by the Authority; or ticket surcharge revenues collected by the Metropolitan Government or the Authority from patrons of the Authority’s downtown arena currently known as Bridgestone Arena.

“**Party**” and “**Parties**” shall have the meaning set forth in the preamble of this Agreement.

“**Person**” or “**Persons**” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

“**Pledged Revenues**” shall mean the following revenues which shall be pledged by the Authority for the repayment of the Authority Bonds:

(i) all Ticket Tax Revenues and Sales Tax Revenues received by the Authority from the Metropolitan Government pursuant to the Intergovernmental Project Agreement; and

(ii) all lease payments made by Bristol to the Fair Board under the Speedway Lease, including any CVC Use Payments assigned by Bristol to the Fair Board thereunder.

“Pre-Development Activities” has the meaning set forth in Section 4(a) below.

“Pre-Development Budget” has the meaning set forth in Section 4(a) below.

“Pre-Development Expenses” has the meaning set forth in Section 4(a) below.

“Preliminary Plans” has the meaning set forth in Section 5(b)(i) below.

“Project” shall mean the design, construction, installation, equipping and furnishing of the Project Improvements.

“Project Accounts” shall mean the accounts established with Metropolitan Government or the Bond Trustee in accordance with Section 6 hereof in respect of the Authority Contribution, the State Grant and the Bristol Contribution (if any).

“Project Budget” shall mean the total project budget, as from time to time amended pursuant to the terms of this Agreement, for all costs under the Construction Agreements relating to the Project Improvements.

“Project Completion Date” shall mean the date of Completion of all of the Project Improvements Work in accordance with all of the requirements of this Agreement.

“Project Contributions” shall mean the Authority Contribution, the State Grant and the Bristol Contribution (if any).

“Project Costs” shall mean the costs of the design, development, and construction of the Project Improvements as set forth in the Project Budget.

“Project Delivery Date” shall have the meaning set forth in Section 5(e) below.

“Project Improvements” shall mean, collectively, the Speedway (including all Speedway-related furniture, fixtures and equipment and all concession improvements) and all improvements appurtenant thereto or comprising a part of any of the same (including all pre-construction infrastructure improvements) and all appurtenances and amenities relating to any of the same, all as are more fully described in the Preliminary Plans and the Final Plans.

“Project Improvements Construction Schedule” shall mean a schedule, as from time to time amended, of critical dates relating to the Project Improvements Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which Project Improvements Construction Schedule shall contain the dates for: (a) ordering and delivering of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Project Improvements, (b) completion of the Final Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (c) issuance of all building permits and satisfaction of all Applicable Laws prerequisites to commencement of the Project Improvements Work, and (d) commencement and completion of the Project Improvements Work.

“Project Improvements Work” shall mean the design, development, construction, and furnishing of the Project Improvements in accordance with this Agreement and any demolition, site clearance and excavation work in connection therewith.

“Project Manager” shall mean [_____], which has been retained by, and is the advisor to, Bristol as its representative with respect to the design, development, construction, management of the Project Improvements Work and related services in connection therewith and be the project manager and direct the activities of the Design-Builder under the supervision of and per the directives of Bristol.

“Proposed Final Plans” has the meaning set forth in Section 5(c) below.

“Qualified Design-Builder” shall mean an entity that, on the date its name and qualifications are submitted to the Metropolitan Government, and at all times until Completion, shall satisfy all of the following criteria:

- (a) licensed or otherwise in compliance with all Applicable Laws to do business and act as a designer and general contractor in the State of Tennessee and Davidson County, Tennessee for the type of work proposed to be performed by such entity;
- (b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent Design-Build Contract from a Qualified Surety;
- (c) well experienced as a designer and general contractor in comparable work; and
- (d) neither such general entity nor its Affiliate is in default under any material obligation to the Metropolitan Government under any other contract between such contractor or its Affiliate and the Metropolitan Government.

“Qualified Surety” shall mean any surety which has an Alfred M. Best Company, Inc. rating of “A” or better and a financial size category of not less than “VIII” (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

“Ready for Occupancy” shall have the meaning set forth in Section 5(h).

“Reasonable and Prudent Developer” shall mean a developer of projects similar in scope, size, and complexity to the 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 developer of facilities similar to the Project Improvements complying with all Applicable Laws and engaged in the same type of undertaking.

“Regulated Substances” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws

“Required Environmental Permits” shall mean permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Project Improvements, or required to operate, maintain or use the Speedway or construct, maintain, operate or use any alterations or improvements, regardless of whether such Permits are required to be or have been obtained by the Authority or Bristol.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Speedway Site, including the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

“Sales Tax Revenues” shall mean revenue apportioned and distributed to the Metropolitan Government or its designee pursuant to Section 67-6-103(d)(1)(A)(vii), Tennessee Code Annotated, related to the Speedway.

“Site” means the site on which the Nashville Fairgrounds Speedway is currently located and on which the Speedway is to be constructed, in Nashville, Tennessee that is described on **Exhibit B** hereto.

“SM Guaranty” shall have the meaning set forth in Section 12.

“Speedway” shall mean a motorsport racetrack containing the requisite capacity to meet all requirements of Applicable Law for the collection of Ticket Tax Revenues, as determined in the sole discretion of the Metropolitan Director of Law or the Tennessee Attorney General, and including all appropriate amenities, signage, fixtures and other necessary and customary items, constructed in accordance with the Final Plans. The Speedway shall include all structures and areas within the Speedway footprint, including, but not limited to, grandstands, racing surface, infield and buildings. The Speedway shall be located in the Nashville Fairgrounds.

“Speedway Lease” shall have the meaning set forth in the preamble of this Agreement.

“State Grant” means an unconditional grant from the State of Tennessee in an amount not less than Seventeen Million Dollars (\$17,000,000) made to Bristol for the costs of designing and constructing the Project Improvements.

“Subcontractor” means any person or entity having a contract with the Design-Builder or any Subcontractor for the construction, equipping, or supplying by such Subcontractor for any portion of the Project.

“**Subcontracts**” means all subcontracts now or hereafter entered into by the Design-Builder or Bristol for the construction of any of the Project Improvements or the installation of any of the personal property for the Project or the performance of any other aspect of the Project Improvements Work, together with all sub-subcontracts, material or equipment purchase orders, equipment leases, and other agreements entered into by the Design-Builder, any Subcontractor, or any other party supplying labor or materials in connection with the Project Improvements Work.

“**Sub-Lease**” shall have the meaning set forth in Section 3 below.

“**Substantial Completion**” shall have the meaning set forth in Section 5(e) below.

“**Ticket Tax Revenues**” shall mean revenue apportioned and distributed to the Authority pursuant to Section 7-3-202, Tennessee Code Annotated, and an ordinance adopted by Metropolitan Council for the levy of a ticket tax on admission to all events held at the Speedway in an amount equal to the lesser of (i) five dollars (\$5.00) or (ii) 10% of the stated ticket price, in either case per ticket sold or given away during the term of the Speedway Lease or so long as the Authority Bonds remain outstanding, whichever is later.

“**TDEC**” shall have the meaning set forth in Section 9(b) below.

2. **Development Plan Generally.** Concurrently with the execution of this Agreement, the Fair Board, as Master Lessor, and the Authority, as Master Lessee will enter into a Master Lease Agreement in the form attached hereto as **Exhibit D** (the “**Master Lease**”), by which the Authority will lease the Site from the Fair Board for the duration of the term of the Authority Bonds; and (b) the Authority shall lease the Site back to the Fair Board pursuant to a Sub-Lease Agreement in the form attached hereto as **Exhibit E**, between the Authority, as Sublessor, and the Fair Board, as Sublessee (the “**Sublease**”), which provides the Fair Board with full, exclusive use and occupation of the Site for a period of no less than thirty (30) years from the effective date of the Sublease. The Fair Board, as lessor and Bristol, as lessee, will then enter into the Speedway Lease, pursuant to which Bristol will agree to operate, maintain and manage the Speedway and cause the Project to be completed pursuant to this Agreement. This Agreement sets forth the obligations of the Parties with respect to the development of the Project.

3. **Collaborative Process.**

(a) **Process.** The parties intend for the design and construction of the Improvements to be a cooperative, mutual endeavor in which the Metropolitan Government, the Fair Board and Bristol actively participate and work together with due diligence and good faith within the terms and conditions of this Agreement.

(b) **Speedway Oversight Committee.** The Speedway Oversight Committee will consist of the Fairgrounds Executive Director, the Chair of the Fair Board, and the Metropolitan Director of Finance or its designee. The Speedway Oversight Committee will represent the interests of Metropolitan Government and the Fair Board throughout the design, development and construction process.

(c) Declaration. The Fair Board, Bristol, and Nashville Soccer Club, LLC have approved the form of the Declaration, and will each execute and deliver the Declaration to the Fair Board. Notwithstanding any provision to the contrary contained herein, in the event the Fair Board, Bristol or Nashville Soccer Club, LLC fail to execute the Declaration prior to the Effective Date, Bristol agrees that, unless caused by an act of bad faith on the part of the Authority or the Fair Board, Bristol's inability to schedule any event at the Speedway under the Speedway Lease shall not be considered a breach of or default on this Agreement by the Authority or the Fair Board. Notwithstanding the expiration or earlier termination of this Agreement, the rights and obligations of the Parties herein that expressly survive such expiration or earlier termination will survive such expiration or earlier termination.

4. Pre-Development Budget and Activities.

(a) Design and Design-Build Contract. Bristol shall work cooperatively with the Fair Board and the Authority in the selection process for a Design-Builder. Upon selection of the Design-Builder, Bristol shall enter into a written contract (the "**Design-Build Contract**") to be approved by the Fair Board and Authority, which approval shall not be unreasonably withheld, conditioned, or delayed. The Design-Build Contract shall name the Metropolitan Government and the Authority as third-party beneficiaries. The Design-Build Contract shall be in form and substance typical and usual for projects similar to the Project Improvements, including such items as costs, construction schedules, liquidated damages for failure to satisfy delivery requirements, change orders and retainage requirements. Project Manager, as supervised and directed by the Speedway Oversight Committee, will be responsible for directing the activities of the Design-Builder in accordance with the Design-Build Contract. Without limiting any of the foregoing, the Design-Build Contract shall:

(i) require the Design-Builder to furnish evidence of insurance insuring the Metropolitan Government, the Authority, and Bristol, and their respective affiliates, from all claims as a result of injury or damage in connection with the Design-Builder's construction of the Project Improvements;

(ii) require the Design-Builder to submit a customary guaranteed maximum price ("**Guaranteed Maximum Price**") proposal for constructing the Improvements when the Proposed Final Plans are fully complete or at such earlier stage of completion (but no earlier than 75% complete) as may be approved by the Metropolitan Government and Bristol;

(iii) permit termination of the Design-Build Contract without liability to the Design-Builder (except for acceptable design and other pre-construction work already performed) if the Guaranteed Maximum Price proposal is not accepted;

(iv) require the Design-Builder to provide separate payment and performance bonds having a penal sum in the full amount of the Guaranteed Maximum Price and naming the Metropolitan Government and Authority as additional obligees;

(v) require that all substantive construction work and materials be procured by bidding or other competitive process approved by Bristol and the Metropolitan Government;

(vi) not permit the Design-Builder to self-perform any substantive construction work or furnish any materials intended to be incorporated into the Improvements except under exceptional circumstances and where approved in writing by Bristol and the Metropolitan Government, provided, however, that repurposing grandstands and/or other fixtures, equipment or furnishings owned by Bristol or any entity controlling, controlled by or under common control with Bristol shall not be deemed "self-performance" within the meaning of this Section 4(a)(vi);

(vii) permit amendment of the Guaranteed Maximum Price by additions or deductions by change order (any such change orders being subject to the approval of the Metropolitan Government and Bristol, and any increase in the Guaranteed Maximum Price paid by the party requesting such change), with any costs, other than duly approved change orders, which would cause the Guaranteed Maximum Price to be exceeded to be paid by the Design-Builder without reimbursement by the Metropolitan Government or Bristol;

(viii) provide that neither the Authority nor the Metropolitan Government shall be responsible for costs associated with any change order necessitated by or associated with errors or omissions in the Final Plans;

(ix) require the Design-Builder to indemnify and hold harmless Bristol, the Metropolitan Government, the Authority, and their affiliates (collectively, the "Indemnified Parties") for any damages, losses or expenses incurred by the Indemnified Parties for the failure of the Design-Builder to complete the Project Improvements on or before the Project Delivery Date in accordance with this Agreement (subject to appropriate extension for bona fide Excusable Delays) provided that such delay is not the fault of Bristol or its affiliates; and

(x) require the Design-Builder and any Subcontractors of the Design-Builder, upon written request from the Metropolitan Government, to furnish the Metropolitan Government with certified copies of payroll records.

(b) Bristol shall cause the Design-Builder to prepare detailed design drawings in furtherance of the development of the Project. Bristol may also incur other expenditures in furtherance of the pre-development of the Project as specifically described in the pre-development budget set forth in **Exhibit A** (such budget, as amended, modified and/or supplemented from time to time with the Approval of the Speedway Oversight Committee, in each instance, the "Pre-Development Budget"). Bristol shall have the right to re-allocate amounts contained in particular line items within the Pre-Development Budget to and from other line items within such Pre-Development Budget, provided, however, that re-allocations within the applicable sub-groups of the Pre-Development Budget may not exceed, in the aggregate a ten percent (10%) increase or decrease adjustment in such sub-groups without the Approval of the Speedway Oversight Committee. The expenditures identified in the Pre-Development Budget are collectively referred to in this Agreement as the "Pre-Development Expenses." The activities described and identified in the Pre-Development Budget are collectively referred to in this Agreement as the "Pre-Development Activities." All Pre-Development Expenses must be for expenditures which were incurred for design, environmental and engineering assessments of the Speedway or such other related expenditures as described in the Pre-Development Budget.

(c) Bristol shall submit to the Metropolitan Government a report on or prior to the 15th day of each month commencing with the first full calendar month following the Effective Date, detailing the amount of Pre-Development Expenses, by type or category, incurred by Bristol in the preceding month, and identifying the amount of such Pre-Development Expenses required to be paid by Metropolitan Government, Bristol and CVC pursuant to Section 3(c).

(d) CVC will fund the Pre-Development Expenses out of the CVC Contribution on a monthly basis, up to a maximum amount of \$4,000,000. Bristol will be responsible for paying any Pre-Development Expenses in excess of \$4,000,000. Bristol will enter into the CVC Tourism Promotion Agreement with CVC setting forth the obligation of CVC to fund the CVC Contribution in accordance with the preceding sentence within thirty (30) days after receipt of the monthly Pre-Development Expense report in accordance with Section 3(a).

(e) Bristol agrees that all Pre-Development Activities and all Project Improvements shall be procured consistent with the processes approved by the Metropolitan Director of Finance and Director of Law and that comply with Applicable Law, including without limitation the requirements of Title 4 of the Metropolitan Code of Laws. Bristol may procure elements of the Project from related companies so long as the procurement process described above is followed. All procurement processes undertaken pursuant to this Agreement or the Lease must be approved by the Metropolitan Government, such approval not to be unreasonably withheld.

(f) The Parties acknowledge and agree that at such time as the Pre-Development Activities have been completed information will be available to determine the final Project Budget.

5. Construction of Project Improvements.

(a) Construction Responsibilities. Bristol shall cause the Project Improvements to be constructed in accordance with the Final Plans in direct consultation with and approval of the Authority. Bristol shall be responsible for administering and supervising construction of the Project Improvements in collaboration with the Speedway Oversight Committee. The Project Improvements Work shall be constructed in accordance with the time schedule to be agreed upon by the Parties prior to the commencement of construction, subject to Excusable Delays (defined below). The Design-Builder shall construct the Project Improvements in a good and workmanlike manner and shall cause all construction work to comply with Applicable Law, applicable NASCAR standards, and all other Minimum Design Standards (defined below).

(b) Preliminary Plans.

(i) Bristol shall work directly with the Design-Builder to prepare and submit to the Metropolitan Government for review, proposed detailed (i) preliminary plans and specifications and elevations for the Project Improvements and (ii) a site plan of the Project Improvements showing the location, configuration and size of the Project Improvements (collectively, the “**Preliminary Plans**”) no later than _____, 202_. The Preliminary Plans must meet the minimum design standards described in **Exhibit G** attached hereto (the “**Minimum Design Standards**”). The Minimum Design Standards will

include, without limitation, fan and driver safety elements, noise abatement elements, ADA accommodation requirements, and all applicable NASCAR standards. The parties acknowledge a noise abatement study performed in 2021 and presented to the Fair Board (the “**Noise Study**”). The Minimum Design Standards will include the noise abatement features contemplated in the Noise Study. Any material items of concern of the Metropolitan Government shall be identified by the Metropolitan Government in writing in a detailed list specifying the nature and areas of concern and the changes the Metropolitan Government desires to be considered. Bristol, the Design-Builder and Metropolitan Government will meet within ten (10) business days from the date of delivery of the Metropolitan Government’s written list to discuss such areas of concern in good faith to consider possible adjustments to the proposed Preliminary Plans.

- (ii) If the expected Project Budget based on the proposed Preliminary Plans exceeds expected available funds from the State Grant and the Authority Contribution, the Parties will consider design adjustments to reduce the Project Budget so as not to exceed available funds; provided that such design adjustments shall not cause the Project design to fall below the Minimum Design Standards. If the expected Project Budget, as adjusted, continues to exceed expected available funds from the State Grant and the Authority Contribution, Bristol will have the option to (i) terminate this Agreement and Lease Agreement or (ii) contribute additional funds as may be necessary to cover the shortfall in the adjusted Project Budget (which amounts shall be included in the Bristol Contribution (as defined in Section 6(a), below). Bristol will notify the Metropolitan Government in writing of its election to contribute the Bristol Contribution or terminate this Agreement and the Lease Agreement within sixty (60) days after the Parties have identified that the expected Project Budget, as adjusted, exceeds expected available funds from the State Grant and the Authority Contribution. If Bristol notifies the Metropolitan Government in writing of its election to make the Bristol Contribution, such election shall be irrevocable and Bristol acknowledges that the Authority, the Fair Board and the Metropolitan Government shall have relied upon Bristol’s commitment to make the Bristol Contribution in electing to proceed with the issuance of the Authority Bonds.

(c) Final Plans. Bristol shall work directly with the Design-Builder to prepare and submit to the Speedway Oversight Committee for review, proposed detailed and final plans and specifications for the Speedway and other Improvements (the “**Proposed Final Plans**”) no later than _____, 202_. Any material items of concern of the Speedway Oversight Committee shall be identified by the Speedway Oversight Committee in writing in a detailed list specifying the nature and areas of concern and the changes the Speedway Oversight Committee desires to be considered. Bristol, the Design-Builder and Speedway Oversight Committee will meet within ten (10) business days from the date of delivery of the Speedway Oversight Committee written list to discuss such areas of concern in good faith to consider possible adjustments to the Proposed Final Plans. Once the Proposed Final Plans shall have been approved by Bristol and the Speedway

Oversight Committee, such Proposed Final Plans shall constitute the “**Final Plans**” for all purposes under this Agreement.

(d) Construction Schedule. The Parties shall agree upon a Project Improvements Construction Schedule in connection with the approval of the Final Plans. Promptly following approval of any Proposed Final Plans and their designation as “Final Plans” hereunder, Bristol or the Design-Builder, as appropriate, shall apply for a building permit and all other permits necessary for construction of the Project Improvements, and the Design-Builder shall commence construction of the Project Improvements immediately upon receipt of all necessary permits and proceed with all due diligence until Completion. Bristol shall cause the Project Improvements to be Ready for Occupancy on or before completion date agreed upon in the Final Plans (“**Project Delivery Date**”), subject to Excusable Delays.

(e) Project Reporting. Bristol shall furnish to the Metropolitan Government monthly a project status report or reports, each certified to the Metropolitan Government, which shall contain (a) the status of design planning, (b) a comparison of the Project Budget to costs incurred through the date of the report, and a description of the variances, (c) a status of the Project Improvements Construction Schedule in relationship to the work completed through the date of the report, and a description of the variances, (d) the status of any permits, licenses or approvals under Applicable Laws required or necessary to facilitate the continued construction, or ultimate occupancy, of the Project Improvements, and (e) any other matters relating to the design, development, and construction of the Project Improvements Work subject to mutual agreement of the Parties.

(f) Performance of the Project Improvements Work. All such Project Improvements Work shall be (i) prosecuted with reasonable diligence and completed with all reasonable dispatch, subject to Excusable Delays; (ii) constructed and performed in a good and workmanlike manner in accordance with standard construction practices for construction, repair, renewal, renovation, demolition, rebuilding, addition or alteration, as the case may be, of improvements similar to the Project Improvements; (iii) constructed and performed using qualified workers and Subcontractors; (iv) constructed and performed in accordance with Applicable Laws and the terms of this Agreement; and (v) free of any Liens. Bristol shall take all reasonably necessary measures and precautions to minimize damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all Persons affected thereby, in each case in the manner as a Reasonable and Prudent Developer would undertake in light of the particular circumstances. Except as expressly provided in this Agreement, Bristol shall be responsible for all costs incurred in connection with the Project Improvements Work, including any costs, charges, and fees in connection with supplying the Project Improvements with all necessary utilities, all costs, charges, and fees payable to any Governmental Authority in connection with the Project Improvements Work (including all building permits, platting, and zoning fees and street closure fees or any other license, permit or approval under Applicable Laws), title insurance costs associated with any leasehold and mortgagee title insurance obtained by Bristol and all other site preparation costs, fees or expenses incurred in connection with the Land or the design, development, construction, furnishing, and opening of the Project Improvements. Dust, noise, traffic, hazards, and other effects of such work shall be controlled in accordance with Applicable

Law and in such manner as a Reasonable and Prudent Developer would undertake in light of the particular circumstances.

(g) Substantial Completion. Upon the occurrence of all of the following, the Premises shall be deemed “**Ready for Occupancy**”: (i) Substantial Completion of the Project Improvements in accordance with the Final Plans and Applicable Law with all equipment, utilities and systems in good condition and working order and with access to the Speedway free and clear of any construction materials or equipment, obstructions or debris, (ii) receipt of a certificate of occupancy or equivalent for the Speedway, (iii) actual physical possession of the Premises has been delivered to Bristol in a broom clean condition, free and clear of all personal property of any other parties and all tenancies and rights of any parties to possession, (iv) actual physical possession of the Premises has been delivered to Bristol free and clear of any asbestos or other hazardous materials and any mechanic’s lien claims which have not been bonded or otherwise satisfied so as to permit delivery of the Premises free and clear of any lien claim, (v) delivery to Bristol of a certificate of completion for the Project Improvements signed by the Designer or Record, and (vii) ninety (90) days’ written notice from Bristol has been given to Metropolitan Government of the estimated delivery date prior to actual delivery of the Premises. The term “**Substantial Completion**” shall mean that the construction of the Project Improvements has been completed in accordance with the Final Plans, subject to minor punch list items, which punch list shall be established as provided below, all as documented by the issuance of a certificate to that effect issued as provided herein.

(h) Additional Close-Out Documentation. Notwithstanding anything to the contrary contained in this Agreement, in addition to any other requirements set forth herein, Bristol and/or Design-Builder shall deliver to Metropolitan Government all of the following as soon as possible following Substantial Completion of the Project Improvements, but not later than sixty (60) days thereafter:

- (i) Operation and maintenance manuals for all systems and equipment installed in the Speedway.
- (ii) The originals or copies of all guarantees and warranties obtained by Bristol or Design-Builder in connection with the construction of the Project Improvements.
- (iii) A set of as-built plans and specifications for the Project Improvements.
- (iv) A list of the name, address and telephone number of all contractors, Subcontractors and suppliers that have supplied labor or furnished a major component of materials or equipment to the Premises on behalf of Bristol or Design-Builder.

(i) Excusable Delay. The term “**Excusable Delay**” shall mean any event that temporarily delays the development or construction of the Project Improvements and that is beyond the reasonable control and without contributing fault of any Party, including any fire or other casualty, act of God, earthquake, flood, epidemic, landslide, war, riot, civil commotion, terrorism, general unavailability of supplies, construction materials, energy, fuel, water or other necessary utility, strike, slowdown, walk-out, lockout, shortages of labor or labor dispute (other

than strike, slowdown, walk-out, lockout, shortages of labor or labor dispute related to the Design-Builder); provided that the term Excusable Delay shall not include an inability to pay monetary obligations or, unless caused by a separate Excusable Delay, the failure to obtain any government legislation, approval, action or funding with respect to the Speedway or the Site or any approval, funding or other action by or from any person other than (i) a condemnation action by a Governmental Authority with power of condemnation (other than the Metropolitan Government or the Authority) that is not reasonably expected to, and does not, delay the development or construction of the Speedway for more than six (6) months in the aggregate; (ii) any action by a Governmental Authority of a generally applicable nature that is not specifically targeted with respect to the development, construction and/or operation of the Speedway or the acquisition or ownership of any portion of the Site and that is not reasonably expected to, and does not, delay the development or construction of the Speedway for more than six (6) months in the aggregate; or (iii) any unreasonable delay by the Metropolitan Government or any subdivision or department thereof in the issuance of permits and approvals deemed necessary or desirable by Bristol (including, without limitation, the Approvals). In the event of an Excusable Delay, Bristol shall not be penalized under Section 5(d) above, provided however, that Bristol shall (i), within three (3) business days after it becomes aware that any such Excusable Delay event has commenced, notify Metropolitan Government in writing of such event and the causes thereof, once determined, and reasonably estimate the length of such Excusable Delay and (ii) use best efforts to minimize the delay. If Bristol claims any extension of the date of completion of any obligation hereunder due to an Excusable Delay, it shall be the responsibility of Bristol to reasonably demonstrate that the Excusable Delay is the proximate cause of the delay.

(j) Changes. If Bristol requests a change, alteration or addition, other than Correction Work, as defined below, after the Final Plans have been approved, it shall submit the same in writing to the Metropolitan Government. The Design-Builder shall provide Bristol with an estimate of the cost of such change and the additional time required and, upon receipt of same, Bristol shall have three (3) Business Days to elect whether to proceed with such change and any extension of construction time that may be required. If Bristol desires to proceed with such change, Bristol shall submit such request to Metropolitan Government for approval, which approval shall not unreasonably be withheld or delayed. Upon approval by the Metropolitan Government, the Design-Builder shall incorporate the change into the Final Plans and the Design-Build Contract. If Bristol elects not to make such change, then Bristol shall immediately notify the Design-Builder and construction shall proceed in accordance the Final Plans as previously approved. The delay in construction time, if any, caused by such changes shall extend the Speedway Renovation Project Delivery Date by the additional time established in accordance with the second sentence of this Section 5(k), without penalty to either the Metropolitan Government or the Design-Builder. Notwithstanding the foregoing, if conditions arise after the commencement of construction of the Project Improvements that could not reasonably have been foreseen and that will necessitate changes to the Final Plans, and so long as such changes would not cause the Project to fail to meet the Minimum Design Standards, Bristol shall be entitled to make such necessary design adjustments to complete the Project Improvements within the funds available from the Project Contributions established in the Final Plans and Project Budget approved by the Parties prior to the commencement of construction.

(k) Governmental Regulations. The design and construction of the Project Improvements shall conform to any and all requirements of applicable building, plumbing, electrical and fire codes and to the requirements of any applicable Governmental Authority, as such codes and requirements may from time to time be amended or supplemented.

(l) Metro Construction Representative. The Metropolitan Government may retain a representative to assist the Metropolitan Government with questions or any issues in connection with the Project Improvements Work (such representative shall hereinafter be referred to as the “**Metro Construction Representative**”), and shall have the right, from time to time, to change the individual who is the Metro Construction Representative by giving at least ten (10) days’ prior notice to Bristol thereof. The cost to retain the Metro Construction Representative shall be part of the Project Budget.

(m) Access to Speedway Property. During the course of construction of the Project Improvements, the Metropolitan Government and its representatives shall have the right, from time to time, to enter the Premises to inspect the construction work, provided that any such party shall not materially interfere with such work. If any such work is discovered to be defective or not in compliance with the Final Plans or Applicable Law, Metropolitan Government will notify Bristol, and Bristol shall cause the Design-Builder to promptly correct the defective work (the “**Correction Work**”) without cost or expense to Bristol or the Metropolitan Government. The delay in construction time caused by such corrections shall not extend the Project Delivery Date.

(n) Final Inspection.

(i) Bristol shall reconfirm by written notice to Metropolitan Government the date of actual delivery of the Project Improvements to Ready for Occupancy at least seven (7) business days prior to such date. The Designer of Record, the Design-Builder, the Metropolitan Government’s representative(s) and Bristol’s representative(s) shall meet at the Speedway Property at a mutually acceptable date and time to conduct an on-site inspection of the Project Improvements and to prepare a punch list of all Correction Work.

(ii) The Designer of Record shall prepare a detailed written punch list of all corrections and repairs to be made to the Project Improvements based on such inspection and a copy of such punch list shall be delivered to the Metropolitan Government and Bristol. If any items that are not “minor” punch list items require correction, repair or replacement, including without limitation Correction Work, as defined above, then Substantial Completion of the Project Improvements shall not be deemed to have occurred. After all such work which does not constitute “minor” punch list items has been completed, then the Parties shall meet again to inspect the Project Improvements and prepare, if necessary, another punch list.

(iii) If the Project Improvements are completed in accordance with this Agreement, except for minor punch list items, then (i) the Metropolitan Government and Bristol shall sign the punch list and the Design-Builder shall cause all such minor punch list items to be completed within thirty (30) days thereafter and (ii) the Designer of

Record shall sign the certificate of Substantial Completion referenced in Section 5(h) above and deliver a signed copy to all Parties within seven (7) days after such inspection.

(o) Warranty. Bristol agrees to include in its contract with the Design-Builder a provision requiring the Design-Builder to warrant the Project Improvements against defects in materials and workmanship for a period of one (1) year (commencing on the date of Substantial Completion). Bristol agrees, to transfer, assign or otherwise cooperate with Metropolitan Government to enforce and/or make available to Metropolitan Government for its benefit any and all manufacturer warranties or guarantees related to any materials or equipment that are used in the construction of or otherwise become a part of the Project Improvements.

(p) Liquidated Damages. Bristol shall use commercially reasonable efforts in good faith by appropriate proceedings to collect any liquidated damages from the Design-Builder pursuant to the Design-Build Contract. The Metropolitan Government shall have no obligation whatsoever to enforce the Design-Build Contract or other construction, design or consulting agreements, as applicable. If Bristol collects any liquidated damages from the Design-Builder or such other contractor or pursuant to the Design-Build Contract or such other contract, as applicable, for a delay in achieving Substantial Completion of the Project Improvements Work, then Bristol (i) may use such liquidated damages to fund any Cost Overruns, and (ii) will, promptly following completion and payment of all Cost Overruns, distribute the remaining balance of such liquidated damages as follows: one-half to the Authority, and one-half to Bristol. Upon receipt of its share of any such liquidated damages, the Authority shall deposit such sums into the Revenue Fund established under the Bond Indenture. Bristol covenants the provisions of this Section 3(q) and Bristol's obligations with respect to any such liquidated damages accruing prior to the date of termination hereof shall survive any expiration or earlier termination of this Agreement.

(q) Time is of the Essence. Bristol shall use its best efforts to ensure the Project Improvements are Ready for Occupancy on or before the Project Delivery Date (subject to appropriate extension for bona fide Excusable Delays). The Parties acknowledge and agree that time is of the essence for Completion of the Project Improvements by the Project Delivery Date.

6. Project Financing and Project Accounts.

(a) Financing Generally. The Project Costs will be paid from the following sources of funds and in the following order:

(i) First, from the CVC Contribution in the amount of \$17,000,000, less the portion of the CVC Contribution disbursed to fund the Pre-Development Expenses;

(ii) Second, from the State Grant in the amount of \$17,000,000;

(iii) Third, from the Bond Construction Proceeds realized from the sale of the Authority Bonds (the "Authority Contribution"); and

(iv) Fourth, an amount, as determined from time to time, equal to the amount necessary to complete the Project Improvements in accordance with the Project Budget minus the

Authority Contribution and the State Grant (such amount, the “Bristol Contribution”), subject, however, to Bristol’s right to terminate this Agreement and the Lease as set forth in Section 5(b)(ii) prior to the issuance of the Authority Bonds.

(b) Authority Contribution. The Authority Contribution shall be funded by the Authority as follows:

(i) The Metropolitan Government shall enter into the Intergovernmental Project Agreement with the Authority pursuant to which the Non-Tax Revenues shall be made available to replenish the debt service reserve fund established in favor of the Authority Bonds, and the Authority will issue the Authority Bonds to fund a portion of the costs of the Project, contingent upon (i) Final Plans being acceptable to the Fair Board, (ii) the Project meeting the Minimum Design Standards, (iii) the Authority’s and the Fair Board’s satisfaction that the Project Costs do not exceed the sum of the Authority Contribution, the State Grant and the Bristol Contribution, and (iv) the Authority’s and the Fair Board’s satisfaction that the State Grant and Bristol Contribution have or will be timely funded in accordance with the terms hereof.

(ii) Within 30 days after the satisfaction of the conditions set forth in (i) above and the written request of Bristol, the Authority shall issue the Authority Bonds and cause the Authority Contribution to be deposited into the “Project Fund” established with the Bond Trustee under the Bond Indenture (the “Bond Proceeds Account”).

(c) State Grant. Bristol shall be responsible for preparing and submitting all applications and information required by the State for the issuance of the State Grant. Bristol shall comply with all conditions and requirements imposed by the State in connection with such State Grant. The proceeds of the State Grant shall be deposited into a segregated, interest-bearing account maintained in accordance with the requirements of the State, which account shall only be used to pay costs of the Project (the “State Grant Account”), provided, however, that Bristol shall request that the State agree that the State Grant Account be controlled and administered, in trust, by [_____] (the “Trustee”). The State Grant funds shall not be commingled with any other funds of Bristol or the Metropolitan Government.

(d) Bristol Contribution. If Bristol has elected to make the Bristol Contribution in accordance Section 5(b)(ii), Bristol shall, not later than the issue date of the Authority Bonds, deposit the Bristol Contribution into a segregated account controlled and administered by the Trustee.

(e) Termination of Project Accounts.

(i) Upon certification by Metropolitan Government and Bristol in writing that the Project Completion Date has occurred and all then legally owing Project Costs have been fully paid, then:

(1) The Project Accounts will be terminated.

(2) All remaining amounts in the Bond Proceeds Account, including interest and funds earned from investment of the Bond Proceeds Account, shall be applied to the

redemption of, or the payment of debt service on the Authority Bonds, in the manner specified in the Bond Indenture.

(3) All remaining amounts in the State Grant Account shall be applied as required by the terms of the State Grant.

(4) All remaining amounts in respect of the Bristol Contribution then held in the Bristol Contribution Account, if any, including interest and funds earned from investment of the Bristol Contribution, shall be paid to Bristol.

7. **Disbursement of Project Contributions.**

(a) No more than once each calendar month Bristol will submit to the Metropolitan Government or its designee, a requisition (“**Requisition**”) for the amount currently due for Project Costs, less any required retainage. Each Requisition shall include an application for payment that is in a form reasonably acceptable to Metropolitan Government (“**Payment Application**”) that is certified by Bristol, and that establishes (i) the amount of the requested advance; (ii) the names, addresses and amounts due or to become due as well as the amounts previously paid to the Design-Builder, and every Subcontractor, and supplier furnishing materials for or performing labor on the construction of any part of the Project; (iii) a narrative description of the Project Improvements Work that has been completed so that Metropolitan Government or its designee can verify such Project Improvements Work (either independently or by its architect or other consultant); (iv) certification by Design-Builder that all construction lien rights or claims have been waived for the amounts disbursed for the period up to and including the prior month's Requisition; (v) percentage of completion of the Project Improvements Work; and (vi) an updated list of all change orders requested to be funded through the Payment Application.

(b) Each Requisition shall be approved in writing by the Metro Construction Representative. Within thirty (30) days after the receipt of each approved Requisition, unless the Parties otherwise agree, the Metropolitan Government shall, to the extent funds are available in the Project Accounts, pay the full amount requested in accordance with the Requisition.

(c) Metropolitan Government will advance the final disbursement request for payment of Project Costs in an amount not to exceed the full principal amount of the Project Contributions not theretofore disbursed (the “**Final Project Advance**”) when the following conditions shall have been complied with, provided that such compliance shall have occurred on or prior to the scheduled Project Completion Date and no Bristol Default has occurred and is continuing:

(i) Certificates of occupancy issued by the Governmental Authority having appropriate jurisdiction over the completed Project and all other governmental licenses and permits required to use, occupy, and operate the Project as contemplated from appropriate governmental authorities have been issued.

(ii) Certificates of substantial completion, in the form of AIA Document G704, executed by the Designer of Record, have been delivered to the Metropolitan Government.

(iii) Bristol shall have delivered to the Metropolitan Government fully executed copies, in form and content satisfactory to the Metropolitan Government, of (i) AIA Document G704 and (ii) AIA Document G707 (Consent of Surety to Final Payment).

(iv) All Subcontractors and the Design-Builder have supplied the Metropolitan Government or its designee with final sworn statements and full and complete waivers of all mechanics' lien and all other Project-related claims in a form reasonably acceptable to the Metropolitan Government.

(v) A final survey and surveyor's certification reasonably acceptable to the Metropolitan Government showing the as-built location of the completed improvements, the perimeter of the Project by courses and distances, any existing foundations and footings for the improvements, all easements and rights-of-way, the boundary lines of the streets abutting the Site, any encroachments and the extent thereof in feet and inches, the relation of the improvements by distances to the perimeter of the Site and the building lines. All costs associated with the survey and surveyor's certification shall be paid as part of the Project Budget.

(vi) Delivery by the Design-Builder of an affidavit stating that the improvements have been completed substantially in accordance with the Design-Build Contract except for punch list items identified as described below; that all amounts due from the Design-Builder to all Subcontractors and materialmen who have provided services or materials in connection with the construction of the improvements have been paid (or will be paid out of funds requested to be advanced); and that Metropolitan Government and the Design-Builder have received lien waivers or releases from such Subcontractor and materialmen in a form acceptable to Metropolitan Government.

(vii) A certificate of an officer of Bristol to the effect that, to the best of such officer's knowledge, (i) the acquisition, construction, equipping and development of the Project has been substantially completed in accordance with the Plans and Specifications, all applicable zoning and building laws, ordinances, rules and regulations and in accordance with the applicable provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; (ii) all labor, materials, equipment and services used in connection with such acquisition, construction, equipping and development have been paid in full; (iii) all other material improvements necessary in connection with the Project have been acquired, constructed and completed, and all costs and expenses incurred in connection therewith have been paid in full; (iv) substantially all of the equipment, materials and furnishings have been purchased and installed in the Project and have been paid in full; and the Project is suitable and sufficient for its intended purpose.

(viii) Bristol shall cause the Designer of Record to prepare a schedule, by descriptive line item, of minor items of construction that remain uncompleted as of the date of substantial completion of the Project, which shall have been provided to the Metropolitan Government and will estimate the actual cost of completion.

(ix) Verification by the Metro Construction Representative that the Project has been completed.

8. Cost Overruns, Project Savings And Audit

(a) Cost Overruns. The term “**Cost Overruns**” as used in this Agreement shall mean the amount by which the total costs and expenses required to be paid under the Construction Agreements by Bristol for the Project Improvements Work exceeds the aggregate of the amounts on deposit in the Project Accounts.

(b) Project Savings. The term “**Project Savings**” means and refers to the amount by which the total costs and expenses required to be paid by Bristol under the Construction Agreements for the Project Improvements Work is less than the Project Budget. Subject to the terms of Section 8(c) below, any such Project Savings shall, within forty five (45) days after Final Completion of the Project Improvements Work, be retained by or paid to Bristol. For avoidance of doubt, Bristol shall be entitled to recoup any remaining funds in the Project Accounts that result from Project Savings after the completion of the Project Improvements Work up to the amount of the Bristol Contribution. Any remaining funds above that amount will be retained by or paid to the Authority.

(c) Payment of Cost Overruns. Bristol shall pay all Cost Overruns as and when the same are due. The Metropolitan Government, the Authority and the Fair Board shall not be responsible for the payment of any Cost Overruns. If subsequent to payments of Cost Overruns by Bristol, Project Savings are realized, the same shall first be paid to Bristol until Bristol has recovered the amount paid by it for all prior Cost Overruns. Any remaining Project Savings shall be paid to the Authority. Bristol shall have the sole and exclusive right to pursue all claims and receive all recoveries, damages, and penalties from contractors and sureties to the extent of any Cost Overruns paid by Bristol. To the extent of other costs paid by the Parties, each Party shall have the right to pursue claims and receive recoveries, damages, and penalties from contractors and sureties in proportion to their respective Losses. The Parties shall cooperate with each other in pursuing joint recoveries and the Party whose projected Losses are the greater shall have the right to select counsel and control the litigation to recover such Losses.

(d) Audit Rights. Subject to the limitations listed below, the Metropolitan Government may, upon prior written notice to Bristol but not more frequently than once per calendar year, designate an independent auditor to audit from time to time the books, records, receipts, vouchers, and other documentation (“**Books and Records**”) necessary to verify Bristol’s compliance with the requirements of this Agreement. Bristol shall cause such files, records, and accounts of expenditures for materials, equipment, employees and contractors and the like, and other costs of rendering services or performing work in connection with the Project Improvements Work to be kept as necessary for the proper administration of this Agreement. Such records shall be kept on the basis of generally-recognized accounting principles for projects of this nature and in accordance with this Agreement.

9. Environmental

(a) Environmental Assessments. Bristol will obtain a Phase I environmental assessment of the Site during the Project design phase and will provide the Metropolitan Government with a copy of the full and final written Phase I report within 14 days after receipt

thereof. Bristol shall have a Phase II environmental assessment performed if either Bristol or the Metropolitan Government determines it to be reasonably necessary. The costs of the Phase I (and Phase II, if any) environmental investigations and reports shall be paid as a Pre-Development Expense. Any remediation work recommended by such environmental reports and determined by Bristol to be necessary for undertaking the Project will be treated as a Project Improvement for all purposes.

(b) Environmental Costs In the event any Contamination is discovered after execution of the Design-Build Contract that, pursuant to applicable Environmental Laws, requires the performance of a Response Action, Bristol shall arrange for the preparation and delivery of a Response Action plan sufficient to obtain from the Tennessee Department of Environment and Conservation (the “TDEC”) a “No Further Action” letter for soils at the Site and shall obtain approval of such plan by TDEC. The costs of any Response Action (including preparation of the Response Action plan) shall be paid as a Project Improvement, but Bristol shall have the right to require changes to designs for the Project Improvements for cost savings so long as despite such changes, the Project Improvements will still satisfy the Minimum Design Standards.

10. Commencement Contingencies. The obligation to commence construction of the Project Improvements as provided in this Agreement is expressly conditioned on the satisfaction of all of the following requirements (collectively, the “**Commencement Contingencies**”):

(a) The Authority Contribution, the State Grant and the Bristol Contribution shall have been deposited to the applicable Project Account(s);

(b) The Authority, the Fair Board, and Bristol shall have determined that the Authority Contribution, the State Grant, and the Bristol Contribution, if any, are sufficient to fully fund the Project Budget;

(c) The Design-Build Contract shall be acceptable to the Speedway Oversight Committee in its reasonable discretion; and

(d) Bristol shall have received all permits and approvals (including, without limitation, the Approvals) deemed necessary or desirable by Bristol for the construction of the Project Improvements and operation of the Project. Notwithstanding any provision to the contrary herein, the Metropolitan Government shall evaluate Bristol’s applications in the ordinary course of business and not unreasonably delay issuance of such permits and approvals (including, without limitation, the Approvals) to the extent such permits or approvals are to be issued by the Metropolitan Government or any subdivision or department thereof.

Upon satisfaction of the Commencement Contingencies, Bristol agrees that it will commence construction of the Project Improvements in accordance with this Agreement. Bristol agrees that it shall be responsible for all Project Costs not funded with funds from the State Grant and the Authority Contribution, whether included in the Project Budget or as a result of Cost Overruns. Notwithstanding anything to the contrary in this Agreement, so long as the Authority Bonds have not been issued, if the Commencement Contingencies are not satisfied on or before

_____, 202_, then this Agreement may be terminated at the election of the Fair Board or Bristol by written notice to the other Party at any time prior to the actual satisfaction of the Commencement Contingencies. Notwithstanding the expiration or earlier termination of this Agreement, the rights and obligations of the Parties herein that expressly survive such expiration or earlier termination will survive such expiration or earlier termination.

11. **Insurance.**

(a) In addition to the insurance requirements under the Lease, Bristol shall procure and maintain, or cause to be procured and maintained, a builder's risk insurance policy on an "all risk" 100% replacement cost basis and shall name the Fair Board, the Authority and the Metropolitan Government as additional insureds.

(b) Bristol shall be responsible for ensuring that the Design-Builder maintain the following insurance coverage: [METRO TO PROVIDE]

12. **Speedway Motorsports Guaranty of Bristol's Obligations.** Bristol agrees that it will cause Speedway Motorsports, LLC, a Delaware limited liability company ("SM") to execute and deliver to Metropolitan Government, or to an escrow agent designated by Metropolitan Government, a Guaranty Agreement in the form attached as Exhibit [] to the Lease (the "SM Guaranty").

13. **Payment and Performance Bonds.** Bristol shall cause the Design-Builder to obtain payment and performance bonds (the "Performance Bonds") covering the Design-Builder's faithful performance of the Project Improvements Work as provided in this Agreement and the Construction Agreements and the payment obligations arising under this Agreement, the Design-Build Contract for the benefit of Bristol and the Metropolitan Government. The costs of the Performance Bonds shall be included in the Guaranteed Maximum Price. The Design-Builder's Performance Bonds for the Project shall cover the entire amount of the Guaranteed Maximum Price allocated for the Project Budget. Bristol and Metropolitan Government shall be named dual or third-party obligees on the Performance Bonds and the Design-Builder shall execute dual obligee riders prior to payment of the premiums for the Performance Bonds. The Performance Bonds shall be executed by a Qualified Surety licensed in the State of Tennessee. The Performance Bonds shall remain in effect for a period of not less than one (1) year following the later of (a) the Completion date, or (b) the time required to resolve any items of incomplete Project Improvements Work or the payment of any disputed amount. Each Performance Bond shall (i) display the surety's bond number, and (ii) include a rider that expressly waives the surety's right to notice, waives any defense or rejection of a claim on the basis of a modification of any sort to the Project Improvements Work or this Agreement and requires the surety to remain obligated under such Performance Bond to any successor, grantee or assignee of Metropolitan Government. Bristol and the Design-Builder shall be responsible for all communications to the surety and Metropolitan Government shall be included in all such communications, but Metropolitan Government shall have the right to communicate directly with the surety. All Performance Bonds shall be delivered to Metropolitan Government before any Project Improvement Work is permitted to commence and at the same time that the insurance certificates or policies, as applicable, are delivered.

14. **Termination of Agreement.**

(a) If Bristol defaults or fails or neglects to carry out the Project Improvements Work in accordance with this Agreement, or if Bristol fails to perform any of its obligations or breaches any of its representations under this Agreement, Metropolitan Government may give written notice of such default, which notice shall contain a reasonably detailed description of the alleged defaults. Bristol shall correct the defaults, failure or neglect within thirty (30) days after being given such notice; provided, however, if the nature of such defaults, failure or neglect is such that they are not reasonably capable of being corrected within such thirty (30) day period, Bristol shall be allowed a reasonable period of additional time (the “**Bristol Cure Period**”) to correct the defaults, failure or neglect so long as Bristol promptly commences and diligently pursues such corrections to completion, which Bristol Cure Period shall in no event extend beyond ninety (90) days following the applicable default. If Bristol fails to make such corrections within the Bristol Cure Period, then the Metropolitan Government may, and without prejudice to any other remedy, declare that a “Bristol Default” has occurred under the Lease and exercise any and all remedies provided for under the Lease. Such remedies shall include, without limitation, the right of Metropolitan Government to terminate this Agreement and take possession of the Speedway, of the Construction Agreements and of all materials, equipment, tools and construction equipment and machinery thereon that were purchased with Project Contributions or are in the process of being leased for the Project and, if the Metropolitan Government so chooses, to use the remaining proceeds of the Project Contributions to finish the Project Improvements Work by whatever method the Metropolitan Government may deem expedient.

(b) Upon the occurrence of (i) a Fair Board Default which is not cured beyond any applicable grace period, and the election of Bristol to terminate the Lease in accordance with Section 17() of the Lease, or (ii) any (1) failure by the Fair Board or the Metropolitan Government to perform any of its material obligations hereunder or (2) breach of any of the Fair Board’s or Metropolitan Government’s representations hereunder, which failure or breach continues for at least thirty (30) days after the Fair Board’s or the Metropolitan Government’s receipt of written notice specifying such failure or breach, Bristol may terminate this Agreement by written notice to the Metropolitan Government.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Parties. In proving this Agreement, a Party must produce or account only for the executed counterpart of the Party to be charged.

16. **Electronic Signatures.** This Agreement may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe’s Portable Document Format (“PDF”)). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the Parties to create a valid and legally enforceable contract between them. The exchange and delivery of this Agreement and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes.

Notwithstanding the foregoing, at the request of any Party, the Parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

17. **Term.** The term of this Agreement shall commence on the Effective Date and, except as otherwise expressly provided herein, shall expire on the date of Completion of the Project Improvements Work (the “**Project Term**”); provide however, if the Commencement Contingencies are not satisfied by September 1, 2023, then this Agreement may be terminated at the election of the Metropolitan Government or Bristol by written notice to the other Parties. Notwithstanding the expiration of the Project Term or the earlier termination of this Agreement, the rights and obligations of the Parties herein that expressly survive such expiration or earlier termination shall survive such expiration or earlier termination.

18. **Notices.**

Notices required herein shall be deemed properly given via (i) registered or certified mail, postage prepaid, return receipt requested, (ii) nationally recognized overnight courier, or if delivered personally (or by bonded courier), to the address designated for the recipient. Notice shall be effective on the date of receipt of the notice by the Party being notified. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to the Parties shall be delivered as follows:

To the Metropolitan Government:

Director of Finance
106 Metropolitan Courthouse
PO Box 196300
Nashville, Tennessee 37219

and to:

Director of Law
Metropolitan Department of Law
108 Metropolitan Courthouse
PO Box 196300
Nashville, Tennessee 37219

To Bristol: Bristol Motor Speedway, LLC
151 Speedway Boulevard
Bristol, Tennessee 37620
Attn: President / General Manager

and to: Bristol Motor Speedway, LLC
151 Speedway Boulevard
Bristol, Tennessee 37620
Attn: Julie Bennett

and to: Speedway Motorsports, LLC
5401 East Independence Boulevard
Charlotte, North Carolina 28212

Attn: J. Cary Tharrington IV

and to: Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville Tennessee 37219
Attn: Robert R. Campbell, Jr.

19. **Governing Law and Venue.** The Parties agree that this Lease is executed in and is to be performed in the State of Tennessee, and that all provisions of this Lease and any dispute arising hereunder shall be governed by the laws of the State of Tennessee. Any dispute arising out of this Lease shall be litigated exclusively in the federal or state courts sitting in Davidson County, Tennessee. The Parties hereby consent to in personam jurisdiction of such courts and irrevocably waive any objection and any right of immunity on the ground of venue, the convenience of forum or the jurisdiction of such courts.
20. **Severability.** If a court of competent jurisdiction holds that one or more clauses, sections or provisions of this Lease is unlawful, invalid or unenforceable, the Parties hereto agree that all remaining clauses, sections and provisions shall continue in full force and effect.
21. **Consent Standards.** In granting or withholding any consents or approvals contemplated hereunder, the Fair Board and the Metropolitan Government shall do so in a commercially reasonable manner, where “commercial reasonableness” is measured in the context of similarly situated commercial (i.e., non-governmental) parties.
22. **Miscellaneous.** This Agreement shall be deemed to be part of the Speedway Lease.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Metropolitan Government, the Fair Board and Bristol have executed this Agreement the date first above written.

The Metropolitan Government of Nashville and Davidson County:

Mayor

Attest By:

Metropolitan Clerk

Bristol Motor Speedway, LLC

By: _____

Name: _____

Title: _____

Exhibit A

PRE-DEVELOPMENT BUDGET

[See attached budget]

Exhibit B

LEGAL DESCRIPTION OF THE SITE

Exhibit C

DECLARATION

[see attached]

Exhibit D

MASTER LEASE

[see attached]

Exhibit E

SUB-LEASE

[see attached]

Exhibit F

CVC TOURISM PROMOTION AGREEMENT

[see attached]

Exhibit G

MINIMUM DESIGN STANDARDS

The design for the renovation of Nashville Fairgrounds Speedway shall include, at a minimum, the following elements:

1. Seating capacity for at least thirty thousand (30,000) people
2. Accessibility for mobility limited handicap guests based on federally mandated requirements
3. Safety and operating standards for NASCAR sanctioned events
 - a. Safer Wall as outlined and specified by NASCAR
 - b. Wheel Fence as outlined, approved, and/or specified by NASCAR
 - c. Track geometry and apron construction as outlined, approved, and/or specified by NASCAR
 - d. Pit road utilities as outlined, approved, and/or specified by NASCAR
 - e. LED lighting of facility for competition (foot candles achieved as outlined by TV/NASCAR and automated control system)
 - f. Facilities for Emergency services (i.e. care center, media space)
 - i. GSF building
 - ii. Restrooms for media space
 - iii. Infield food service area
 - iv. Driver interview area
 - v. Care center to meet NASCAR specifications
 - vi. Restrooms for Care center
 - vii. Utilities for temporary infrastructure
 - g. Facilities and/or space for event support, 60,000 GSF fenced TV compound, fueling location for race fuel, tire mounting location, competition and ruling body hauler locations
 - h. Track services access and locations
 - i. Restroom facilities
 - ii. Concession stand with cooking facilities including hood suppression systems
4. Event Operations
 - a. 20' absorbing sound wall or structure around the perimeter of the racing surface that is not fronted by grandstands or buildings
 - b. Permanent sufficient electrical, water, and sewer capacity and distribution throughout concourse to accommodate full NASCAR event
 - c. Perimeter fencing and flexible gates with electrical distribution to power metal detection
 - d. Hard and soft landscape
 - e. LED lighted facility ID, wayfinding, and Nashville branding signage
 - f. Minimum of 20,400 GSF of food service and permanent concession stands with cooking capability (fryers and ovens)
 - g. Minimum of 18,100 GSF of restroom facilities
 - h. 26 luxury suites a minimum of 18,000 GSF with 300 permanent chairs, seating ranging from 16-63 person, and food and beverage service areas

- i. Catering kitchen to service suites
 - ii. Minimum of 22 restroom facilities
 - iii. 6 passenger elevators and two freight elevators
 - iv. Broadcast booth with fiber as outlined, approved, and/or specified by TV Network
 - v. NASCAR Scoring booth with fiber as outlined, approved, and/or specified by NASCAR
 - vi. Production Suite to control AV with fiber as outlined, approved, and/or specified by
 - i. Turn 4 Building, which shall contain 25,000 GSF of flex space and be of sufficient size, layout, and furnishings to accommodate the types of events that will generate the revenues provided in the CSL Report. Said space will include:
 - i. Catering prep space
 - ii. Banquet facilities with seating for at least 500 guests
 - iii. Appropriate audiovisual equipment for the types of events contemplated in the CSL Report
 - iv. Design process to be coordinated with the CVC
 - j. 4,000 GSF video board of 10mm pitch or tighter
 - k. Permanent Stadium PA System to cover infield, grandstands, and all buildings. System to include conditioned amp rooms in the concourses, dante control system, all speaker ranges including subs and state of the art mixer
5. Bristol will use good faith efforts to design the renovation of the Turn 4 Building, any enclosed and conditioned space in the grandstands building, and any enclosed and conditioned spaces in the infield in such a manner as to comply with the requirements of the "LEED Gold" standard, to the extent applicable LEED standards have been established for such improvements.

Exhibit H

DESCRIPTION OF AUTHORITY BONDS AND BOND CONSTRUCTION PROCEEDS

Description of Authority Bonds

1. The Authority Bonds will be issued on a federally taxable basis.
2. The Authority Bonds will be payable primarily from and secured primarily by a pledge of the Pledged Revenues.
3. The Authority Bonds will be additionally secured by a pledge of Non-Tax Revenues by the Metropolitan Government to replenish any deficiency in the debt service reserve fund to be established for the benefit of the Authority Bonds, as more fully described in (6) below, which such pledge shall be subordinate to all prior pledges of Non-Tax Revenues and any subsequent pledge of Non-Tax Revenues in support of debt obligations issued to fund the costs of the construction or renovation of an NFL Stadium on the East Bank and/or the costs of constructing and installing parking or infrastructure facilities within the campus surrounding the NFL Stadium.
4. The Authority Bonds will amortize over a period of 30 years from their issuance, with principal structured in a manner (a) such that the Pledged Revenues, which shall be assumed to be in the amounts scheduled below, are not less than 120% of the resulting debt service in any Bond Year; and (b) that maximizes the Bond Construction Proceeds.
5. Pledged Revenues:

| Bond Year | Pledged Revenues | | | | |
|-----------|---------------------|-----------------------------|--------------|------------------|-------|
| | Ticket Tax Revenues | Sales Tax Revenues | Bristol Rent | CVC Use Payments | Total |
| 1 | | | | | |
| 2 | | <i>To come from Hilltop</i> | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| Thru 30 | | | | | |

6. The term “**Bond Construction Proceeds**” means (a) the gross proceeds generated from the sale of the Authority Bonds, minus (b) the sum of (i) costs of issuance of the Authority Bonds (including underwriter’s discount) not to exceed 2% of the par amount of the Authority Bonds, (ii) the amount necessary to fund a debt service reserve fund for the Authority Bonds, which shall equal the maximum annual debt service on the Authority Bonds, and (iii) the amount necessary to fund the scheduled payment of interest on the Authority Bonds through Completion.
7. Included with this Exhibit H in the structure of the Authority Bonds and calculation of the Bond Construction Proceeds, at estimated current rates of interest on the Authority Bonds. The final structure of the Authority Bonds and the final calculation of Bond

Construction Proceeds will vary from this example if and to the extent interest rates change between the date hereof and the issue date of the Authority Bonds.

[Hilltop to provide example calculation]

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4866-6336-3889.10

Development Agreement