METRO COUNCIL OFFICE

M E M O R A N D U M

TO: All Members of the Metropolitan Council

FROM: Jon Cooper, Director
Metropolitan Council Office

SUBJECT: **Revised Supplemental Analysis of Proposed Sounds Lease Extension**

DATE: December 15, 2008

RESOLUTION NO. RS2008-590 (RYMAN, MOORE & FORKUM) **–** This resolution approves an amendment to the current lease agreement between the Metropolitan Government, Nashville Sounds Baseball Club, L.P., ("NSBC"), and MFP Baseball, LLC ("MFP") for lease of the Greer Stadium site, as enacted by Ordinance No. O98-1044, and amended by Resolution No. RS2002-955. The present site and stadium, located in a part of Fort Negley Park, has been leased by Metro to the Sounds since 1977. The current lease agreement is for a ten-year term, beginning January 1, 1998, and expiring December 31, 2008.

Under the present lease terms, the rent is based upon the net income of the baseball team as determined by an outside audit. NSBC has been required to pay Metro 25% of the first $400,000 of net income, plus 20% of the net income between $400,001 and $1 million, plus 12.5% of the net income over $1 million. The existing lease also provides that Metro will pay $250,000 on or before July 31st of each year to the baseball team for further capital improvements. The lease required NSBC to provide detailed schedules showing that the capital improvement funds were used for intended purposes.

The department of law has taken the position that NSBC is in default of the lease, as they have not made necessary upgrades to the stadium to achieve compliance with the Americans with Disabilities Act (ADA). NSBC has reached an agreement in principle to sell the team to MFP, a New York-based real estate group. Before the Pacific Coast League can approve the sale of the team, they need assurance that the team will have a place to play next year and that the stadium will be up to the league's standards. However, the new ownership group cannot make those improvements without having the lease assigned and having the term extended.

This resolution approves an assignment of the lease from NSBC to MFP and extends the term of the lease. The lease agreement provides that the sale of the team, as well as the required approvals of the Pacific Coast League and the National Association of Professional Baseball Leagues, are to take place not later than February 28, 2009. In the event the transaction is not completed by this date, the lease will terminate. If the transaction is completed prior to February 28, 2009, the lease agreement will be extended through December 31, 2013, with a possible five year extension.

Pursuant to the lease agreement, Metro agrees to reimburse MFP $250,000 per year for capital expenditures, as we have been contributing under the existing lease. In order to receive this $250,000, MFP will be required to show that it has spent an average of $500,000 per year on capital expenditures for calendar years 2009 through 2013. Metro also agrees to make the $250,000 payment for 2008, which had been withheld by Metro as a result of NSBC's default on the lease agreement. Further, NSBC agrees to contribute $500,000 in exchange for Metro releasing NSBC from being in default. This $500,000 (plus the $250,000 payment for 2008) will be passed on to MFP to make certain improvements to the stadium. These improvements will consist of ADA compliance projects, repairing the scoreboard, replacement/repair of damaged stadium seats, renovation of the bathrooms, and possible structural improvements to the left field grandstand. MFP agrees to make these improvements not later than December 31, 2009, and will make every effort to complete the improvements prior to April 9, 2009. MFP agrees that it will spend not less than $1,000,000 of its own money on these improvements, plus the $250,000 Metro 2008 payment and the $500,000 NSBC payment, for a total of $1,750,000. NSBC will remain liable for any possible environmental contamination of the site as if the lease had expired on December 31, 2008.

MFP is essentially leasing Greer Stadium "as is". Metro will not be responsible for any defects in the stadium, and expressly disclaims any implied warranty that the stadium is suitable for MFP's purposes. MFP will be responsible for all operating, repair, and maintenance costs of the stadium, including utilities. MFP agrees to keep the stadium up to the levels required by the Pacific Coast League and the National Association of Professional Baseball Leagues. MFP will be required to maintain $1,000,000 in commercial general liability insurance and $4,000,000 in property insurance, plus $5,000,000 in excess insurance naming the Metropolitan Government as additional insured.

In the event MFP is financially successful, the formula for calculating the rent provisions is the same as in the existing lease, which is based on the team's net income. The lease provides that any management fees MFP pays, as well as expenditures related to the planning, design, or construction of a new stadium, will not be included in the computation of net income. Further, MFP can deduct stadium repair expenses from the net income calculation, and will be entitled to amortize any capital improvements to the stadium over the five year lease period. MFP will also be entitled to carry forward any losses it incurs to be offset against the net income in future years.

The Metropolitan Government will have the right to use the stadium at anytime that does not conflict with baseball games. Metro must give 30 days notice of its intent to schedule an event. Metro will be responsible for reimbursing MFP for its employees used as part of the Metro event. Metro will get to keep all concessions and parking revenue generated during Metro events.

In the event MFP ceases operation in the stadium and the lease is terminated due to MFP's default, Metro may require MFP to pay an early termination fee equal to all capital payments made by Metro.

In summary, this revised lease agreement will keep the Sounds playing in Nashville with no new taxpayer money being committed. The new ownership group is making a good faith effort to build a positive relationship with the city, as is evidenced by their commitment in the lease to spend an average of $500,000 per year in capital expenses before being eligible to receive the $250,000 annual reimbursement from Metro. The council office is of the opinion that the terms of this revised and extended lease are more favorable to Metro than the current lease, and will result in a substantial upgrade to the stadium owned by the Metropolitan Government.