

City Council — Action Request Form

Date: June 15, 2009

To: The City Manager

From: Derwick L. Paige, Deputy City Manager
Denise C. Bell, Chief Financial Officer

Council Action Requested:

1. Adopt Resolution authorizing the following items related to the Brookstown Development project:
 - A) Authorizing the acquisition of property from Brookstown Development Partners, LLC and Sports Menagerie, LLC; and
 - B) Financing of the sale of certain City-owned land; and
 - C) Clarifying language for the Brookstown Development Incentives Agreement with Brookstown Development Partners, LLC; Sports Menagerie, LLC; and Sports Menagerie Corporation.
2. Adopt Resolution of the City of Winston-Salem, North Carolina Directing the Application to the Local Government Commission for Approval of a Taxable Special Obligation Bond; Requesting Local Government Commission Approval of the City's Taxable Special Obligation Bond; and Certain Related Matters.
3. Adopt Ordinance Authorizing the use of local funds in exchange for SAFETEA-LU Program funds.

Summary of Information:

On November 19, 2007, the City Council approved a revised economic development agreement with Brookstown Development Partners, LLC; Sports Menagerie, LLC; and Sports Menagerie Corporation for the Brookstown Development project. This mixed used development project if developed in full, would have an estimated taxable value of \$189 million. At that time, Phase I of the project consisted of baseball stadium that was anticipated to cost \$22.6 million; however, due to several significant changes in the project, the new cost is approximately \$40.7 million. In addition to the \$40.7 million in construction/development costs, the developer has expended \$18 million for land purchases related to Phase I and Phase II.

To date, approximately sixty percent of the construction of the stadium has been completed. Due to an unforeseen split in the partnership of owners and the current global credit crisis severely impacting financing for real estate development projects, Billy Prim, the remaining managing partner, has found it difficult to raise sufficient capital to complete the project.

Committee Action:

Committee _____ **Action** _____

For _____ **Against** _____

Remarks:

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Additional funding sources of \$32.7 million are needed to complete the project that will allow the payment of all outstanding bills on previous stadium work, purchase the stadium land and cover all remaining work to be done. The funds would include 1) \$15 million in a commercial bank loan secured by the developer and other investors, 2) \$3 million in additional private equity investments, 3) \$2 million from an advancement of local funds in anticipation of a federal grant, and 4) \$12.7 million in funds provided by the City. Eight million dollars (\$8 million) of this additional funding will be used to secure the release of the land under the stadium from a first lien held by Regions Bank which is currently standing in the way of permanent construction financing.

A bank consortium will lend the developer \$15 million towards the completion of the stadium. The City would borrow \$12.7 million in additional funds as a private placement special obligation bond from a commercial bank and then use the funds to purchase an interest in the development property with a lease back provision to cover the entire cost of the borrowing. Because of the very difficult credit climate, it is necessary for the City to secure this portion of the commercial bank financing. The \$12.7 million would be used to acquire an interest in the land under the footprint of the stadium, the stadium itself, the adjoining parking spaces, and easements. The debt service on the \$12.7 million loan would be covered by an annual lease payment. If this item is approved, additional items authorizing 25-year leases of the City's interest in the stadium and land to the developer will come to the City Council for consideration on July 6, 2009.

The following chart summarizes the sources and uses of funds for the project:

Brookstown Development Project			
Estimated Sources and Uses of Funds			
USES	CURRENT	ADDITIONAL	TOTAL
Stadium Construction ¹	\$ 16,000,000	\$ 24,700,000	\$ 40,700,000
Phase I Land (stadium) ²	<u>8,000,000</u>	<u>0</u>	<u>8,000,000</u>
<i>Sub-total</i>	24,000,000	24,700,000	48,700,000
Phase II Land	<u>10,000,000</u>	<u>0</u>	<u>10,000,000</u>
TOTAL	\$ 34,000,000	\$ 24,700,000	\$ 58,700,000
SOURCES			
City of WS	\$ 12,000,000	\$ 0	\$ 12,000,000
Regions Bank (land)	18,000,000	(8,000,000)	10,000,000
Developer Bank Loan	0	15,000,000	15,000,000
City of WS Bank Loan	0	12,700,000	12,700,000
Federal Grant ³	0	2,000,000	2,000,000
Millennium Fund	1,300,000	0	1,300,000
Private Investment ⁴	<u>2,700,000</u>	<u>3,000,000</u>	<u>5,700,000</u>
TOTAL	\$34,000,000	\$ 24,700,000	\$ 58,700,000

¹ Includes \$10 million owed for existing work and \$14.7 million to complete.
² Includes \$1.05 million in capitalized interest.
³ City advances capital project reserves in anticipation of receipt of federal grant funds.
⁴ Private investment includes \$2 million from managing partner.

Staff has reviewed a 5-year forecast of the project revenues and expenses and based upon the projections of at least 350,000 tickets per year being sold, the project generates revenues to cover the annual lease payments in addition to the debt service payments for the bank consortium loan. In case of a shortfall in revenues to make the City's lease payments, the deficits would accumulate and be repaid in future years from project revenues before any profits are distributed to the stadium or team owners. Exhibit A outlines the conditions for structuring the additional funding for the project.

On August 6, 2007, the City Council authorized selling certain City-owned land being Tax Block 0637, Lots 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 009P, 013W, 110A, 111, 110B; Block 0639, Lots 002, 003, 004, 005, 007, 115, 116A, 116B; Block 0659, Lot 109; Block 0098, Lots 003A, 101A, 201, 003B, 101C, 202A and Block 0103, Lots 106, 107 to Brookstown Development Partners, LLC for \$1,192,872 for the development of a mixed-use development known as the Brookstown Development project. Some of these lots have already been acquired by the developer; however, the remaining lots have not yet been purchased.

Brookstown Development Partners, LLC is requesting that the City finance their purchase of the remaining lots. The attached resolution authorizes the City to finance the sale of these remaining City-owned lots being Tax Block 0098, Lots 003A, 101A, 201, 003B, 101C, 202A and Tax Block 0103, Lots 106 and 107 for \$980,361 under the terms and conditions outlined in the attached Exhibit B, provided a lease is entered into with the City for a term of five years or the date by which the loan is paid whichever comes first, at fair market value, which shall not exceed the annual interest payment.

The attached resolution also clarifies language in the original economic development agreement related to the Brookstown Development project. Under the original agreement, Phase I of the project was envisioned to be a baseball stadium with a total capital investment of at least \$22.6 million. The City would apply 100% of the tax increment generated from this phase of the project towards the up-front financed investment (\$5.5 million) generated by the project. This tax increment plus revenues from the guaranteed surcharges on baseball stadium tickets would cover the City's entire debt service. However, the agreement was silent on what would happen if the Phase I investment exceeded \$22.6 million.

Because the Phase I investment will substantially exceed \$22.6 million, the developer has requested applying any portion of the actual taxable investment in excess of \$22.6 million to the City's previously authorized Phase II commitment of up to \$8,012,252. The Phase II commitment is scheduled to be provided over a period of up to 25 years based on the annual taxes paid to the City in the previous year. This clarification would simply make those funds available sooner, but the annual grants would never exceed 100% of the annual property taxes paid to the City for the previous year in excess of \$22.6 million investment. In addition, the City's total Phase II commitment of \$8,012,252 does not change.

The final modification involves the exchange of local transportation funds for SAFETEA-LU funds. Council previously authorized this adjustment of funds such that SAFETEA-LU funds would be used for the Broad Street project and local funds would be used for the Brookstown Development project. However, the adjustment was contingent upon SAFETEA-LU funds being made available for the Broad Street improvement project. While staff is still optimistic that the Congress will approve a technical amendment to allow the SAFETEA-LU funds to be used for

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Broad Street, there is no timetable in place for this approval to occur. As such, the attached budget ordinance would allow this exchange of funds to occur now in anticipation of the SAFETEA-LU funds being made available for the Broad Street project, at some time in the future.

**RESOLUTION AUTHORIZING THE ACQUISITION OF PROPERTY FROM
BROOKSTOWN DEVELOPMENT PARTNERS, LLC AND SPORTS MENAGERIE, LLC,
AUTHORIZING THE FINANCING OF THE SALE OF CERTAIN
CITY-OWNED LAND, AND CLARIFYING LANGUAGE FOR THE
BROOKSTOWN DEVELOPMENT PROJECT.**

WHEREAS, the City Council previously approved the City's participation in this economic development project to help offset the project costs including public infrastructure improvements, site preparation, and stadium construction costs associated with the development; and

WHEREAS, due to increased costs associated with the project and an unforeseen split in the ownership of Brookstown Development Partners, LLC; Sports Menagerie, LLC; and Sports Menagerie Corporation along with the current global credit crisis, the City has been requested to assist with financing of the project; and

WHEREAS, the developer has requested any net new tax increment from Phase I investment in excess of \$22.6 million be applied to the City's previously authorized Phase II commitment of up to \$8,012,252 and that the annual grants would never exceed 100% of the annual property taxes paid to the City for the previous year and the City's total Phase II commitment of \$8,012,252 would not change.

NOW, THEREFORE, BE IT RESOLVED, that the Winston-Salem City Council authorizes as set forth in Exhibit A the purchase of the land (Revised Lot 1, as shown on a map recorded in Plat Book 54, page 182-184) under the footprint of the stadium, adjacent land (Lot 2 as shown on a map recorded in Plat Book 54, pages 182-184) for on-site parking and easements for off site parking, and the procurement of subordinated security interest in (1) the improvements on the stadium land from Sports Menagerie, LLC, its successors, affiliates, and assigns and (2) land owned by Brookstown Development Partners, LLC, all from Brookstown Development Partners, LLC, its successors, affiliates, and assigns.

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BE IT FURTHER RESOLVED that the Winston-Salem City Council authorizes the City to finance the sale of certain City-owned lots being Tax Block 0098, Lots 003A, 101A, 201, 003B, 101C, 202A and Tax Block 0103, Lots 106 and 107 under the terms and conditions set forth in Exhibit B to Brookstown Development Partners, LLC, its successors, affiliates, or assigns, provided a lease is granted to the City on said property for a term of five years or the date by which the loan is paid, whichever comes first, at fair market value, which shall not exceed the annual interest payment.

BE IT FURTHER RESOLVED that the original economic development agreement between the City, Brookstown Development Partners, LLC, and Sports Menagerie, LLC be: (1) Restated and Amended, to incorporate any additional parties such as Sports Menagerie Stadium, LLC; Double Play Partners, LLC; W-S Dash Partners, LLC; any affiliates, successors, and assigns thereof; and (2) any additional provisions necessitated by the adoption of this resolution, including but not limited to clarifications regarding any Phase I investment in excess of \$22.6 million such that the net new tax increment from this additional investment is applied to the City's previously authorized Phase II commitment of up to \$8,012,252 and that the annual grants would never exceed 100% of the annual property taxes paid to the City for the previous year in excess of the \$22.6 million investment and that the City's total Phase II commitment of \$8,012,252 does not change.

BE IT FURTHER RESOLVED that the City Manager and City Secretary are hereby authorized to execute all documents necessary to effectuate the actions authorized by this resolution.

EXHIBIT A

**STRUCTURE FOR ADDITIONAL (BANK FINANCED) FUNDING
FOR BROOKSTOWN DEVELOPMENT PROJECT**

1. The current proposal for completing the ballpark (the “stadium”) calls for an additional financing infusion of \$27.7 million from 1) a loan to the developer by a banking consortium for \$15 million and 2) a City secured bank financing for \$12.7 million.
2. The banking consortium loan for \$15 million (Bank Loan I) would be 100% secured through stadium revenues and personal guarantees of entity owners. Each Guaranty shall be limited in an amount equal to 125% of the Guarantor’s ownership interest in Sports Menagerie Stadium, LLC times the amount of Loan I. The initial loan commitment is for three years. At the end of the term, an extension will need to be negotiated with terms dependent upon the success of the project.
3. The City secured financing of \$12.7 million (Bank Loan II) would be used to purchase the land under the stadium through a payment of \$8 million to Regions Bank (the original funding source) and to complete the stadium construction.
4. The City receives:
 - Title to land under stadium (Lot 1-subordinated to a 1st lien on land for Bank Loan I).
 - Title to Land for parking (Lot 2) and easements for parking during the time events are occurring at the stadium.
 - Security interest in the stadium subordinate to Bank Loan I.
 - 2nd Deed of Trust of all Brookstown Development Partners Properties, LLC.
 - Access to stadium and other revenues described below.
5. No additional principal advances may be made on the Regions Bank Deed of Trust without the City’s consent and no property subject to the Second Deed of Trust will be released from the lien unless accrued, unpaid ground rent and the interest thereon has been paid in full.
6. No additional principal advances may be made on Bank Loan I or be secured by the deed of trust supporting Bank Loan I without the City’s consent.
7. The City would a) ground lease the site of the stadium to Brookstown Development Partners, LLC for 25 years at a ground rent equal to debt service on \$8 million of Bank Loan II and b) lease their portion of the stadium to Sports Menagerie for a rent equal to debt service on \$4.7 million of Bank Loan II.
8. Brookstown Development Partners, LLC would sublease the stadium land to Sports Menagerie, LLC at a ground rent of a) \$1 million upfront payment and b) annual payments equal to debt service on \$1.5 million at the interest rate on Bank Loan II. The

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ground lease will provide that as long as the ground rent from Brookstown Development Partners, LLC is unpaid the ground rent payable will under the sublease be paid instead to the City to the extent of the amount of any shortfall.

9. Stadium Net Revenues (all income received from the stadium, less operating expenses excluding depreciation and other non-cash expenses) would be distributed as follows:
 - 1) Debt Service on Bank Loan I.
 - 2) Ground Lease Payment (includes deficits from Brookstown Development Partners, LLC).
 - 3) Lease Payment to City for stadium (includes any deficits from prior years)
 - 4) Establish one-year debt service reserve for Bank Loan II.
 - 5) Distribution to Investors at 10% return on investment.
 - 6) Retire principal on Bank Loan II with 50% remaining revenues.
10. Relocation of the team or sale of the team which results in the team not playing in the stadium will give rise to acceleration of the payment obligations of Sports Menagerie, LLC and Brookstown Development Partners, LLC.
11. The City's obligation is subject to the approval of the North Carolina Local Government Commission.

EXHIBIT B

**CITY FINANCING
TERMS AND CONDITIONS**

- Borrower:** Brookstown Development Partners, LLC, its successors, affiliates, and assigns
- Amount of Assistance:** \$980,361
- Interest Rate:** 5½ %
- Purpose of Assistance:** Financing the sale of City-owned land
- Loan Term:** Five years
- Repayment:** Annual interest only payments for Years 1 and 2
Commencing in Year 3 an annual principal reduction of \$25,000 shall be made in addition to interest only payment.
Balloon payment due at the end of Year 5.
- Collateral:** The loan shall be secured by a subordinated Deed of Trust on the property.
- Use of Property:** The property shall be developed as part of a mixed-used development being part of the Brookstown Development project. Approval must be granted by the City Council to change the intended use of this property or the ownership of this property during the term of the loan. Failure to meet this requirement would require Brookstown Development Partners, LLC to repay the City any outstanding portion of the financial assistance within 90 days of such unapproved change.
- Other Conditions:**
- (1) The sale of the above listed property and related financing will close at the same time as the satisfactory closing of a loan (or loans) to Brookstown Development Partners, LLC and Sports Menagerie, LLC and their successors, affiliates, and assigns that will allow the stadium to be completed within seventy-five days of the date of the closing with the possibility of a one time extension provided substantial progress, as determined by the City, has been made.
 - (2) The City will be granted a lease on the property for a term of five years or the date by which the loan is paid, whichever date comes first. The amount of the lease shall be at fair market value, but shall not exceed the amount of the annual interest payment.
 - (3) Brookstown Development Partners, LLC shall pay all property taxes on the land.
 - (4) The City's lien will be subordinate to a lien in favor of Regions Bank.

RESOLUTION OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA, DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF A TAXABLE SPECIAL OBLIGATION BOND; REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE CITY'S TAXABLE SPECIAL OBLIGATION BOND; AND CERTAIN RELATED MATTERS.

WHEREAS, the City Council (the "*City Council*") of the City of Winston-Salem, North Carolina (the "*City*"), hereby determines that it is necessary to improve a municipal service district known as the Central Business District, including acquisition of land and rights-of-way and easements in connection therewith, to provide for a downtown minor league baseball stadium, related parking facilities and other improvements further the public welfare, and convenience (the "*Project*"); and

WHEREAS, the City Council is considering the issuance of not to exceed \$13,000,000 in principal amount of a Taxable Special Obligation Bond, Series 2009 (the "*2009 Bond*") to finance the Project and pay the costs of issuing the 2009 Bond; and

WHEREAS, the City Council has determined to (1) retain Parker Poe Adams & Bernstein LLP of Charlotte, North Carolina, as bond counsel, (2) retain DEC Associates, Inc. of Charlotte, North Carolina, as financial advisor, (3) retain The Bank of New York Mellon Trust Company, N.A., as trustee, in connection with the issuance by the City of the 2009 Bonds, and (4) place the 2009 Bond with Branch Banking and Trust Company (collectively, the "*Financing Team*"); and

WHEREAS, the City Council wants the Chief Financial Officer of the City to file with the North Carolina Local Government Commission (the "*Commission*") an application for its approval of the 2009 Bond, on a form prescribed by the Commission, and (1) request in such application that the Commission approve (a) the negotiation of the sale of the 2009 Bond to Branch Banking and Trust Company, (b) the City's use of Parker Poe Adams & Bernstein LLP, as bond counsel for the City, (c) the City's use of DEC Associates, Inc., as financial advisor, and (d) the City's use of The Bank of New York Mellon Trust Company, N.A., as trustee, and (2) state in such application such facts and to attach thereto such exhibits in regard to the 2009 Bond and to the City and its financial condition, as may be required by the Commission, and to take all other action necessary to the issuance of the 2009 Bond.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winston-Salem, North Carolina, as follows:

Section 1. That the 2009 Bond is to be issued by the City for the purpose of providing funds (1) to finance the costs of the Project and (2) to pay the costs of issuing the 2009 Bond all as set out fully in the documents attached to the City's application to the Commission. The use of the proceeds of the 2009 Bond, as described, is necessary in order to meet the expanding needs of the users of the municipal service district known as the Central Business District.

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Section 2. That the use of the Financing Team in connection with the issuance by the City of the 2009 Bond is hereby ratified.

Section 3. That the Chief Financial Officer of the City with advice from the City Manager, the City Attorney, and bond counsel, is hereby authorized, directed, and designated to file an application with the North Carolina Local Government Commission for its approval of the issuance of the 2009 Bond.

Section 4. That the City Council finds and determines and asks the Commission to find and determine from the City's application and supporting documentation:

- (a) that the issuance of the 2009 Bond is necessary or expedient;
- (b) that the not to exceed stated principal amount of the 2009 Bond will be sufficient but is not excessive, when added to other moneys available to the City, for the proposed Project and to refund the Refunded Bonds;
- (c) that the City's debt management procedure and policies are excellent; and
- (d) that the 2009 Bond can be marketed at a reasonable interest cost to the City.

Section 5. The City Council has considered and evaluated fixed rate and variable rate financing alternatives and has determined to incur variable rate indebtedness in order to take advantage of short-term interest rates and to preserve the option to prepay the 2009 Bond at any time without a prepayment premium. The City Council recognizes that (a) variable rate debt instruments are subject to risk of higher interest rates in the future and (b) that additional costs are associated with variable rate financings. However, the City Council hereby determines that a variable rate financing is in the best interests of the City for its current financing needs.

Section 6. That the Mayor, the City Manager, and the Chief Financial Officer are hereby authorized to do any and all other things necessary to complete the steps necessary for the issuance of the 2009 Bond.

Section 7. That the City Council requests that the Commission sell the 2009 Bond through negotiation with Branch Banking and Trust Company on such terms as may be agreed on but at a maximum interest cost rate not exceeding 15.00%.

Section 8 That this Resolution is effective on the date of its adoption.

**ORDINANCE AMENDING THE PROJECT BUDGET ORDINANCE
FOR THE CITY OF WINSTON-SALEM, NORTH CAROLINA
FOR THE FISCAL YEAR 2008-2009**

BE IT ORDAINED by the City Council of the City of Winston-Salem that the Project Budget Ordinance for the Fiscal Year 2008-2009 be amended to include expenditures and revenues related to the various funds as described herein.

SECTION 1. That the Project Budget Ordinance of the City of Winston-Salem, adopted on June 16, 2008 and amended on July 21, 2008, August 18, 2008, September 15, 2008, October 27, 2008, November 17, 2008, December 15, 2008, December 22, 2008, January 26, 2009, February 16, 2009, March 23, 2009, April 20, 2009, and May 18, 2009, shall be further amended by changing the expenditure appropriations in the following funds.

CAPITAL PROJECTS FUND (EXPENDITURES)

Brookstown Stadium Area Improvements	
<i>Transportation Infrastructure</i>	-\$2,147,500
<i>Stadium Infrastructure</i>	2,000,000
Broad Street Transportation Improvements	108,950
Bridge Replacement/Other Reserve Projects	<u>38,550</u>
Total Capital Projects Fund Expenditures	\$ 0

SECTION 2. That the following revenues will be available to meet the above listed appropriations.

CAPITAL PROJECTS FUND (REVENUES)

Brookstown Stadium Area Improvements	
<i>SAFETEA-LU Federal Grant Funds</i>	-\$1,718,000
<i>Capital Project Reserve funds</i>	1,570,500
Broad Street Transportation Improvements	
<i>SAFETEA-LU Federal Grant Funds</i>	1,718,000
<i>Capital Project Reserve funds</i>	-1,103,240
<i>2000 General Obligation Bonds</i>	-505,810
Bridge Replacement/Other Reserve Projects	
<i>Capital Project Reserve funds</i>	-467,260
<i>2000 General Obligation Bonds</i>	<u>505,810</u>
Total Capital Projects Fund Revenues	\$ 0

SECTION 3. That this amendment to the Project Budget Ordinance shall become effective as of the date of adoption.