

AGREEMENT

THIS AGREEMENT (hereinafter the “Agreement”) is made and entered into as of the ____ day of September, 2023 (the “Effective Date”), by and between **LSC STADIUM COMPANY, LLC**, a Kentucky company with its principal office located at Bull Lea Run, Lexington, Kentucky 40511 (hereinafter “LSC”) and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter “LFUCG”).

WITNESSETH:

WHEREAS, LSC was granted a United Soccer League (USL) League One franchise and a women’s Super League franchise and joined the pre-professional league USL Academy for professional and youth soccer; and

WHEREAS, LFUCG previously entered into an agreement giving LSC or its affiliates \$1 million in incentives for the purposes of assisting with the construction of youth soccer fields which will benefit the community; and

WHEREAS, LSC Facilities Holding Company, LLC, a wholly owned subsidiary of LSC, owns approx. 23 acres of real property located at 5354 Athens Boonesboro Road, Lexington, Fayette County Kentucky (the “Project Site”), as further described in Exhibit “A”, which is attached hereto and incorporated herein by reference, along the Interstate 75 Corridor and plans to locate thereon a professional soccer stadium with at least 5,250 seats and a related training facility (the “Project”); and

WHEREAS, LSC or its subsidiaries have been awarded state sales tax incentives under the Kentucky’s Tourism Development Incentive Program as a designated Kentucky Tourism Development Act Project for the already constructed youth soccer fields, and the Kentucky Enterprise Initiative Act as a qualifying economic development project with the support of LFUCG; and

WHEREAS, LSC or its subsidiaries have committed to the hiring and retention of between 50 and 150 additional qualified employees in Fayette County for at least the period of time provided in this Agreement; and

WHEREAS, LFUCG recognizes that this a special and unique project for the community and that the location of this Project at the Project Site will be of significant benefit to Fayette County, both economically and through improvement of infrastructure, and is willing to provide certain incentives as an inducement for locating the Project at the Project Site; and

WHEREAS, LFUCG finds that the provision of economic incentives towards the Project, as further provided herein, is in the public interest as it will create new jobs and significant tourism for the community; and

WHEREAS, LSC is agreeable to accepting these incentives subject to the terms and conditions of this Agreement and with the understanding that certain of the incentives are contingent upon, and shall require further additional final approval by certain governmental boards and the Urban County Council.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals**. The above recitals are incorporated herein as if fully stated.

2. **Definitions**. The following definitions shall apply to this agreement:

- A. "Activation Date" shall mean thirty (30) days after the earlier of completion of the Project (as evidenced by the issuance of a Certificate of Occupancy or equivalent) or January 1, 2025.
- B. "Company" shall mean LSC and any subsidiary companies or other affiliated entities owned or controlled by LSC in Fayette County.
- C. "Division of Revenue" shall mean LFUCG's Division of Revenue.
- D. "Employees" shall mean all persons hired after the effective date of this Agreement and retained by the Company and working in Fayette County for any portion of the time between the Activation Date and the ten (10) year anniversary thereof.
- E. "Gross Salaries" shall mean the salaries and wages paid to the Company's Employees, as defined above.
- F. "Industrial Revenue Bond" or "IRB" shall mean a bond issued through the Lexington-Fayette Urban County Government pursuant to KRS 103.200, et seq., with the approval of, and in compliance with the guidelines and procedures of LFUCG's Economic Development Investment Board and the Urban County Council.
- G. "Payroll Tax" shall mean the LFUCG's occupational tax on employees' salaries and wages applicable to Gross Salaries of employees of the Company, which is currently in the amount of 2.25% of gross salaries and wages.
- H. "Project" shall mean the 5,250 seat professional soccer stadium and related training facility located on the Project Site as further described in the attached Exhibit "B", which is incorporated herein by reference. Company understands and agrees that any material change to the proposed Project will require the advance written approval of LFUCG.
- I. "Project Site" shall mean the property comprised of approx. 23 acres located at 5354 Athens Boonesboro Road, Lexington, Fayette County Kentucky, as further described in Exhibit "A" which is incorporated, herein by reference.
- J. "Public Infrastructure" shall have the same definition as provided in LFUCG Ordinance No. 141-22 pertaining to the Public Infrastructure Fund.
- K. "Public Infrastructure Fund" shall mean the fund created pursuant to LFUCG Ordinance No. 141-22.

3. Incentives. This Agreement provides for three types of incentives that may be provided by LFUCG to the Company: (a) a 1% Payroll tax refund for a period of ten (10) years, (b) an IRB in an amount not to exceed \$50 million for up to fifteen (15) years in length, and (c) a \$1 million forgivable loan from the Public Infrastructure Fund. Whether the Company ultimately receives one or more of the incentives is dependent upon certain conditions being met and, in some instances, additional final approval being provided. The Company understands and agrees that any calculation of the total financial benefits to be derived from these incentives is speculative, and LFUCG is not guaranteeing any minimum amount. Company further understands and agrees that with respect to the IRB, it is incumbent upon the Company to hire its own legal counsel to determine the feasibility and legality of utilizing this method of financing for the Project. The incentives are intended to operate separately and independently from each other, and in the event that the Company fails to meet a condition or default as to that incentive it does not necessarily mean that another incentive will be reduced or eliminated absent additional circumstances.

4. Payroll Tax Refund Incentive.

- A. That from the Activation Date and for a period of ten (10) years thereafter LFUCG shall refund to LSC on an annual basis as Payroll Tax from the Company is paid, a portion of the Payroll Tax paid by the Company for work performed in Fayette County, in the amount of one percent (1%) of its Employees' Gross salaries. Such refunds will be paid by LFUCG within sixty (60) days of receipt of Company's Payroll Taxes and returns.
- B. LSC shall provide and certify to the Division of Revenue a listing of all entities and subsidiaries that are included within the definition of Company that are operating in Fayette County, which may be updated as needed, and no Payroll Tax shall be refunded from entities not provided by LSC to the Division of Revenue or for any late Payroll Tax payments made by the Company.
- C. LSC and the Division of Revenue shall develop procedures relating to the calculation and certification of the Payroll Tax refund that may be due each year, which shall include a process to ensure and certify that the Payroll Tax to be refunded does not include tax from Company Employees that are currently employed in Fayette County as of the effective date of this Agreement and that it takes into account any refunds that may have been provided to any Employees also performing work outside Fayette County. The Company shall comply with reasonable requests for information from the Division of Revenue to enable the Division of Revenue to calculate and certify the Payroll Tax refund due.
- D. Any dispute between LSC and the Division of Revenue related to the Payroll Tax refund may be appealed in writing to the LFUCG Commissioner of Finance, whose decision relating to any appeal shall be final.

- E. The Parties acknowledge that the incentives granted by this Agreement are based on the representations made by the Company regarding the scope of the Project and the estimated capital investment as further described in Exhibit "B". In the event that the Project as built is significantly less in size and scope than the Project as was represented by LSC, LFUCG reserves the right to review the matter and possibly reduce this incentive.
 - F. Company shall provide LFUCG with the initial benchmark information related to all of its current employees in Fayette County, which shall include title, gross salaries for work performed in Fayette County, and any other reasonable information requested by LFUCG, at least sixty (60) days prior to the Activation Date.
5. **Industrial Revenue Bond Incentive.** LFUCG administration will recommend to its Economic Development Investment Board and the Urban County Council the approval of an Industrial Revenue Bond or Bonds for the Project with the following conditions: (a) the footprint shall be limited to the Project Site, (b) the bond or bonds shall not exceed fifteen (15) years in duration, (c) the bonds or bonds shall not exceed a total amount of \$50 million, (d) the Company is responsible for obtaining PILOT Agreements with Lexington-Fayette County Library Board and the other relevant taxing districts in Fayette County, including but not limited to the Health Department and the School Board, and for otherwise complying with the legal requirements related to IRB's. LFUCG agrees to recommend the waiver of all costs and fees normally paid to LFUCG in relation to the issuance of any Bond(s). The Company understands and agrees to hire, at its expense, its own legal counsel to determine the feasibility and legality of utilizing this method of financing for the Project before seeking approval by the Economic Development Investment Board, and to pay for any costs or expenses it incurs related to the issuance of the bonds, including but not limited to bond counsel. The Company further understands and agrees that the issuance of any Bond(s) is contingent upon the additional separate final approval of LFUCG's bond counsel, the Board and the Urban County Council.
6. **Public Infrastructure Forgivable Loan Incentive.** LFUCG administration will recommend to its Economic Development Investment Board and the Urban County Council that they waive certain of the restrictions and requirements pertaining to the Public Infrastructure fund and support the issuance to LSC of a ten (10) year year forgivable loan, with no interest payments, in the amount of \$1 million to be used for qualifying Public Infrastructure expenditures on the Project Site. Without limitation, the loan terms shall require that: (a) the Project be completed, and (b) the professional soccer teams remain at the Project Site, and the headquarters of the Company's remain in Fayette County, for at least fifteen (15) years from the date of completion of the Project. LFUCG further agrees to recommend the waiver of all costs and fees normally paid to LFUCG or the Board in relation to the issuance of the loan including the application fee. The Company further understands and agrees that the issuance of any loan is contingent upon the additional separate final approval of the Board and the Urban County Council, and that it is responsible for covering any costs or expenses it incurs related to the issuance of the loan.

7. **Project Start; Relocation Prohibited.** In the event that the Company fails to start the Project within one (1) year of the approval of this Agreement the incentives provided herein shall be automatically revoked. LFUCG shall have, at its sole discretion, the right to declare the entire amount of any of these incentives paid to LSC immediately due and payable if the Company fails to complete the Project by January 1, 2026, or if any of the following take place within fifteen (15) years of completion of the Project: (a) the professional soccer teams no longer play their home games at the Project Site, (b) the headquarters of the Company are no longer located in Fayette County, or (c) the Company ceases its operations in Fayette County.
8. **Company's Obligations.**
 - A. **Project Completion.** Pursuant to the terms and conditions of the Agreement, Company shall complete the Project as further described in Exhibit "B", which is attached hereto and incorporated by reference.
 - B. **Reporting.** On or before January 31st of each calendar year during the Term of this Agreement, LSC shall provide LFUCG with an annual certification of the following information as of the preceding December 31st: (i) the number of jobs maintained by the Company in Fayette County as of such date and the Gross Salaries related to its Employees/aggregate payroll in Fayette County; (ii) the aggregate real and personal property improvements made prior to such date; and (iii) a written certification of compliance with the terms and conditions of this Agreement signed by an officer of Company.
 - C. **Soccer Championships.** Company agrees to host both the boys and girls Kentucky State High School Athletic Association (KHSAA) State Soccer Championship games free of charge to the association for at least fifteen (15) years following the completion of the Project. The dates of these games will be as mutually agreed upon by LSC and the KHSAA along with the related details such as ticket sales and concessions.
9. **Term.** This Agreement shall remain in effect until the Company has fully complied with its requirements, with each incentive having its own respective compliance, unless terminated by LFUCG in writing for nonperformance at an earlier time.
10. **Company's Representations, Warranties, and Covenants.**
 - A. **Investment.** Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.
 - B. **Registration; Compliance; Authority to Sign.** Company is lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Company has timely filed federal, state, or local tax forms which shall be provided by Company on a timely basis. The person signing this Agreement on behalf of Company is fully authorized to do so.

- C. Entity Existence. Company shall at all times remain a validly and legally authorized business entity in the Commonwealth of Kentucky and shall not without the prior consent of LFUCG: (1) liquidate, dissolve, or take actions related thereto, (2) substantially cease operation at the Project Site, (3) assign its rights under this Agreement, or (4) undertake a change in majority ownership, management or control.
- D. Records. Company shall keep and make available to LFUCG any records related to this Agreement such as are necessary to support its performance hereunder and shall be made available to LFUCG upon request. Company understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.
- E. Access. Company shall allow LFUCG any necessary reasonable access to monitor its performance under this Agreement.
- F. Equal Opportunity; Fairness Ordinance. Company shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, and (b) promote equal employment through a positive, continuing program of equal employment. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Company agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.
- G. Sexual Harassment. Company must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Company conducts business. The policy shall be made available to LFUCG upon request.
- H. Indemnification. Company shall indemnify, defend and hold harmless LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest, from and against any and all liability, damages, and losses, including but not limited to: demands, claims, liens, suits, notices of violation from governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Company's performance of, or breach of this Agreement and/or the provision of goods or services, provided that (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Company or its officials, employees, or agents; and (b) not caused solely by willful misconduct of LFUCG. Company understands that LFUCG is a political subdivision of the Commonwealth of Kentucky and acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend Company in any

manner. This paragraph shall survive the termination or expiration of this Agreement.

- I. Insurance. Company shall maintain its real property, buildings, and other fixed assets located at the Site in good condition, subject only to normal wear and tear, and make all necessary and proper repairs, renewals, and replacements, and shall comply with all material provisions of its agreements in order to prevent loss or forfeiture. During the Term of this Agreement, Company shall purchase and maintain in full force and effect the following insurance policies: General Liability (\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit); Commercial Automobile Liability (combined single, \$1 million per occurrence); Worker's Compensation (Statutory); and Employer's Liability (\$1 million).

11. Default.

Should the Company fail to abide by any of the terms provided in this Agreement or any subsequent agreement related to the incentives described herein, LFUCG shall have, at its sole discretion, the right to declare the entire amount of any of these incentives provided to LSC immediately due and payable. **In the event of a default LFUCG shall provide LSC with a written notification of the default condition(s) and a sixty (60) day period to cure, which may be extended at the discretion of LFUCG.**

12. Miscellaneous Provisions.

- A. Approvals. The Project shall be constructed in accordance with all local, state and federal permits that may be required, and nothing contained herein shall be considered a waiver of any and all required approvals of the Project by LFUCG and its agencies from the customary zoning and other permits and required approvals that are applicable to the Project.
- B. Contractual Relationship Only. In no event shall the parties be construed, held, or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.
- C. Last Dollar In. The Company represents and certifies that the financial incentives provided under this Agreement are necessary for the Project to be completed and are the last funds received from a third party.
- D. No Third Party Rights. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either the Company or LFUCG.
- E. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken.
- F. Amendments. By mutual agreement, the Parties may, from time to time, make written changes to any provision hereof. Company acknowledges that LFUCG may make any such material changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

- G. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.
- H. Waiver. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this Agreement.
- I. Kentucky Law and Venue. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.
- J. Notice. Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Company:

LSC HOLDINGS, LLC
1301 Dixiana Domino Road
Lexington, Kentucky 40511
Attn: Vince Gabbert

For LFUCG:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Kevin Atkins, Chief Development Officer

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
LINDA GORTON, MAYOR

ATTEST:

URBAN COUNTY COUNCIL CLERK

LSC STADIUM COMPANY, LLC

BY: _____
William J. Shively, Manager of LSC Holdings, LLC

COMMONWEALTH OF KENTUCKY)

COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by William J. Shively, as Manager of LSC HOLDINGS, LLC, on this the _____ day of September, 2023.

My commission expires: _____

NOTARY PUBLIC, STATE AT LARGE, KY

EXHIBIT A
The Site

EXHIBIT B
The Project