

**38662**

DATE: February 26, 2014

TO: Board of Acquisition and Contract

FROM: Kathleen M. O'Connor  
Commissioner, Department of Parks, Recreation and Conservation

RE: Authority to enter into a License Agreement with MSG D-League Team, LLC to use the Westchester County Center in connection with NBA Development League basketball games for a five-year term commencing May 1, 2014 through April 30, 2019, and granting MSG a five-year option to renew

---

Authority is hereby requested for the County of Westchester ("County"), acting by and through the Department of Parks, Recreation and Conservation, to enter into a license agreement with MSG D-League Team, LLC ("MSG") to use the Westchester County Center ("County Center") for NBA Development League basketball games, and for the use of certain other areas located at the County Center in connection with such games including, locker rooms, office space, storage and parking, in accordance with the terms and conditions more fully set forth in the Term Sheet dated February 25, 2014 which is attached hereto and incorporated herein ("Agreement").

The Agreement shall be for the period commencing May 1, 2014 through April 30, 2019. MSG shall have an option to renew the Agreement for an additional five (5) year period on six (6) months notice to the County prior to the expiration of the initial five (5) year term.

The proposed license agreement is exempt from the County's Procurement Policy pursuant to Section 3(b) thereof.

Based upon the foregoing, approval of the attached resolution by your Honorable Board is most respectfully requested.

KMO/TSA

**RESOLUTION**

Upon a communication from the Commissioner of Parks, Recreation and Conservation, be it hereby

**RESOLVED**, that the County of Westchester, (“County”) acting by and through the Department of Parks, Recreation and Conservation, is authorized to enter into a license agreement with MSG D-League Team, LLC (“MSG”) to use the Westchester County Center (“County Center”) for NBA Development League basketball games, and for the use of certain other areas located at the County Center in connection with such games including, locker rooms, office space, storage and parking, in accordance with the terms and conditions more fully set forth in the Term Sheet dated February 25, 2014 which is attached hereto and incorporated herein (“Agreement”); and be it further

**RESOLVED**, that the Agreement shall be for the period commencing May 1, 2014 through April 30, 2019. MSG shall have an option to renew the Agreement for an additional five (5) year period on six (6) months notice to the County prior to the expiration of the initial five (5) year term; and be it further

**RESOLVED**, that the County Executive or his authorized designee is hereby empowered to execute any and all instruments and take such other actions as may be reasonably necessary to effectuate the purposes hereof.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars	
165	42	7150	9149		\$55,800	2014
165	42	7150	9149		\$175,935	2015
165	42	7150	9149		\$180,857	2016
165	42	7150	9149		\$185,926	2017
165	42	7150	9149		\$191,148	2018
165	42	7150	9149		\$132,444	2019

Budget Funding Year(s) 2014-2019 Start Date 5/1/14 End Date 4/30/19  
(must match resolution)

Funding Source Tax Dollars \_\_\_\_\_  
State Aid \_\_\_\_\_  
Federal Aid \_\_\_\_\_  
Other Revenue \_\_\_\_\_  
\$ 922,110 \*  
(must match resolution)

\*Additional revenue is expected from additional staffing if necessary, ticket sales, concessions, parking, and advertising all as described in the attached term sheet.

**NBA D-League Proposed License Agreement Terms**  
**February 25, 2014**

This Term Sheet sets forth the material terms of our understanding whereby MSG D-League Team, LLC (“MSG”) will license the Westchester County Center (“WCC”) from Westchester County (“County”) for the purpose of staging NBA Development League (“NBADL”) basketball games and related activities (each, an “MSG Game”).

**I. License Agreement Term**

The term of the license agreement shall be from May 1, 2014 – April 30, 2019. MSG shall have an option to renew for an additional five (5) year period upon notice to the County given no less than six months prior to the expiration of the initial term. The County will give MSG a permit to occupy office space and conduct day-to-day business activities as set forth in the Section XIV below, provided, however, that MSG shall not interrupt WCC business, and provided further that the permit will expire upon commencement of the License Term.

Agreement to include mutual termination right, exercisable by either party at any time and effective no earlier than eighteen (18) months after notice of termination is given (the “Effective Date”), provided, that (i) if the Effective Date is scheduled to occur during an NBADL Season (the “Termination Season”), MSG may elect to have such termination become effective immediately prior to or immediately following such Termination Season in lieu of the scheduled Effective Date and (ii) if County exercises such early termination right, MSG may at any time elect to have the effective date occur earlier than the scheduled Effective Date.

MSG to have right to terminate at any time that MSG no longer owns a D-League Team.

**II. Game Day License Fee**

\$6,500 per game for the 2014-15 Season. The Game Day License Fee shall increase each year by 3% beginning in the 2015-16 Season. Payable at the end of the month that follows the month in which each game was played

Includes the following staffing levels (all staff to be in place by no later than one hour prior to scheduled tip-off of each MSG Game):

<u>Personnel</u>	<u>Staff Required</u>
Event Supervisor	1
Maintenance Foreman	2
Box Office Clerk	2
Restroom Attendant	1
Laborer	3
County Police Supervisor	1
County Police Officer	3
Chief Usher	1
Usher	20
Ticket Taker	6
Parking Attendants	5
<b>Personnel Totals:</b>	<b>45</b>

MSG to pay actual incremental out-of-pocket overtime staffing and labor costs incurred in connection with a “Next Day Facility Changeover”. A Next Day Facility Changeover is defined as (x) the breakdown of a previously scheduled event (i.e. scheduled by County prior to MSG reserving the subsequent day) and set up for an MSG Game taking place the following day or (y) the breakdown of an MSG Game and set up of a previously scheduled event (i.e. scheduled by County prior to MSG reserving the previous day). Final levels of staffing for Next Day Facility Changeovers will be based on actual costs, as reasonably determined by the Parks Commissioner, using best efforts to schedule staffing and labor to occur during regular business hours where possible and not incurring overtime costs. MSG shall have no obligation to pay for a Next Day Facility Changeover where a third party is otherwise obligated to pay for same.

MSG to pay to County a \$475 per game energy/utility usage fee. If the County increases such fee in future years, MSG will pay additional sum, provided that any such fee increase is reasonable, established in good-faith and applicable to all WCC licensees. In determining the reasonableness of any potential increase in per game energy/utility usage fee, the parties will consider the annual rent escalator of 3% per year, any changes in County’s direct energy/utility costs, and the cumulative effect on MSG when such increase is applied to MSG’s 25 or more games per season.

MSG may be subject to relevant state and local taxes, consistent with other arena events, but County will not charge any other arena surcharges. County may charge a Facility Fee on all individual sales of tickets purchased via Ticketmaster, the box office or third party vendors engaged by MSG; County will not be entitled to any other portion of ticket revenue. Facility Fee shall be \$2.50 on tickets that are priced greater than \$15.00 and \$1.50 on tickets priced at \$15.00 or less. County will waive its Facility Fee on sales of season tickets, group plans or partial plans.

### **III. Renovations**

County has provided its proposed Capital Plan for the redevelopment of the facility for general County needs and purposes. A copy of the proposed Capital Plan has been provided to MSG. MSG and County agree to work together in good faith so that public improvements to the facility are consistent with requirements for MSG and NBADL and to fulfill the terms contained herein. The parties acknowledge that any public bonding for capital improvements must be for a “public purpose” and cannot be solely for “private activity”.

### **IV. Future Renovations**

County agrees to reasonably consult with MSG with respect to future capital improvement projects to the WCC.

If at any time during the term of the license, County changes the capacity of the WCC without the consent of MSG and such change has a material adverse effect on MSG’s business operations, MSG shall have the option to terminate the license on 30 days’ notice to the County.

### **V. Permanent Building Assets (i.e. Signage for all Arena Events)**

MSG will be the exclusive sales agent and shall have the right (but not the obligation) to sell signage, sponsorships or advertising for use on or adjacent to the areas listed below and defined as “Permanent Building Assets”, provided that MSG will ensure that County has no obligation to display such signage, sponsorships or advertising after the termination or earlier expiration of the license contemplated herein. The Permanent Building Assets are categorized as follows:

#### **A. Arena (Main Hall)**

- Electronic Scoreboards (2)
- Walls signage
- Fascia signage

- Space next to the Main electronic scoreboard

B. Lobby

- Plasma displays (3)
- Wall space
- Concourse signage
- Exit-way signage

C. Outside

- Electronic marquee (1)
- Banners (1)
- Exterior signage (other than column banners)
- Parking lot signage

D. Other

- other signage that is not specific to NBADL games

MSG's sale of signage, sponsorships or advertising for use on or adjacent to the Permanent Building Assets, Categories A – D above, is subject to the following conditions:

1. Any required approval of the County Board of Legislators, with respect to naming rights.

2. Any required approval of the Commissioner, with respect to any signage, sponsorship or advertising on or adjacent to the Permanent Building Assets, such approval not to be unreasonably withheld, conditioned or delayed.

3. Each year, MSG to receive the first \$100,000 of net revenues received from the sale of any signage, sponsorships or advertising on or adjacent to the Permanent Building Assets; for any amounts in excess of \$100,000 in any given year, 70 percent will be payable to MSG and 30 percent will be payable to the County. For purposes of this section, net revenues shall mean all revenues received from the sale of signage, sponsorships or advertising on or adjacent to the Permanent Building Assets, less only outside agency commissions and third party fulfillment costs.

At the end of the third year of the license agreement the

parties shall discuss in good faith a potential adjustment to this Permanent Building Assets revenue allocation for future years; any adjustment shall be limited to sales made by MSG after the parties agree to such adjustment.

4. (a) During MSG games:

Notwithstanding anything to the contrary in sub-section 3 above, with respect to the revenue split, revenue derived from the sale of any signage/sponsorship/advertising on the electronic marquee (C), scoreboards (A) or the lobby plasma displays (B) during MSG Games shall be treated as Game Related Arena Sales, and MSG shall be entitled to retain all revenue therefrom, see Game Related Arena Sales section below.

(b) Non-game day usage:

Use of the electronic marquee (C), scoreboards (A) or the lobby plasma displays (B) on non-game days shall include both MSG and County promotions and upcoming events as well as signage/sponsorship/advertisements sold by MSG. The rotational schedule will be within County's discretion.

5. MSG may offer electronic marquee (C), three lobby plasma displays (B), arena scoreboards (A) and LED signage, if any, to sponsors/advertisers on a non-exclusive basis (to be included along with County's standard rotation of promotional advertisements). Any such sales shall be subject to revenue split detailed in subsection 3 above at all times, except during MSG Games (when MSG shall be entitled to retain all such revenue).

6. The terms of any agreements that the County has already entered into as of the date hereof.

7. County will have use of two fascia signs and one wall sign for displays; County's other currently existing promotional displays may remain until such time that MSG needs to utilize the space.

8. Cost of any County signs or promotional displays, including, without limitation, cost of fabrication, installation and maintenance shall be County's

## VI. Ticket back advertising

responsibility.

1. MSG shall be entitled to retain 100% of the revenue derived from the sale of ticket back advertising for MSG Games.

2. Ticket back advertising for events other than MSG Games shall be subject to the revenue split detailed in subsection 3 of the Permanent Building Assets paragraph.

## VII. Game-Related Arena Sales (i.e. Signage for MSG games only)

MSG shall retain 100 percent of the revenues from sales of game day signage and promotional activity at WCC, including, but not limited to, the following assets, as these assets may exist:

- i) Courtside Rotational Signage
- ii) On-Court Logos, Consistent with NBA D-League Standards
- iii) Game Uniforms
- iv) Ball Racks
- v) Basketball Stanchions
- vi) Logos on Press Row Staff
- vii) Logos on Ball Kid Staff
- viii) Team Gear and Player Uniforms
- ix) Player Bench Areas
- x) Player Chair Backs
- xi) VIP Row Seating Placards/Backs/Covers
- xii) Ticket Back Advertising
- xiii) Event Presentation and Promotion
- xiv) Game Programs and other MSG produced collateral material
- xv) Court Naming rights (provided that County shall receive 30% of any such sale if County court is used).
- xvi) Temporary Courtside Clubs and Hospitality Areas
- xvii) Digital and Social Media Rights
- xviii) One outdoor banner (in addition to the banner referenced in the previous section) for purposes of promoting the team and/or the NBADL (which may incorporate sponsor logos or references) , to be used by MSG beginning at least 24 hours prior to each MSG Game through conclusion of such game.
- xix) Arena scoreboard and related electronic marquees
- xx) Exterior electronic marquee, three lobby plasma



displays, provided that County shall be allowed to use such inventory during MSG Games for 25% of the time for promotion of upcoming events at the WCC.

xxi) Novelty and promotional give-away items.

MSG shall be responsible for 100% of its advertising fulfillment costs.

MSG to afford to County a reasonable amount of time (as determined in MSG's discretion) during MSG game presentation programming to promote upcoming County events.

### **VIII. Television and Radio Broadcast Charges**

Any infrastructure costs for television and radio broadcasts beyond the infrastructure that already exists or for which the County has capital budget money already designated shall be borne by MSG.

Reasonable event day media accommodations to be mutually agreed upon.

### **IX. Concessions**

County represents that it has entered into a one year concession Agreement with its current vendor (Culinart). County receives approximately 17-20% gross concession fees from vendor per game. County will work with MSG in negotiating its subsequent concession agreement and the parties will discuss the County's share of proceeds from such agreement in good faith. The gross concession fees owed to County from Culinart or any subsequent vendor shall be defined as "County Concession Share".

For each regular season MSG Game, County will receive the first \$1,000 in County Concession Share from the WCC concessionaire and MSG will receive all County Concession Share in excess of \$1,000 for each such MSG Game. For preseason and postseason MSG Games, each Party will receive 50% of the County Concession Share. County will work with MSG in negotiating its subsequent concession agreement, and if County Concession Share increases as a result of any subsequent concession agreement, the parties will discuss in good faith the allocation of any such increase for future seasons.

MSG and County to discuss, in good faith, expanding current food options and altering food pricing for MSG Games.

MSG will also have the right to non-competitive product placement at existing concession stands, subject to appropriate pricing, and further subject to the Parks Commissioner's approval, such approval not to be unreasonably withheld, conditioned or delayed.

MSG to pay at contract cost to County, catering for VIP areas, media, staff, players, officials, etc. The County will waive its commission fees on the catering.

## **X. Ticketing**

MSG to control all aspects of ticket sales for MSG Games. County agrees that MSG will use MSG-Ticketmaster arrangement for MSG Games at WCC. No convenience charge will be applied to any box office sales, any MSG internal sales, or any online ticket sales of season tickets, partial season tickets and group sales.

MSG and County to make 25 complimentary tickets per game available to County for customer emergency relocation needs and County use; such tickets may not be resold.

County to provide, at its cost, year-round box office staffing and facilities during normal business hours for sales and inquiries at no additional cost to MSG. Normal business hours are Monday through Friday 9 am – 5 pm and Saturday 9 am – 4 pm. County holidays are not included. Notwithstanding anything to the contrary in this paragraph, County will provide box office services prior to and during all MSG Games.

## **XI. Merchandise**

MSG shall have the exclusive right to sell MSG and NBADL-branded merchandise at MSG Games. MSG will be exclusively responsible for all associated costs and will pay to County twelve percent (12%) of all gross revenues (less credit card fees and taxes) derived from the sale of such merchandise at games. MSG to determine merchandise that is for sale, subject to the prior approval of the Parks Commissioner, such approval not to be unreasonably withheld, conditioned or delayed. MSG to securely store its merchandise in the office space (Section XIV).

## **XII. Programs and Novelties**

MSG may produce its own programs and novelties to be sold to or given to attendees and will be responsible for all associated costs and entitled to retain all revenues.

Any use of the County's name and likeness in these materials is subject to the prior approval of the Commissioner of Parks, such approval not to be unreasonably withheld, conditioned or delayed.

## **XIII. Scheduling**

Subject to NBADL regulations and prior to January 15 of each year, County will work with MSG to identify at least 50 available dates for the ensuing NBA D-League regular season and MSG will, on or before the following February 1, select 50 mutually agreed upon dates, with the following additional parameters:

- i) County to provide a minimum of 25 Thursday night through Sunday afternoon dates from November 15 to April 5 each year (or during the Regular Season timeframe as defined by the league). Dates cannot include NBA All-Star Weekend, Christmas, Thanksgiving or New Year's.
- ii) Subject to any previously scheduled events at the WCC as of the date hereof (for purposes of this provision, previously scheduled events shall include current WCC licensees use of the WCC on similar dates in future years), the County will, upon execution of the license agreement, use commercially reasonable efforts to reserve at least 12 Friday or Saturday night dates for MSG Games each Season (which dates will only be released to third parties with MSG's prior approval).
- iii) County will endeavor to reserve eleven evenly-distributed dates between April 5 and April 30 for NBADL Playoffs. Six of those eleven dates must be Friday or Saturday nights, subject to availability.
- iv) Back-to-back Friday and Saturday night dates must be limited to no more than five with no more than two occurring in any given month. Dates should be as evenly-distributed throughout the season as possible.
- v) County shall also provide a minimum of ten additional dates, MSG to pay incremental staffing costs, if any, (but no additional license fee) for the following types of events: a) Ticket Sales "Open House" Events; b) Meet the Team Events; c) Fan Fest Events or any other community or fan

engagement events as MSG sees fit; d) Tryouts. MSG to reserve these dates within 45 days of actual event, to ensure that no third party will be using WCC.

- vi) County shall work with MSG to make the court available to MSG and visiting teams during the day of scheduled games at other mutually agreed upon times, each subject to availability, and taking into consideration that other scheduled events may require the parties to coordinate on the time of day that the court is made available. Notwithstanding anything to the contrary contained herein, County will ensure that only necessary staff is in the WCC prior to the doors opening to ticketholders.
- vii) MSG shall pay County the Game Day License Fee and any applicable Next Day Facility Changeover costs for each hosted playoff game. MSG recognizes that the County has already scheduled a number of events in the future and that the parties will have to coordinate their schedules. In addition, MSG will work with NBADL and County to minimize playoff holds as well as conflicts between playoff holds and confirmed third party bookings of the WCC.
- viii) In the event a scheduled game is canceled, the parties will work together to reschedule the game.

#### **XIV. Office Space/Storage**

The County to provide office space in order to accommodate up to fifteen full time business staff in the lower level and on the second floor of WCC. In the event the County incurs any costs in connection with providing office space, MSG shall reimburse the County for such incremental, out-of-pocket costs, provided such costs have been preapproved in writing by MSG. The County will provide all utilities to such space; but MSG will be required to arrange hookup and pay for use of such utilities, to the extent that such utilities are separately metered. MSG to provide office equipment and furniture.

County to provide storage space for typical game day basketball equipment including, without limitation, basketball court floor (provided, that MSG to pay for structure to store court floor), three stanchions (one supplied by MSG, two supplied by County) and courtside signage.

## **XV. Locker Room**

County to provide, on game days, dedicated and primary locker room area for MSG within the existing building footprint. Space to include locker accommodations for all players as well as training room facilities and showers. Space also to include office space for two coaches. Space to be subject to NBA and NBADL guidelines for professional quality.

County will also provide a second locker room complex for use by visiting teams on game days, as well as sufficient locker room(s) for referees and other needs consistent with NBADL Facility Standards.

MSG is aware of the County Capital Plan and has inspected the facility. Capital improvements must come within the existing capital budget and must be for the benefit of the public purpose of the facility. Any additional costs or requirements to comply with NBADL guidelines must be borne by MSG.

MSG shall have the right to terminate the Agreement, which termination may be effective prior to or immediately following the 2015-16 season, if capital improvements to make home and visitor locker rooms consistent with the County's Capital Plan are not completed by November 1, 2015. Such improvements must include the relocation of existing pipes located outside of the second floor locker rooms and the following improvements being made to at least one locker room on each side of the basketball court, on the first or second floors of WCC: Minimum of 4 showerheads, 2 toilets and 1 urinal (or 3 toilets) in each room and the installation of 15 actual lockers in each room. County and MSG acknowledge and agree that the foregoing improvements are for the benefit of the public purpose of the facility.

## **XVI. Facilities**

MSG has inspected the facility and has reviewed the County's Capital Plan. Any requirements above those will be the responsibility of MSG at MSG's cost. Any additional costs or requirements to comply with NBADL guidelines to be borne by MSG.

## **XVII. Parking**

County to provide complimentary parking for up to 20 staff members on non-event days and 40 full-time and part-time staffing spaces on event days, including premium parking in close proximity to arena for all

players and coaches.

County to provide game-day parking staff at County's expense. MSG to receive 50% of gross parking revenues on each event day.

Parking revenues are all parking fees collected during the time period commencing 2 hours prior to a game and up to 1 hour after a game. The parties agree that game-day parking shall be \$10, unless the parties mutually agree on alternate pricing. MSG may request that County charge a lower price, but County's share of parking revenues shall equal \$5 per car and this will not decrease.

**XVIII. Medical Accommodations**

Provision of Medical personnel and EMTs are the responsibility of MSG.

**XIX. Other**

Each party shall have the right to conduct, at the end of each year of the license agreement, an audit of the records of the revenues generated from the MSG Games. Within thirty days after completion of such audit, the parties will undertake a reconciliation, if necessary.

Customary representations, warranties, insurance and indemnification provisions to be mutually agreed upon.

APPROVED BOARD OF ACQUISITION & CONTRACT 003002044 - JIMMY VEIRA SECRETARY