
**CONTRIBUTION
AGREEMENT**

between

CONFLUENCE COMMUNITY AUTHORITY

and

CITY OF COLUMBUS, OHIO

Dated

as of

December ____, 2019

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CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT made and entered into as of December ____, 2019, between the CONFLUENCE COMMUNITY AUTHORITY, a new community authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “**Authority**”), and the CITY OF COLUMBUS, OHIO a municipality and political subdivision organized and validly existing under the laws of the State of Ohio and the City’s Charter (the “**City**” and, together with the Authority the “**Parties**”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof).

RECITALS:

A. The City, Franklin County, Ohio (the “**County**”) and JHAC Ventures, LLC (“**JHAC**”), an affiliate of Developer, executed a Memorandum of Understanding (“**MOU**”) dated as of December 10, 2018, and pursuant to which, among other things, the City, County and JHAC agreed to finance, design, develop and construct the following: (i) a new multi-purpose sports, entertainment, cultural and recreation facility, including certain stadium-related infrastructure and public space (the “**Stadium**”); (ii) a new, state-of-the-art practice facility and training complex for the Club (the “**Training Facility**”); and (iii) a community sports campus that will include a community recreation facility, playing fields and other community assets (the “**Sports Park**”; the Training Facility and Sports Park are collectively the “**Community Sports Park**” or “**CSP**”), all for the benefit of the City, the County, the Authority, the Developer, the Team, the Club, JHAC, the greater metropolitan Columbus area and the State of Ohio.

B. The City, Crew SC Stadium Company, LLC, a Delaware limited liability company (the “**Original Developer**”), which is an affiliate of Crew SC Team Company, LLC, a Delaware limited liability company (the “**Team**”), and the County entered into that certain Development Agreement relating to the Stadium, Training Facility and CSP dated as of July 3, 2019 (the “**Original Development Agreement**”).

C. The Team has acquired the right to operate Columbus Crew SC (the “**Club**”), a Major League Soccer franchise, based upon, and subject to, the commitments and conditions set forth in the Development Agreement and this Agreement.

D. The Authority and Crew SC Development Company, LLC, a Delaware limited liability company (“**Developer**”), which is an affiliate of the Team and Original Developer, were added as parties to the Development Agreement pursuant to that certain First Amendment to Development Agreement dated as of December ____, 2019 (the “**DA Amendment**”; the Original Development Agreement, as amended by the DA Amendment, is hereinafter referred to as the “**Development Agreement**”).

E. In accordance with the DA Amendment, Developer assumed all rights and obligations of the Original Developer under the Development Agreement and the other Definitive Documents (as defined in the Development Agreement) and Original Developer was removed as a party from the Development Agreement to satisfy certain financing conditions relating to Developer’s Contribution, provided, however, the Original Developer will remain a

party to the Stadium Lease, the Stadium Contract Documents, the Stadium Plaza Operating Agreement and the Funding Agreement, each as defined in the Development Agreement.

F. The City, the County, the Authority and Developer have determined that it is in the best interest of the City, the County, the Authority and the residents of each, as well as the Team and Club, to finance and construct the Project and retain the Club in the City and each of the Parties acknowledges that the Team's decision to acquire the right to operate the Club, the location of the Club in the City, the location of the Stadium Project and the Community Sports Park and the approval of MLS relating thereto is furthered by the execution and delivery of the Development Agreement and this Contribution Agreement and the performance of the Parties' obligations hereunder.

G. The construction of the Project is estimated to support approximately 605 direct full time equivalent ("FTE") construction jobs in the City during the construction of the Project, and after construction it is estimated that the Project will be responsible for approximately 775 permanent FTE jobs. Each of the Parties believes that the Project will create jobs and employment opportunities in the City and thereby improve the economic welfare of the people of the City and each Party has the full right and lawful authority to cooperate with one another by entering into this Contribution Agreement and performing the provisions of this Contribution Agreement required to be performed and observed hereunder.

H. The City has agreed in the Development Agreement, subject to appropriation as provided for herein, to fund certain Project Costs in accordance with the Development Agreement, through the City's contribution of cash to the Authority for deposit into the Project Fund Account.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Parties agree as follows (provided that any obligations of the Authority or the City created by or arising out of this Contribution Agreement shall never constitute a general debt or pledge of the faith and credit or taxing power of the Authority or the City or, prior to appropriation, give rise to any pecuniary liability of the Authority or the City, but any obligation of the Authority under this Contribution Agreement shall be payable solely out of the City Contribution, if and when paid to the Authority, and any obligations of the City to make payments under this Contribution Agreement shall be payable solely out of sources identified in this Agreement, the Development Agreement or as otherwise determined by the City, and any such payments by the City shall be subject to appropriation as provided for herein:

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ARTICLE I DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms elsewhere defined in this Contribution Agreement, the words and terms set forth in Section 1.2 have the meanings assigned in that section unless the context indicates another or different meaning. Definitions are equally applicable to both the singular and plural forms of any words and terms.

Any reference to the Authority or the City or any officials or officers of the Authority or the City includes those who succeed to their functions, duties or responsibilities in accordance with or by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Ohio Constitution or to a section, provision, or chapter of the Ohio Revised Code includes that section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded. No change in the Constitution or laws, however, will be deemed applicable by reason of this provision if that change would in any way constitute an impairment of the rights or obligations of the Authority or the City under this Contribution Agreement.

The captions, headings and table of contents in this Contribution Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections.

All references in this Contribution Agreement to “this Contribution Agreement” or this “Agreement” and to designated “articles,” “sections” and other subdivisions are to this Contribution Agreement and the designated articles, sections and other subdivisions as originally executed and as amended from time to time in accordance with its terms. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms, mean this Contribution Agreement as a whole and not any particular article, section or subsection. Words of any gender include correlative words of any other gender.

Section 1.2. Definitions. Capitalized words used as defined terms, to the extent not defined herein, shall have the meanings assigned to those terms in the Defined Terms attached to the Development Agreement as Schedule 1.

In addition, each of the terms below shall have the following definitions:

“**City Bonds**” shall mean, collectively, any bonds issued by the City to fund or reimburse all or any portion of the City Contribution as identified by the City to the Authority in a written notice following the issuance of any bonds, which notice shall include the maturity schedule for such bonds.

(End of Article I)

ARTICLE II
REPRESENTATIONS

Section 2.1. Representations of the Authority. The Authority represents and covenants that:

(a) It is a new community authority and body corporate and politic of the State, duly organized and validly existing under the laws of the State.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Authority which would impair its ability to carry out its obligations contained in this Contribution Agreement and the Development Agreement.

(c) It is legally empowered to enter into and carry out the transactions contemplated by this Contribution Agreement and the Development Agreement and has duly authorized the execution, delivery and performance of this Contribution Agreement and the Development Agreement and the transactions contemplated hereby. Such execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the Authority, including but not limited to, its By-Laws, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the Authority is a party or by which it is bound.

(d) It has duly authorized the execution, delivery and performance of this Contribution Agreement and the Development Agreement and the transactions contemplated herein and therein.

(e) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction, the obtaining of which would constitute a condition precedent to the performance by the Authority of its obligations under this Contribution Agreement and the Development Agreement have been obtained or will be obtained when necessary to enable the performance of those obligations.

(f) No event or condition has occurred or exists that, with notice or lapse of time or both, could become an event of default by the Authority under this Contribution Agreement and the Development Agreement.

(g) To the knowledge of the Authority, no litigation, proceeding or official investigation of any governmental or judicial body is pending or threatened against the Authority or against any other person or entity of which the Authority has notice (i) in any way affecting the existence of the Authority or the title of any official of the Authority to his office, or (ii) in any way contesting or affecting the validity or enforceability of this Contribution Agreement and the Development Agreement, or (iii) contesting the power of the Authority or its authority with respect to this Contribution Agreement and the Development Agreement, or (iv), which, if adversely determined, could materially adversely affect the financial position of the Authority or the transactions contemplated by this Contribution Agreement and the Development Agreement.

Section 2.2. Representations of the City. The City represents and covenants, for the benefit of the other Parties, that:

(a) It is a municipality and political subdivision duly organized and validly existing under the laws of the State.

(b) It is not in violation of or in conflict with any provisions of, the laws of the State or of the United States of America applicable to the City which would impair its ability to carry out its obligations contained in this Contribution Agreement and the Development Agreement.

(c) It is legally empowered to execute, deliver and perform this Contribution Agreement and the Development Agreement and to enter into and carry out the transactions contemplated by this Contribution Agreement and the Development Agreement. Such execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the City, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(d) It has duly authorized the execution, delivery and performance of this Contribution Agreement and the Development Agreement and the transactions contemplated herein and therein.

(e) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction, the obtaining of which would constitute a condition precedent to the performance by the City of its obligations under this Contribution Agreement and the Development Agreement, have been obtained.

(f) No event or condition has occurred or exists that, with notice or lapse of time or both, could become an event of default by the City under this Contribution Agreement and the Development Agreement.

(g) To the knowledge of the City, no litigation, proceeding or official investigation of any governmental or judicial body is pending or threatened against the City or against any other person or entity of which the City has notice (i) in any way affecting the existence of the City or the title of any official of the City to his office, or (ii) in any way contesting or affecting the validity or enforceability of this Contribution Agreement and the Development Agreement, or (iii) contesting the power of the City or its authority with respect to this Contribution Agreement and the Development Agreement, or (iv), which, if adversely determined, could materially adversely affect the financial position of the City or the transactions contemplated by this Contribution Agreement and the Development Agreement.

(h) The audited Financial Statements of the City for the fiscal year ended December 31, 2018, fairly present, in all material respects, the financial position and results of operation of the City as of the dates and for the periods therein set forth, and such financial statements have been prepared in accordance with generally accepted accounting principles.

(End of Article II)

ARTICLE III
COOPERATIVE ARRANGEMENT; CITY CONTRIBUTION;
PROVISION OF THE PROJECT; TAX EXEMPTION

Section 3.1. Cooperative Arrangement. The Authority and Developer have requested the assistance of the City in the financing and development of certain portions of the Project, as further described in the Development Agreement, in order to enhance, foster, aid, and promote economic development benefitting the City and the Authority. For the reasons set forth in this Contribution Agreement, including the recitals hereto, the Parties have determined to cooperate with each other in the financing and development of those portions of the Project as more fully set forth in the Development Agreement. This Contribution Agreement is intended to and shall be an agreement among the Parties to cooperate in financing of “land acquisition”, “land development” and “community facilities” pursuant to Chapter 349, Ohio Revised Code, and the agreements contained herein are intended to and shall be construed as agreements to further effective cooperative action and safeguard the respective interests of the Parties.

Section 3.2. City Contribution.

Subject to appropriation of sufficient funds by Columbus City Council as provided for herein, and in accordance with and subject to the conditions provided in Article IV of this Contribution Agreement, the City shall contribute to the Authority, for deposit into the Project Fund Account and applied toward certain Project Costs, as set forth in greater detail in the Development Agreement and in accordance with the Funding Plan and Schedule, the following amounts and on the following dates:

Not later than March 1, 2020, the amount of \$13,000,000.

Not later than March 1, 2021, the amount of \$12,500,000.

Not later than March 1, 2022, the amount of \$12,500,000.

The City shall provide the fiscal officer’s certificate required by Section 7.11.1 of the Development Agreement on or before such City Contribution Deadline.

The City hereby acknowledges and agrees that the “City Contribution” hereunder shall include, and the City hereby agrees to pay to the Authority, the following: (a) any costs and expenses relating to any obligation of the City under the Development Agreement that is assigned by the City to the Authority; and (b) the Annual CRF Contribution as required by and in accordance with the terms of the Stadium Lease.

Section 3.3. The Project.

The Authority hereby agrees to cause the development, construction and equipping of the Stadium Project and, upon the addition of the Community Sports Park to the Authority’s new community district, the Community Sports Park with all reasonable dispatch and in accordance with the terms of this Article III, the Development Agreement, the Sports Park Contract Documents, the Training Facility Contract Documents, and any other relevant agreements,

subject to the receipt by the Authority of sufficient funds for that purpose and execution and delivery by the Developer of all agreements necessary for that purpose.

Pursuant to Section 4115.071 of the Revised Code, the Authority agrees to appoint a prevailing wage coordinator for any expenditures related to the Project, if required. The City shall cooperate with the Authority to make qualified personnel of the City available to serve as a prevailing wage coordinator if requested by the Authority.

Section 3.4. Tax Exemption.

The Authority has taken and shall take all actions within its control which are necessary and appropriate to cause the interest paid on the City Bonds to be and remain excluded from gross income for federal income tax purposes pursuant to the current provisions of Sections 103 and Sections 141 to 150 of the Internal Revenue Code of 1986, as amended, and to prohibit the occurrence or existence of any fact, event or circumstance or the interpretation thereof (including, without limitation, the taking of any action by the Authority, or the failure to take any action by the Authority, or the making by the Authority of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of any City Bonds) which has the effect of causing interest paid or payable on the City Bonds to become includable, in whole or in part, in the gross income of the holder or any prior holder for federal income tax purposes.

(End of Article III)

ARTICLE IV
CONTRIBUTION PAYMENTS

Section 4.1. City Obligations Unconditional.

In order to fund or assist in funding community facilities to be owned by the Authority, including the Project, especially those that promote the health, safety and welfare of the citizens of the City and that assist in providing jobs, employment and economic development opportunities, the City represents and agrees, but solely with respect to the City Contribution, that legally available funds in an amount sufficient to make all of the City Contribution can be appropriated and obtained.

Section 4.2. Annual Appropriation.

(a) The obligation of the City to make each contribution to the Authority due in accordance with Section 3.2 hereof is subject to annual appropriations made by the Columbus City Council to the extent (a) required by Applicable Law and (b) otherwise necessary for the City to have funds available to make such contribution. The City reasonably believes that legally available funds in an amount sufficient to make all contributions to the Authority required by Section 3.2 of this Agreement can be appropriated and obtained. The City shall do all things lawfully within its power to obtain and maintain funds from which its financial obligations and all other payments owing under this Agreement may be made. The City's obligations under this Section 4.2 and the other terms of this Agreement shall continue throughout the Term of this Agreement as set forth in Section 6.1.

(b) To the extent not prohibited by law, the person or persons in charge of preparing the City's budget will include in the budget request for each fiscal year during the term of this Agreement an amount sufficient to support the contribution to the Authority due during that fiscal year and will use all reasonable and lawful means available to secure, the appropriation of money for such fiscal year, funds sufficient to pay the City's financial obligations under this Agreement.

(c) The City shall, not later than March 1 of each applicable fiscal year, deliver to the Authority a certified copy of the ordinance authorizing the contribution to the Authority due in that year, except for a certified copy of the ordinance authorizing the Annual CRF Contribution which shall be delivered not later than June 1.

(d) If the City appropriates funds in the amount and within the time specified in subsection (c) above, the City's obligation to make the contribution to the Authority due in that fiscal year will be absolute and unconditional in all events and will not be subject to any abatement, set-off, defense, counterclaim or recoupment for any reason whatsoever. Notwithstanding any dispute between the City and the other Parties or the City and any other person, including but not limited to any failure to perform on the part of any other Party or such person, the City shall pay any such amount pending final resolution of such dispute, nor shall the City assert any right of set-off or counterclaim against its obligation to pay such amount.

(e) In the event no appropriations or insufficient appropriations are made for any City fiscal year enabling the contribution to the Authority due in that year, then the City will immediately notify the Authority, the County, and the Developer of that fact.

(f) The obligation of the City to make each such payment shall not, prior to appropriation, constitute a general obligation or an indebtedness of the City within the meaning of the Constitution and laws of the State of Ohio. Nothing herein shall constitute a pledge by the City, or an obligation by the City, of any taxes or other moneys to the payment of the City contributions to the Authority described in Section 3.2 hereof.

(g) All of the obligations of the City under this Contribution Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

(End of Article IV)

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. Each of the following shall be an Event of Default under this Contribution Agreement:

(a) The City shall fail to observe and perform any other material agreement, term or condition contained in this Contribution Agreement, and the continuation of such failure for a period of 30 days after notice thereof shall have been given to the City by the Authority; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City institutes curative action within the applicable period and diligently pursues that action to completion.

(b) The Authority shall fail to observe and perform any other material agreement, term or condition contained in this Contribution Agreement, and the continuation of such failure for a period of 30 days after notice thereof shall have been given to the Authority by the City; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Authority institutes curative action within the applicable period and diligently pursues that action to completion.

Section 5.2. Remedies on Default by the City. Whenever an Event of Default by the City shall have happened and be continuing, any one or more of the following remedial steps may be taken:

The Authority may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due from the City under this Contribution Agreement, or to enforce the performance and observance of any other obligation or agreement of the City hereunder.

Section 5.3. Remedies on Default by Authority. Whenever an Event of Default by the Authority shall have happened and be continuing, any one or more of the following remedial steps may be taken:

The City may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due from the Authority under this Contribution Agreement, or to enforce the performance and observance of any other obligation or agreement of the Authority hereunder.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Authority or the City by this Contribution Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contribution Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this

Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

If an Event of Default by any Party should occur and any other Party should incur expenses, including reasonable attorneys' fees, in connection with the enforcement of this Contribution Agreement against the defaulting Party, or the collection of sums due hereunder or thereunder, the defaulting Party agrees, to the extent permitted by law and subject to the appropriation of funds for that purpose, to reimburse the other Party for the reasonable expenses so incurred upon demand.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by another Party of any provision hereof shall constitute a waiver by such Party of its right to strict performance by the other and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy a failure to observe or comply with any provision hereof.

Section 5.6. Notice of Default. Each Party shall notify the other Parties promptly in writing if such Party becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default; provided, however, the failure by any Party to give such notice under this Section to any other Party shall not be deemed a waiver of, or limitation on, any right a Party shall have against another Party under this Agreement.

(End of Article V)

ARTICLE VI
MISCELLANEOUS

Section 6.1. Term of Agreement. This Contribution Agreement shall be and remain in full force and effect until the earlier of the following: (a) all of the City Contribution shall have been paid in full (including, but not limited to, any City Contribution required to fund the Authority's obligation to pay the Annual CRF Contribution due under the Stadium Lease) and the Project paid from the City Contribution shall have been completed; or (b) the expiration of the Initial Term of the Stadium Lease or the earlier termination of the Stadium Lease (unless, in each case, otherwise agreed to in writing between the City and the tenant under the Stadium Lease).

Section 6.2. Notices. All notices, certificates, requests or other communications under this Contribution Agreement shall be in writing and sufficiently given when hand delivered or mailed by first-class certified mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address of a Party. A duplicate copy of each notice, certificate, request or other communication given to a Party must also be given to the other Parties. Any Party may, by written notice to the other Parties, designate or change a Notice Address.

Section 6.3. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Contribution Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, employee or agent of the Authority or the City or the legislative authorities of the Authority or the City in other than their official capacities, and neither the members of such legislative authorities nor any official, officer or employee of a Party executing this Contribution Agreement shall be liable personally on any of such documents or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the Authority or the City contained in this Contribution Agreement.

Section 6.4. Binding Effect. The obligations and liabilities of the Authority hereunder do not constitute and are not a general obligation of the Authority and do not constitute a debt or pledge of the faith and credit of the Authority and are payable and performable only from the City Contribution in accordance with the terms as provided therein.

This Contribution Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties, and their respective successors and permitted assigns. This Contribution Agreement may be enforced only by the parties hereto in connection with Contribution Payments, their permitted assignees and others who may, by law, stand in their respective places. Notwithstanding any term or provision of this Agreement to the contrary, the Parties acknowledge and agree that Developer, Original Developer, the MLS, Soccer United Marketing, and the Team are intended and express third-party beneficiaries of this Agreement. For the avoidance of doubt, none of Developer, Original Developer, MLS, Soccer United Marketing or the Team has any obligation under this Contribution Agreement.

Section 6.5. Amendments and Supplements. This Contribution Agreement may not be amended, modified, altered or terminated except in accordance with the terms hereof or as set forth in a writing signed by all of the Parties, Developer and Original Developer.

(End of Article VI)

IN WITNESS WHEREOF, each of the Parties have caused this Contribution Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.


CONFLUENCE COMMUNITY AUTHORITY

By: 
Ty Marsh, Chair

Approved as to Form:

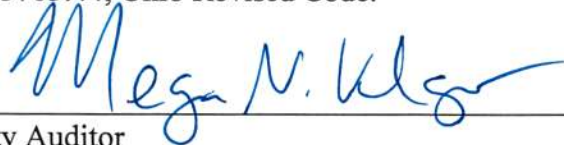

Zach Klein, City Attorney

CITY OF COLUMBUS, OHIO

By: 
Title: DIRECTOR, FINANCE + MANAGEMENT

FISCAL OFFICER'S CERTIFICATE
City of Columbus

The undersigned, Fiscal Officer of the City of Columbus, hereby certifies that the moneys required to meet the obligations of the City during the year 2019 under the Contribution Agreement (\$0.00) have been lawfully appropriated by the City Council of the City of Columbus for such purposes and are in the treasury of the City of Columbus or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



City Auditor
City of Columbus, Ohio

Dated: December 12, 2019