

April 12, 2018

Email: [REDACTED]

Dear [REDACTED]:

Re: Request for Access to Information under Part II of the Access to Information and Protection Privacy Act

On March 16, 2018, the City of St. John's received your request for access to the following information:

"Mile One Memorandum of Understanding (Deacon, ASE, City)."

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. Personal information pertaining to third parties has been redacted from the documentation provided as per Section 39 of the ATIPP Act 2015:

Disclosure harmful to business interests of a third party

- 39.** (1) The head of a public body shall refuse to disclose to an applicant information
- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, implicitly or explicitly, in confidence; and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Access to Information and Protection of Privacy Act* (the *Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner:

Office of the Information and Privacy Commissioner
2 Canada Drive; P. O. Box 13004, Stn. A, St. John's, NL. A1B 3V8
Telephone: (709) 729-6309; Facsimile: (709) 729-6500

ST. JOHN'S

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.

If you have any further questions, please feel free to contact the undersigned by telephone at 576-8619 or by e-mail: kchafe@stjohns.ca

Yours truly,



Karen Chafe
ATIPP Coordinator

ST. JOHN'S

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is dated the ___ day of March, 2018

BETWEEN

**ATLANTIC SPORTS ENTERPRISES LTD.
("ASE")**

AND

**DEACON INVESTMENTS LTD.
("Deacon")**

AND

**ST. JOHN'S SPORTS & ENTERTAINMENT LTD.
("SJSEL")**

AND

**CITY OF ST. JOHN'S
("City")**

AND

**IRWIN SIMON
("Simon")**

AND

**ROBERT SABBAGH
("Sabbagh")**

(all parties above are collectively referred to as the "**Parties**" and individually as "**Party**")

WHEREAS

- A. The City and SJSEL are the owners of Mile One Centre ("**Mile One**") and the St. John's Convention Centre ("**Convention Centre**") in St. John's, NL, and the City provides an annual operating subsidy to SJSEL (the "**City Subsidy**");
- B. SJSEL is responsible for the operations of Mile One and the Convention Centre;
- C. ASE is the owner and operator of the St. John's Edge (the "**Edge**") franchise of the National Basketball League of Canada ("**NBL**"), which plays its home games at Mile One pursuant to a lease agreement as between ASE and SJSEL dated 20 September 2017 (the "**Edge Lease**");

- D. Deacon is the owner of a professional hockey franchise, as a member of the ECHL (the "ECHL Team");
- E. Simon and Sabbagh will be the shareholders of a company to be incorporated, ("NewCo"), for the purposes of this Memorandum of Understanding ("MOU") and the Proposed Working Relationship, as defined herein.
- F. ASE and Deacon are seeking to engage in the business of
 - i. operating the ECHL Team with its home games at Mile One; and
 - ii. assuming the management and operations functions, including the existing contracts with respect to Mile One and the Convention Centre, from SJSEL.
- G. The Parties have held discussions and wish to enter into a working relationship (the "Proposed Working Relationship") to further the objectives outlined in clause F above; and
- H. The Parties wish to document the principal terms of the Proposed Working Relationship that have been discussed to date and to be formalized with further agreements as contemplated herein.

NOW THEREFORE, in consideration of the covenants and memorandums set forth, the Parties agree as follows:

1. ST. JOHN'S EDGE

- 1.1. The Parties agree that ASE will continue to hold its 100% ownership interest in the Edge.
- 1.2. The Parties agree that ASE and SJSEL shall renegotiate the Edge Lease, on reasonable, equitable and fair commercial terms, prior to the commencement of the 2018-2019 Edge season (the "New Edge Lease"). The renegotiation of the Edge Lease shall include, but is not limited to, matters such as food and beverage revenue and suite revenue for Mile One. The Parties further agree that following the initial term of the Edge Lease or the New Edge Lease, as applicable, the renewal of the Edge Lease or the New Edge Lease, as applicable, shall not be unreasonably withheld.
- 1.3. The Parties agree that the New Edge Lease shall consist of terms comparable to, and no less favorable to the Edge than, the ECHL Lease, as defined herein, taking into account the differences of each sport, scheduling, seating capacity at Mile One for each sport, and number of games for each team.
- 1.4. Notwithstanding the terms of the Edge Lease, the Parties agree to mutually work together to facilitate and accommodate the use of the home team dressing room by the Edge and the ECHL Team in a fair and equitable manner. The Parties agree that this may require additional expenditure for additional renovations and/or additions as may be necessary to accommodate the Edge and the ECHL Team. The amount and scope of any such expenditure shall be agreed upon by the Parties and the cost shall be shared equally

between ASE, Deacon and SJSEL.

- 1.5. The Parties agree that the basketball court surface shall be in place at Mile One as of 10:00 a.m. on the day of each home game of the Edge, except in extenuating circumstances

2. ECHL TEAM

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 2.7. The Parties agree that HockeyCo and SJSEL shall negotiate a lease, for a term of not less than three (3) years, for the ECHL Team to play its home games at Mile One, commencing with the 2018-2019 ECHL season, on reasonable, equitable and fair commercial terms (the "ECHL Lease"). The Parties further agree that the ECHL Lease shall be negotiated with the understanding that the ECHL Team shall hold at least 36 home games per season at Mile One, which is expected to bring enhanced economic activity to Mile One, St. John's and, in particular, the downtown core of St. John's. The Parties further agree

that following the initial term of the ECHL Lease, and the entering into of an operating management agreement with OpCo (the "**Operating Management Agreement**"), the renewal of the ECHL Lease with OpCo shall not be unreasonably withheld.

- 2.8. The Parties agree that the City shall inform the Commissioner of the ECHL that the ECHL Lease, for a term of not less than three (3) years, shall be finalized and executed by the Parties as soon as commercially practicable and without undue delay. The Parties further agree that an executed copy of the ECHL Lease shall be provided to the Commissioner of the ECHL without delay.
- 2.9. NewCo and Deacon agree that Deacon shall provide confirmation of ownership of the ECHL Team and shall provide confirmation that all franchise fees or other associated costs have been paid with respect to the acquisition of the ECHL Team.

[REDACTED] NewCo and Deacon agree that Deacon shall provide confirmation that the ECHL Team is affiliated with the Toronto Maple Leafs organization. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 2.11. NewCo and Deacon agree that Deacon shall provide confirmation that the involvement of Deacon and any other partners, if applicable, with respect to the ECHL Team and the Proposed Working Relationship is limited to Dean MacDonald and Glenn Stanford. NewCo and Deacon agree that NewCo shall provide confirmation that the involvement of NewCo, with respect to the ECHL Team, is limited to Irwin Simon and Robert Sabbagh.
- 2.12. NewCo and Deacon agree that Deacon shall provide NewCo with a proposed operating budget for the ECHL Team.
- 2.13. NewCo and Deacon agree that Glenn Stanford shall be the responsible for all hockey operations of the ECHL Team.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. Sports and Entertainment Corporation

- 3.1. NewCo and Deacon agree that a new corporation shall be incorporated,

("MarketingCo"), for the purposes of marketing, promotions, sponsorships, ticket sales, suite sales, merchandising, food and beverage sales, and other matters relating to the Edge, the ECHL Team, and any additional sports and entertainment events that may be held at Mile One, from time to time, as a result of the Proposed Working Relationship. The Parties agree that MarketingCo shall have the right to commence such operations, as particularly outlined above, subject to existing contractual obligations as of the date of the signing of this MOU.

[REDACTED]

3.6. The Parties agree that a lease agreement must be negotiated with SJSEL for the ECHL Team and any additional sports and/or entertainment events as long as SJSEL continues to manage Mile One and the Convention Centre.

4. Mile One and Convention Centre Operations

4.1. The Parties agree that SJSEL shall continue to manage and operate Mile One and the Convention Centre for the first year of operation of the ECHL Team, deemed for the purpose of this MOU to expire on June 30, 2019. The Parties further agree that, from the date of execution of this MOU and for the period that SJSEL continues to manage and operate Mile One and the Convention Centre, SJSEL shall not enter into any contracts without the prior written consent of NewCo and Deacon, which consent shall not be unreasonably withheld. The Parties acknowledge and agree that a Request For Proposals for Food and Beverage Services for the Convention Centre has been completed and the Contract will be awarded to Centreplate in or around the same time as the execution of this MOU.

4.2. The Parties agree that while SJSEL continues to manage and operate Mile One and the Convention Centre, SJSEL shall make best efforts to accommodate the scheduling

requirements of ASE, NewCo, Deacon, HockeyCo, MarketingCo, the Edge and the ECHL Team. The final decision as to scheduling will remain with SJSEL. The Parties further agree that ASE, NewCo, Deacon, HockeyCo, MarketingCo, the Edge and the ECHL Team shall have a right of first refusal on future scheduling dates, not otherwise committed to as of the date of execution of this MOU, and that dates that are on hold would be considered committed for the purposes of this section. SJSEL will provide the Parties with confirmation of the current committed hold dates.

- 4.3. The Parties agree to co-operate and make best efforts to accommodate the schedules of the Edge and the ECHL Team, subject to the scheduling requirements of the NBL and ECHL. ASE, NewCo and Deacon agree that weekends shall be made available to the Edge and to the ECHL Team on a pro rata basis, according to the number of regular season games for each team. The final decision as to scheduling will remain with SJSEL as long as SJSEL continue to manage Mile One and the Convention Centre.
- 4.4. The Parties agree that signage and advertising space at Mile One and the Convention Centre shall be shared as follows:
 - a) The Edge and the ECHL Team shall, for the purposes of the self-promotion of each respective team, share signage in an equal manner; and
 - b) NewCo and Deacon shall, for the purposes of advertising and sponsorships, share signage on a pro rata basis in accordance with the number of home games of the Edge and ECHL Team.
- 4.5. The Parties agree that while SJSEL continues to manage and operate Mile One, any additional hockey, basketball or other sporting and/or entertainment events at Mile One will be permitted, provided that they are of a short term nature. Further, SJSEL agrees to consult with ASE, NewCo and Deacon prior to the scheduling of such events.
- 4.6. The Parties agree that the current City Subsidy for 2018 shall remain in place and any increase in subsidy, as deemed necessary by SJSEL when submitting its 2019 budget for approval by the City, shall be granted to account for SJSEL retaining its management and operational function for Mile One and the Convention Centre during the first year of operations of the ECHL Team. The Parties further agree that, following the first year of operations of the ECHL Team, the City Subsidy shall be reduced from time to time throughout the term that the ECHL Team is in operation. Said reductions in the City Subsidy shall be set out in the Operating Management Agreement between SJSEL and OpCo. The Parties further agree that following a reduction in the City Subsidy, SJSEL shall share in the profit accrued from Mile One operations.
- 4.7. In order to maintain Mile One and the Convention Centre in a state of good repair as first-class sports and entertainment facilities, the Parties agree that the City shall commit to the expenditure of the current capital expenditure budget in relation to Mile One and the Convention Centre. The City's current capital funding for Mile One and the Convention Centre consists of \$300,000, funded from the tourism marketing levy, and \$500,000, directly from the City subsidy. Of this \$500,000, approximately \$280,000 is dedicated to covering debt charges incurred on existing capital work. There is a current capital reserve as well as existing identified capital spending requirements. SJSEL agrees to work with OpCo to address capital priorities, with SJSEL retaining the final decision making authority. If the Parties agree that there is a requirement for an increase in

capital expenditure prior to the execution of the Operating Management Agreement with OpCo, the City will consider alternate funding arrangements with the Parties.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.11. The Parties agree that two (2) representatives of NewCo and two (2) representatives of Deacon will be appointed to the Board of Directors of SJSEL.

[REDACTED]

[REDACTED]

4.14. The Parties agree that the CEO of SJSEL, City Manager and/or the Deputy City Manager, Financial Management, as available, will be responsible for the facilitation of the relationships between the Mayor, the City Council, SJSEL, and the SJSEL Board of Directors.

[REDACTED]

5. GENERAL MATTERS

- 5.1. This MOU shall be effective upon execution by the authorized signatories of the Parties and shall be governed in accordance with the laws of the Province of Newfoundland and Labrador.
- 5.2. For the convenience of the Parties hereto, this MOU may be executed and delivered in two or more counterparts, or by facsimile or e-mail transmission of pdf files or either of them, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.
- 5.3. This MOU creates legal rights with respect to the Proposed Working Relationship and is intended to set out terms that have been agreed to date. This agreement contemplates that further formal agreements will be negotiated and executed. Any Party is entitled to reject any subsequent proposed agreements even if the proposed agreement falls within the terms of this Memorandum of Understanding. In the event the subsequent agreements contemplated herein cannot be agreed upon, any Party may give the others ten (10) business days' notice of its intention to terminate this agreement, after which time this agreement shall be deemed of no further force and effect.
- 5.4. If at any time during the continuance of this MOU the Parties shall deem it necessary or expedient to make any alternation, addition or amendment to this MOU, they may do so by means of a written amendment between them which shall be supplemental to and form part of this MOU.
- 5.5. The Parties shall establish and maintain open and respectful communications with one another and in doing so, for the term of this agreement, refrain from conducting discussions or negotiations relating to the joint pursuit of opportunities contemplated herein with any additional outside corporations or parties. The Parties acknowledge that the relationship between the Parties shall be based on mutual trust and respect. The Parties shall act in good faith at all times in their dealings with each other, including throughout the negotiation of the further formal agreements as contemplated herein.
- 5.6. Neither this MOU nor any of the rights or duties of the Parties hereto shall be assigned, transferred or conveyed by any Party, by operation of law or otherwise without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.
- 5.7. If any of the provisions of this MOU are determined by a court to be unenforceable, such provisions shall be deemed to be severed from this MOU, and of no force or effect whatsoever. In that circumstance, all remaining terms and conditions of this MOU shall remain in full force and effect between the Parties, enforceable against them in accordance with their respective terms.

- 5.8. The Parties agree that ASE and/or NewCo, Deacon and the City shall equally share the legal costs associated with the negotiation, preparation and execution of this MOU as of, and including, March 1, 2019 up to the date of execution of the MOU by the Parties. ASE, NewCo and Deacon agree that ASE and/or NewCo and Deacon shall equally share the legal costs associated with the negotiation, preparation and execution of any further documents, including but not limited to the documents contemplated herein, as required to implement the Proposed Working Relationship. The Parties further agree that any additional legal costs on behalf of any one Party shall be the sole responsibility of such Party.
- 5.9. Upon execution of this MOU, ASE agrees to stay its arbitration proceedings with the City with respect to the dispute regarding the Edge Lease (the "**Arbitration**"). ASE further agrees to waive and forego Arbitration upon execution of all documents required to implement the Proposed Working Relationship.
- 5.10. The Parties agree that if any dispute shall arise regarding the rights and obligations of the Parties pursuant to this MOU, the interpretation thereof, or the implementation of the Proposed Working Relationship, and such dispute cannot be resolved through the best efforts of the Parties, then the dispute shall be submitted to, and settled by, binding arbitration to be conducted by a single arbitrator, appointed by agreement of the Parties, and in accordance with the provisions of the *Arbitration Act*, RSNL 1990, c A-14.
- 5.11. The Parties agree to execute confidentiality agreements with respect to the confidential information of any Party that is shared with any other Party as a result of the rights and obligations imposed by this MOU and the implementation of the Proposed Working Relationship. The Parties further agree that all negotiations, discussions, and any other communication between the Parties with respect to this MOU shall remain strictly confidential until this MOU is executed. The parties acknowledge and agree that the City and SJSEL are bound by the provisions of the *Access to Information and Protection of Privacy Act, 2015*, SNL 2002, c A-1.1 and the disclosure requirements therein.
- 5.12. The Parties agree to hold a joint press conference, with the attendance of all Parties, to publicly announce the ECHL Team. The City will prepare a draft Press Release to be circulated to the Parties for their approval.

[Remainder of page intentionally left blank. Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date and year first above written.

SIGNED, SEALED AND DELIVERED

by ASE in the presence of:

**ATLANTIC SPORTS
ENTERPRISES LTD.**

Per: _____
Name: _____
Title: _____

SIGNED, SEALED AND DELIVERED

by Deacon in the presence of:

James Macdonald

NOTARY PUBLIC

DEACON INVESTMENTS LTD.

Per: *[Signature]*
Name: DEAN MACDONALD
Title: CEO, DEACON INVESTMENTS LTD

SIGNED, SEALED AND DELIVERED

by SJSEL in the presence of:

Kelly Butler

**ST. JOHN'S SPORTS AND
ENTERTAINMENT LTD.**


Per: *[Signature]*
Name: SHEENA MACCRATE
Title: CEO SJSEF

KELLY A. BUTLER
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador
My commission expires on December 31, 2022

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date and year first above written.

SIGNED, SEALED AND DELIVERED

by ASE in the presence of:


CATHERINE GALLO
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY
LIC. # 01GA4951930
COMM. EXP. 6-5-2019

SIGNED, SEALED AND DELIVERED

by Deacon in the presence of:

SIGNED, SEALED AND DELIVERED

by SJSEL in the presence of:



KELLY A. BUTLER
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador
My commission expires on December 31, 2020


**ATLANTIC SPORTS
ENTERPRISES LTD.**

Per: _____
Name: _____
Title: _____

DEACON INVESTMENTS LTD.

Per: _____
Name: _____
Title: _____

**ST. JOHN'S SPORTS AND
ENTERTAINMENT LTD.**

Per: 
Name: SHEENA MCCRATE
Title: CEO SJSEF

SIGNED, SEALED AND DELIVERED

by the City in the presence of:

Stacey Fallon

STACEY FALLON

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2019.

Stacey Fallon

STACEY FALLON

A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2019.

SIGNED, SEALED AND DELIVERED

by Irwin Simon in the presence of:

Catherine Gallo

CATHERINE GALLO

**NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NASSAU COUNTY**

LIC. # 01GA4851830

COMM. EXP. 10-5-2019

SIGNED, SEALED AND DELIVERED

by Robert Sabbagh in the presence of:

CITY OF ST. JOHN'S

Danny Breen

Per: _____

Name: *Danny Breen*

Title: *Mayor*

Per: _____

Name: *Elaine Henley*

Title: *City Clerk*

IRWIN SIMON

Irwin D. Simon

Per: _____

Name: *IRWIN D. SIMON*

ROBERT SABBAGH

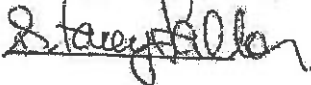
Per: _____

Name: _____

SIGNED, SEALED AND DELIVERED
by the City in the presence of:



STACEY FALLON
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2019.



STACEY FALLON
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2019.

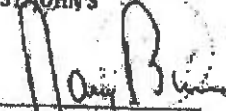
SIGNED, SEALED AND DELIVERED
by Irwin Simon in the presence of:


SIGNED, SEALED AND DELIVERED
by Robert Sabbagh in the presence of:



NICOLO DIMARIA
Notary Public, State of New York
No. 24-4854739
Qualified in Kings County
Commission Expires March 24, 2018

CITY OF ST. JOHN'S


Per: _____
Name: Danny Breen
Title: Mayor


Per: _____
Name: Elaine Henley
Title: City Clerk

IRWIN SIMON

Per: _____
Name: _____

ROBERT SABBAGH


Per: _____
Name: Robert Sabbagh

