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CITY OF OAKLAND



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June 21, 2005

HONORABLE CITY COUNCIL
Oakland, California

Subject: Indemnification Of Oakland-Alameda County Coliseum Corporation, Inc. Directors

President De La Fuente and Members of the City Council:

INTRODUCTION

On February 9, 2004 the Oakland-Alameda County Coliseum Authority (JPA) authorized creation of a board of directors for the Oakland-Alameda County Coliseum Corporation, Inc. (Corporation)¹. The Corporation provides necessary guidance and governance for the operation and maintenance of the Oakland-Alameda County Coliseum Complex (Coliseum Complex), a facility co-owned by the City and the County. The Corporation board consists of two volunteer directors, one appointed by the City and the other by the County of Alameda.

The efficient operation of the Coliseum Complex requires the directors to provide governance and policy direction for substantial financial transactions, including labor agreements, contracts with vendors and the professional sports franchise tenants. These matters are frequently complex and sometimes result in legal disputes leading to arbitration and litigation.

The volunteer directors reasonably anticipate that they, as individuals, will be named in lawsuits arising out of performance of their official duties and have requested that the City of Oakland and County of Alameda defend, indemnify and hold them harmless from costs, fees and other expenses arising out of the performance of their duties.

The attached resolution mirrors a similar resolution that will be presented to County of Alameda Board of Supervisors on June 21, 2005. If this resolution and the County of Alameda Resolution are approved, the City of Oakland and the County of

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¹ Immediately prior to the February 9, 2004 resolution, the JPA Commissioners acted in the dual capacity of JPA Commissioners and OACCI Directors.

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Alameda will, to the extent provided by law, indemnify, defend and hold harmless the volunteer OACCI Directors in legal proceedings arising out of performance of their official OACCI duties.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

Attorney Assigned:
Randolph W. Hall

Doc. No. 343417

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COUNCIL

RWH

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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RESOLUTION No. _____ C.M.S.

RWH:csa

RESOLUTION AUTHORIZING THE CITY OF OAKLAND TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE DIRECTORS OF THE OAKLAND-ALAMEDA COUNTY COLISEUM CORPORATION, INC, ("CORPORATION") WHO THE CITY AND COUNTY RECENTLY APPOINTED, FROM LEGAL EXPENSES, INCLUDING COSTS, ATTORNEY'S FEES AND JUDGMENTS INCURRED IN LITIGATION AND ADMINISTRATIVE PROCEEDINGS ARISING OUT OF THE PERFORMANCE OF THEIR DUTIES PERTAINING TO THE OPERATION AND MAINTENANCE OF THE CORPORATION.

WHEREAS: The Oakland-Alameda County Authority(JPA) is a joint powers authority established by the City of Oakland and the County of Alameda under the July 1, 1995 Amended and Restated Joint Powers Agreement.

WHEREAS: the Oakland-Alameda County Coliseum Corporation, Inc (Corporation), is a non-profit public benefit entity for the purposes of the California Government Tort Claims Act.

WHEREAS: The Directors are volunteers appointed by the Oakland City Council and Alameda County Board of Supervisors to perform duties necessary for the operation and maintenance of the Oakland-Alameda County Coliseum.

WHEREAS: in performing their duties, the Directors are called upon to take acts that may result in litigation or administrative proceedings naming them as defendants.

WHEREAS: the City of Oakland, the County of Alameda and the JPA all benefit from their work.

WHEREAS: the Directors have voiced their concern that they cannot undertake the duties required of them unless they are indemnified, defended and held harmless by the City of Oakland and the County of Alameda for actions arising out the course and scope of their duties.

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RESOLVED: That the City agrees to indemnify, defend, and hold harmless any Director who was or is a party to or is threatened to be made a party to any proceeding by reason of the fact that such person is or was the agent of the Corporation, or for acts taken or omissions occurring in connection with such person's role as Director of the Corporation, against expenses, judgments, fines, settlements, charges, obligations, damages or losses of any kind or in any amount, actually incurred in connection with such proceeding.

FURTHER RESOLVED: That the City's obligation to indemnify, defend, and hold harmless under this Agreement extends to acts which are ultimately found by a court of law to have been taken in bad faith or to be unlawful so long as the Director had reason to believe that the acts or omissions were (i) within the scope of his or her obligations as Director, and (ii) were in the best interests of the Corporation, or in the case of a criminal proceeding, were lawful at the time. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation, or that the Director had reasonable cause to believe that his or her conduct was unlawful.

FURTHER RESOLVED: That the City will provide one half of reasonable costs, attorneys fees or other expenses reasonably incurred pursuant to the indemnification agreement between the City of Oakland, the County of Alameda, the JPA and the Corporation. The remaining one half of such costs, attorneys fees or other expenses is anticipated to be paid by the County of Alameda.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and
Clerk of the Council Of The
City of Oakland, California

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INDEMNITY AGREEMENT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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This Indemnity Agreement (“Agreement”) is made as of _____, 2005 by the Oakland-Alameda County Coliseum Authority (“JPA”), the City of Oakland, the County of Alameda, and those individuals who are presently serving as volunteer directors or officers (“Directors”) of Oakland-Alameda County Coliseum, Inc. (“Corporation”).

1. Recitals:

1.1. The JPA is a joint powers JPA established by the City of Oakland and the County of Alameda under the July 1, 1995 Amended and Restated Joint Powers Agreement.

1.2. The Corporation is a California nonprofit public benefit corporation, and is a public entity for purposes of the California Government Tort Claims Act.

1.3. The Directors are appointed by the Oakland City Council and the Alameda County Board of Supervisors to conduct the business of the Corporation . These Directors are not compensated for their services by way of salary, fee, or other consideration.

1.4. The City of Oakland is a municipal corporation organized under the Constitution of the State of California.

1.5. The County of Alameda is a political subdivision of the State of California, organized under the California Constitution.

1.6. In performing their duties, the Directors are called upon to take acts which may result in litigation.

1.7. Because these acts relate to the operation and maintenance of the Oakland-Alameda County Coliseum, the City of Oakland, the County of Alameda, and the JPA all benefit from the Directors’ work.

1.8. The JPA has previously agreed to indemnify the Directors of the Corporation for specific acts, or in connection with specific litigation. The City of Oakland and the County of Alameda have previously agreed to be jointly and severally liable with the JPA for the Directors’ indemnification.

2. Agreement:

2.1. Definitions. For purposes of this Agreement, “proceeding” shall mean any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; “expenses” includes attorneys’ fees and any expenses incurred in establishing a right to indemnification under this Agreement; “in connection

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with such proceeding” means related in any way to the subject of the proceeding or the events underlying the proceeding.

2.2. Indemnification. The JPA agrees to indemnify, defend, and hold harmless any Director who was or is a party to or is threatened to be made a party to any proceeding by reason of the fact that such person is or was the agent of the Corporation, or for acts taken or omissions occurring in connection with such person’s role as Director of the Corporation, against expenses, judgments, fines, settlements, charges, obligations, damages or losses of any kind or in any amount, actually incurred in connection with such proceeding. The JPA’s obligation to indemnify, defend, and hold harmless under this Agreement extends to acts which are ultimately found by a court of law to have been taken in bad faith or to be unlawful so long as the Director reasonably believed that the acts or omissions were (i) within the scope of his or her obligations as Director, and (ii) were in the best interests of the Corporation, or in the case of a criminal proceeding, were lawful at the time. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation, or that the Director had reasonable cause to believe that his or her conduct was unlawful.

2.3. Self-Defense. If a proceeding is commenced against a Director, the Director may, at his or her option, choose to hire counsel and undertake his or her own defense, or to allow the JPA to conduct the defense. The JPA is obligated to indemnify, defend, and hold harmless the Director against expenses, judgments, fines, settlements, charges, obligations, damages, or losses of any kind or in any amount, actually incurred in connection with the proceeding, whether or not the JPA conducts the defense. However, the JPA is only obligated to pay reasonable costs, expenses, and attorneys fees associated with the defense of an action to which this agreement applies.

2.4. Claim and Payment. A Director shall immediately notify in writing the Executive Director, the Clerk of the Oakland City Council, and the Clerk of the Alameda County Board of Supervisors of any litigation brought against the Director in connection with his or her acts or omissions as Director. The obligation to indemnify commences upon receipt of this notice by the JPA, the City, and the County. If a Director incurs any expenses, judgments, fines, settlements, charges, obligations, damages, or losses of any kind or in any amount in any proceeding, the Director shall seek indemnification for those expenses or costs, or for that liability by filing a claim, in writing with the JPA’s Executive Director. If a claim under this Agreement is not paid by the JPA, or on its behalf, within 90 days after the mailing of the written claim, the Director may at any time thereafter bring suit against the JPA to recover the unpaid amount of the claim. The statute of limitations on any suit shall be the same as applies to contracts generally.

2.5. Obligations of the City and the County. By signing this agreement, the City of Oakland and the County of Alameda agree that they shall become jointly and severally liable with the JPA to indemnify the Directors as set forth above.

2.6. Attorney's Fees. If a Director brings and prevails in any action or proceeding (including, without limitation, any bankruptcy proceeding or appeal) to enforce, protect, or establish any right created by or to interpret this agreement, he or she shall be entitled to recover from the JPA attorneys' fees and all expenses and costs actually incurred in any such action or proceeding, whether or not those fees and costs are "reasonable." If the JPA requires a Director to prove that he or she was not engaged in self-dealing or not acting in violation of the law at the time of an act or omission, and the Director is successful, the Director shall be entitled to recover from the JPA attorneys' fees and all expenses and costs actually incurred in making such proof, whether or not those fees and costs are "reasonable."

2.7. Other Immunities. This Agreement is not intended to, nor shall it, alter, amend or otherwise change any immunity, indemnity, volunteer director liability exclusion, or insurance coverage rights of any Director.

2.8. Successors and Assigns. This Agreement shall be binding upon all successors and assigns of the JPA (including any transferee of all or substantially all of its assets and any successor by merger or operation of law) and shall inure to the benefit of the heirs, personal representatives, and estate of each Director

2.9. Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

2.10. Consideration. By signing this Agreement, each party agrees that there is, and acknowledges the receipt of, legal and adequate consideration for this Agreement.

2.11. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the parties. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties.

2.12. Applicable Law. This Agreement shall be construed in accordance with, and governed by, the domestic laws of the State of California.

2.13. Severability. If any provision or provisions of this Agreement are held to be invalid, illegal, or unenforceable for any reason whatsoever (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and effective as of the date first above written.

JPA:

Oakland-Alameda County Coliseum Authority, a joint powers authority

By: _____

Title: _____

Dated: _____

DRAFT

CITY:

The City of Oakland, California, a municipal corporation

By: _____

Title: _____

Dated: _____

DRAFT

CORPORATION:

Oakland-Alameda County Coliseum Corporation, a public benefit corporation

By: _____

Title: _____

Dated: _____

DRAFT

COUNTY:

The County of Alameda, a political subdivision of the State of California

By: _____

Title: _____

Dated: _____

DRAFT

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