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CITY OF OAKLAND



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December 10, 2013

HONORABLE CITY COUNCIL
Oakland, California

Subject: City Attorney's Report regarding Resolution Approving and Authorizing the Execution of the Eighth Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement

President Kernighan and Members of the City Council:

I. PURPOSE OF REPORT

The purpose of this report is to apprise the City Council of the terms of the proposed amendment to the License Agreement (the "License") between the Oakland Athletics ("A's") and the Oakland-Alameda County Coliseum joint powers authority ("JPA") that will extend the License for an additional two years. The current License Agreement runs through December 31, 2013. The proposed amendment will take effect only if the JPA board, the City of Oakland, Alameda County and Major League Baseball each approve the amendment. The board recently approved an amendment to the License Agreement and Major League Baseball has approved the amendment. We have prepared a resolution for the Council's consideration that would authorize the amendment

II. BACKGROUND

The A's have been operating at the O.co Coliseum under the current License since October 31, 1995. The parties have amended and extended the License a number of times. The last extension in 2006 provided options for the A's to extend the License through December 31, 2013. For a number of months, representatives of the A's and the JPA have been negotiating terms of an extension to the License. The negotiators have

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proposed to the JPA a further extension of the License through an Eighth Amendment to the License (the "Amendment") which is attached to this report.

11. PROPOSED TERMS OF THE AMENDMENT

The following is a summary of the proposed terms of the Amendment. The full form of the proposed form of the Amendment is attached. (Attachment A)

- Term. The term of the License would be extended through December 31, 2015.
- License Fees. The A's agree to pay the JPA \$1.75 million per year: \$1.5 million as an annual license fee and \$250,000 as an annual concession control fee.¹
- Concessions. The License will be amended to require the A's to collaborate on the evaluation of concession proposals and the selection of the concessionaire. The A's will make the decision should the parties fail to agree on one concessionaire. The A's and or/the concession vendor will consult and confer with the Authority and the Raiders on operational matters related to Raiders games and other non-A's events at O.co Coliseum. The Concessionaire will make all payments due to the JPA for food and beverage sales related to the Raiders games and other events at O.co Coliseum directly to the JPA. The A's represent that Bay Area Sports Catering ("BASC")² will have no direct role in the concessionaire's practices at Raiders games and events other than A's events.
- Future Cooperation. The parties agree to cooperate in the execution of provisions of the License, including at least annual meetings of the principals to discuss related matters and the agreement to refrain from knowingly making inaccurate or factually unfounded statements about the condition of the Stadium.

¹ For 2013 the A's rent was \$800,000.00. The highest rent paid by the A's was \$1,200,000.00. The Amendment includes rent of \$1,500,000.00 per year and \$250,000.00 for the right to control concessions, a payment not made before. The A's have committed to allow additional consultation regarding concessions, both selection and operation, though they maintain ultimate control with the above payment.

² BASC is the A's marketing/concessionaire entity.

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- Expedited Arbitration procedures. Inasmuch as the negotiators attempted, but were unable to, settle the issues related to the A's past withholding of rent as a way of asserting claims against the JPA, the Amendment includes an expedited arbitration procedure through the Judicial Arbitration and Mediation Services ("JAMS") to resolve those issues. This should result in the arbitration being completed in about 6 months from inception. The parties being bound by the arbitrator's decision. [Randy, did we give up our right to litigate this in court?]

IV. FURTHER APPROVALS

The Management Agreement, between the JPA, the City of Oakland and the County of Alameda, requires that the City and the County each approve the Amendment. In addition, Major League Baseball which must also approve the Amendment before it becomes effective, has notified the Authority that Major League Baseball has approved the Amendment.

V. CONCLUSION

At the December 10, 2013 meeting our Office will be available to address legal issues and the City's JPA representatives will be available to address rationale and reasons for recommending that the Council adopt the proposed resolution.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Attorney assigned:
Randolph W. Hall

ATTACHMENT A

EIGHTH AMENDMENT TO OAKLAND-ALAMEDA COUNTY COLISEUM - OAKLAND ATHLETICS - AMENDED AND RESTATED STADIUM LICENSE AGREEMENT

This Eighth Amendment (the "Eighth Amendment") to the Oakland-Alameda County Coliseum—Oakland Athletics—Amended and Restated Stadium License Agreement (as more particularly described in the Recitals below) is entered into as of the ___ day of November, 2013 between Oakland-Alameda County Coliseum Authority, a joint exercise of powers authority established by the City of Oakland, a municipal corporation and a charter city duly organized and existing under the laws and the constitution of the State of California, and the County of Alameda, a political subdivision of the State of California ("Licensor"), and Athletics Investment Group LLC, a California limited liability company ("Licensee").

Recitals:

- A. On October 31, 1995, Oakland Alameda County Coliseum, Inc., a California non-profit corporation (the "Former Licensor") and The Oakland Athletics Baseball Company, a California limited partnership ("OABC"), entered into the Oakland Alameda County Coliseum-Oakland Athletics-Amended and Restated Stadium License Agreement ("License Agreement").
- B. On October 31, 1995, Licensee and Athletics Stadium Operations Company LLC, a California limited liability company ("ASOC"), acquired all of the partnership interests in OABC. Thereafter OABC assigned to ASOC all of OABC's right, title and interest in and to the License Agreement.
- C. On June 26, 1998, Licensor, Former Licensor, Licensee and ASOC entered into a First Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- D. On July 30, 1998, Licensor, Former Licensor, Licensee and ASOC entered into a Second Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- E. On October.9, 1998, Licensor, Former Licensor, Licensee and ASOC entered into a Third Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- F. December 24, 1998, Licensor, Former Licensor, Licensee and ASOC entered into a Fourth Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.

- G. In September of 2002, Licensor, Former Licensor and Licensee entered into a Fifth Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- H. On March 28, 2006, Licensor, Former Licensor, Licensee and ASOC entered into a Sixth Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- I. On July 31, 2006, all rights of Former Licensor to license the Stadium terminated pursuant to the terms of the Operating Agreement, dated as of July 31, 1996, between the Licensee and the Former Licensee.
- J. On November 1, 2006 Licensor and Licensee entered in a Seventh Amendment To The Oakland-Alameda County Coliseum-Oakland Athletics Amended and Restated Stadium License Agreement.
- K. Licensor and Licensee desire to extend the term of, and otherwise further amend, the License Agreement as provided below.
- L. The parties recognize that Section 31 of the License Agreement requires the approval of the Office of the Commissioner of Baseball of any such amendment.
- M. The parties recognize that Licensor is required to obtain the approval of the City of Oakland and the County of Alameda prior to entering to any such amendment.
- N. As used herein, the term "License Agreement" shall mean the original License Agreement and all amendments to it as recited above; "Licensee" shall refer to Athletics Investment Group LLC; Licensor shall refer to the Oakland Alameda County Coliseum Authority; and capitalized terms used but not defined herein shall have the meaning ascribed to them in the License Agreement.

Agreement

Now, therefore, Licensor and Licensee hereby amend the License Agreement as follows:

1. Term of License Agreement: Section 7.1 of the License Agreement is hereby amended to read, and is replaced in its entirety, as follows:

"This License Agreement shall be for a term commencing November 1, 1995 and ending on December 31, 2015 (the 'Term')."

2. License Fees: Section 8.1 of the License Agreement is hereby amended in its entirety as follows:

"License Fees. Licensee shall pay license fees to Licensor as follows:

"(a) During the portion of the Term beginning January 1, 2014, Licensee shall pay the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) as an Annual License Fee, and in addition, Two Hundred Fifty Thousand Dollars (\$250,000) as an Annual Concessions Control Fee, for a total of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) per year, not later than each June 30 of each of the years 2014 and 2015. The Annual Concessions Control Fee shall be paid as consideration for Licensee's right to enter into a contract with a concessions vendor for all events at the Stadium effective January 1, 2014 and to exercise operational control over said vendor, and the Annual License Fee shall be paid as consideration for all other rights and privileges granted to the Licensee under the License Agreement, including without limitation the right to use and occupy the Stadium as set forth in Section 3."

3. Arbitration: The parties agree to modify Section 38 by adding the following new clauses:

"38.6 Arbitration of Certain Claims

38.6.1. Past Withholding: Licensor has notified Licensee that it has claims against Licensee relating to Licensee's withholding of money allegedly payable to Licensor during 2009 through 2013 and is aware that Licensee has affirmative defenses and counterclaims relating to those same items (collectively, the "Claims"). So long as the arbitration is initiated prior to June 1, 2014, all five years of the Claims may be arbitrated pursuant to Section 38, as modified in Section 38.6, and shall not be subject to any statute of limitations, laches or other untimeliness bar. The forum for arbitration of the Claims and the location of the arbitration hearing shall be the San Francisco office of the Judicial Arbitration and Mediation Service ('JAMS'). Under Section 38.1, the arbitration shall be administered pursuant to JAMS Comprehensive Arbitration Rules & Procedures ('JAMS Rules') instead of the Commercial Arbitration Rules of the American Arbitration Association. The parties' submissions under Rule 9 of the JAMS rules shall be due within 21 days of the referenced timeframes. The Preliminary Conference under Rule 16 of the JAMS Rules shall take place within 7 days of the final Rule 9 pleading. The selection of an arbitrator (the 'Arbitrator') shall occur as soon as reasonably possible. The parties agree that the Expedited Procedures set forth in JAMS Rules 16.1 and 16.2 shall apply, except that, to ensure maximum expedition, the hearing must commence no

later than 120 days from the date of the Preliminary Conference, the Arbitrator's award must issue no later than 150 days from the date of the Preliminary Conference, and under Rule 16.2 (b) the discovery cut-off and all other pre-hearing deadlines must be set in a manner that reasonably accords with the expedited timetable set forth herein. The Arbitrator shall issue a reasoned award. The Arbitrator's award shall be final and binding, shall not be subject to appeal or review except as permitted by California law, and shall not be subject to de novo review of questions of law. Rule 26 of the JAMS Rules concerning confidentiality shall apply to the parties as well as to JAMS and the Arbitrator. Except to the extent conflicting provisions in Section 38 are superseded by Section 38.6 for purposes of arbitrating the Claims, Section 38.1 – 38.5 shall continue to have full force and effect.”

38.6.2 Future Withholding: Among the issues to be submitted to expedited binding arbitration shall be, along with the correctness of the amounts withheld or the validity of any of Licensee's claims of indebtedness against Licensor, whether Section 18.3 or any other provision of the Licensee Agreement or applicable law authorized any of the offsets taken by Licensee to reduce fees payable to Licensor under Section 8.1 in 2009 – 2013. Should the Arbitrator determine that neither the License Agreement nor applicable law authorized some or all of the amounts withheld by Licensee in 2009 - 2013, Licensee agrees that the Arbitrator's award will be given prospective effect for the remainder of the Term, and that, as result, Licensee's practice of withholding money from Licensor will cease immediately to the extent necessary to comply with the award. In the meantime, until the Arbitrator's award becomes final and enforceable, Licensee shall place any and all disputed amounts related to 2014 and 2015 payable to Licensor in an escrow account, subject to escrow instructions providing, inter alia, that upon entry of a final judgment confirming the Arbitrator's award, in whole or in part, any escrowed amounts shall be disbursed in a manner that accords with the award and the rationale on which it is based. Should there be any dispute about the proper manner of disbursement of the escrowed funds, that dispute shall be arbitrated under Section 38.6 by the same Arbitrator who issued the first Section 38.6 award, and, if possible given the nature of the dispute, the

Arbitrator shall decide the dispute by Summary Disposition under Rule 18 of the JAMS Rules.

38.6.3 For the avoidance of doubt, the parties' agreement to arbitrate before JAMS under the procedures set forth in Section 38.6 is intended to ensure the earliest possible resolution of the Claims in accord with the spirit of the existing accelerated arbitration procedures called for by Section 38, so that the parties may receive binding guidance on all issues submitted for decision, effective prospectively from the date of final judgment on the award through the end of the Term. The intent of Section 38.6 is to put to rest at the earliest possible time all controversy surrounding any alleged improper withholding of money by either party, or any other alleged delinquency by either party, in order to promote trust and cooperation for the remainder of the Term. Any interpretation or application of the expedited procedures set forth in Section 38.6 that prolongs the arbitration of the Claims substantially beyond 150 days from the selection of the Arbitrator would be contrary to that intent."

39 Concessions. The first sentence of Section 12.1 is deleted and Sections 12.2 and 12.3 of the License Agreement are hereby replaced in their entirety, as follows below. Section 12.4 is deleted in its entirety.

"12.2 Control Over Concessions and Entitlement to Concessions Revenues

"12.2.1 Licensee shall have full operational control over the provision of all food and beverages in the Stadium. Licensee shall negotiate a new concession agreement to commence January 1, 2014 (the "New Concessions Agreement"). Licensee and Licensor shall collaborate on the evaluation of bids and the selection of a new concession vendor and any succeeding concessions vendors during the Term (the "Concessions Vendor"), but in the event of a failure to agree on the selection, Licensee shall select the Concessions Vendor. Following selection of the Concessions Vendor, Licensee shall enter into the New Concessions Agreement with the Concessions Vendor and shall have operational control over the Concessions Vendor, including without limitation, subject to Section 12.1 the selection of all food and beverage items sold in the Stadium and all pricing. Licensee shall provide a copy of the New Concessions Agreement to Licensor. Licensor acknowledges that pursuant to its own Request for Proposal to which the prospective concessionaires have responded, the New

Concessions Agreement may be for a period that extends beyond Licensee's actual tenancy. In such instance, the New Concessions Agreement shall be freely assignable to Licensor, and will be assigned to Licensor, pursuant to an assignment clause to be negotiated and inserted into the New Concessions Agreement. To the extent assignment of the New Concessions Agreement to the Licensor following the departure of the Licensee at the end of the Term is not possible, Licensor shall pay directly to concessionaire, who shall be an intended third-party beneficiary hereunder, any amounts that come due to the concessionaire following Licensee's departure.

- 12.2.2. Subject to Sections 12.2.2(a) and (b) below, concessions revenues paid under the New Concessions Agreement shall be the exclusive source of food and beverage revenue generated by events at the Stadium. Subject to Sections 12.2.2 (a) and (b) below, during the operative term of the New Concessions Agreement, Licensee shall not enter into any other contract that generates Food and Beverage revenues from events at the Stadium. As of the effective date of the New Concessions Agreement, Licensee shall represent to Licensor in writing that (i) except for any agreements that are exempted under Sections 12.2.2(a) and (b), no other contract exists that generates Food and Beverage revenues from events at the Stadium other than the New Concessions Agreement and (ii) no payments under the New Concessions Agreement will go to or flow through Bay Area Sports Catering ("BASC").
- (a) Licensee may enter into other agreements for the sale of concessions at the Stadium and generate revenue from those other agreements under the following circumstances: (i) for events held for charitable purposes, (ii) for events held for the benefit of a sponsor or group of sponsors of the Oakland Athletics, (iii) for areas primarily reserved for media personnel, (iv) for themed festivals held outside the Stadium, including but not limited to those held immediately before and/or after a game or other event at the Complex, and (v) upon request of Licensor and/or the Raiders.
- (b) For the avoidance of doubt, the provisions of this Section 12.2.2 are limited to the sale of tangible food and beverage items at the Stadium and shall not restrict Licensee from entering into and deriving revenue from any sponsorship or advertising agreement.

12.2.3. Licensee shall receive all concessions revenues from Home Games and Other Events. Licensor or its designee shall receive all concessions revenues from events other than Home Games or Other Events.

12.3. Without limiting or curtailing Licensee's right to control the Concessions Vendor, Licensee or its contracted concessionaire shall meet, consult and confer with Licensor and the Oakland Raiders (the "Raiders") on a regular basis to discuss concessions staffing and other concessions operational matters of concern to Licensor or the Raiders as those matters may pertain to non-baseball events at the Stadium. Unless agreed to by the Concessions Vendor, BASC shall have no direct input into concessions staffing at events other than Home Games or Other Events.

40 Future Cooperation. The parties agree to add the following new clauses concerning cooperation and good faith negotiation, as follows:

"40.10 Cooperation

- (a) In an effort to build upon a mutually beneficial relationship between Licensor and Licensee that has existed since 1968 and that has continued through multiple changes of leadership on the part of Licensor and multiple changes of ownership on the part of Licensee, the parties agree to hold a meeting of principals at least once a year during the remainder of the Term to discuss any matters that may be of interest to them.
- (b) Subject to applicable law, owners, directors, commissioners, and officers or other executive personnel from Licensee and Licensor will each refrain from knowingly making inaccurate or factually unfounded public statements about the physical condition of the Stadium."

41 Continuing Effect of License Agreement. Except as otherwise expressly set forth in this Eighth Amendment, the License Agreement shall remain in full force and effect. No other modification, alteration and/or amendment of this Eighth Amendment and/or the License Agreement shall be permitted, unless evidenced by the written consent of the parties hereto. This Eighth Amendment, together with the License Agreement, is the entire agreement of the parties and supersedes all prior agreements and representations, irrespective of whether or not such are oral or written.

42 Counterparts. This Eighth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement.