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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 Supplement No. 4 to the Master Agreement and Exhibits to the Master Agreement between the Oakland Raiders and the Oakland Alameda County Coliseum Authority

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 supplement to the Master Agreement, including a License Agreement (the "Master Agreement") between the Oakland Raiders (the "Raiders") and the Oakland-Alameda County Coliseum joint powers authority ("JPA"). The supplement will extend the Master Agreement through the 2014 National Football League ("NFL") season. The current Master Agreement runs through the 2013 NFL season. The proposed supplement will take effect only if the JPA board, the City of Oakland, Alameda County and Major League Baseball each approve the supplement. We have prepared a resolution for the Council's consideration that would authorize the supplement.

II. BACKGROUND

The Raiders have played their home games at O.co Coliseum under a Master Agreement and related Exhibits, including a License Agreement (the "Master Agreement") since the 1995 NFL football season. The parties have executed several supplements to the Master Agreement. The Master Agreement currently provides that the Raiders are entitled to play football at O.co Coliseum through the end of the current (2013) NFL football season. The Raiders are interested in occupying a new stadium as soon as possible within the County of Alameda and the Raiders, the JPA, the City and the County

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are currently studying and discussing this possibility. The Raiders have requested an extension of the Master Agreement through the end of the 2014 football season as these studies continue. JPA staff has worked with the Raiders to accommodate this request, resulting in the attached Supplement No. 4 to the Master Agreement and Exhibits to the Master Agreement (the "Supplement" or "Supplement No. 4").

111. PROPOSED SUPPLEMENT

A summary of the proposed terms of Supplement No. 4 are described below. A full form of the Supplement is attached. (Attachment A)

- Term. Supplement No. 4 extends the term through the end of the 2014-2015 NFL football season.
- Home Games. Supplement No. 4 provides that all Raiders home games will be played at O.co Coliseum, except that the Raiders may play one regular or preseason game at another location approved by the NFL.
- Additional Payments. In addition to all the current payments to the Authority, the Raiders will pay the Authority \$400,000 on December 1, 2014.¹
- Parking. Supplement No. 4 caps the parking fee for the 2014-2015 season at \$35.
- Training Facility. Under the Master Agreement, upon termination of the Master Agreement, the Raiders are required to convey the Training Facility property to the Authority. Supplement No. 4 requires the conveyance occur within 6 months and allows the Raiders to remain in the Training Facility for 24 months following the termination of the Master Agreement, provided that the Raiders pays fair market rent, not to exceed \$525,000 per year, commencing March 1, 2015. If there are good faith discussions continuing with the Authority regarding the extension of the Master Agreement, such rent will be abated during the discussions.

¹ In 2013 the Raiders paid the Authority \$2,500,000.00. Pursuant to the extension which will occur if Supplement No. 4 is executed, the Raiders will pay \$400,000.00 per year. The Raiders indicated willingness to pay more if they were able to secure concessions from the A's allowing the Raiders more control over concessions and more advertising space.

The one home game that the Raiders will play away in Europe will save the Authority approximately \$250,000.00 in costs.

The Authority is permitted to raise the parking fee for Raiders games from \$30.00 to \$35.00.

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IV. FURTHER APPROVALS

The Management Agreement, between the Authority, the City of Oakland and the County of Alameda, requires that the City and the County each approve Supplement No. 4 before the JPA has authority to execute 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,

A handwritten signature in black ink, appearing to read "Barbara J. Parker". The signature is written in a cursive style with a large, prominent initial "B".

BARBARA J. PARKER
City Attorney

Attorney assigned:
Randolph W. Hall

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ATTACHMENT A

SUPPLEMENT NO. 4 TO MASTER AGREEMENT AND EXHIBITS TO THE MASTER AGREEMENT

RECITALS

1. The Oakland Alameda County Coliseum, Inc. ("OACC," "Licensor" or "Coliseum"), the Oakland Alameda County Coliseum Authority (the "Authority" or "JPA"), the City of Oakland (the "City"), the County of Alameda (the "County"), the Oakland-Alameda County Coliseum Financing Corporation ("Financing") and the Oakland Raiders, a California Limited Partnership (the "Raiders" or the "Licensee") (collectively, the "Parties") have previously entered into a Master Agreement, dated August 7, 1995. The Master Agreement contained, as exhibits, the Definitional Annex and certain additional agreements that certain of the Parties executed on August 7, 1995, including (i) the Oakland-Alameda County Coliseum Stadium Operating License, between OACC and the Raiders (the "Operating License"), (ii) the Loan Agreement, between Financing and the Raiders (the "Loan Agreement"), (iii) the Stadium Capital Improvement Design and Construction Coordination Agreement, (iv) the Marketing Agreement, between the JPA and the Raiders (the "Marketing Agreement"), and the associated Marketing Strategy, (v) the Stadium Improvement Plan, (vi) the Visiting Team Share Agreement, among the City, the County, the Authority and the Raiders, and (vii) Revenue Trust and Security Agreement, among OACC, the JPA, the Raiders and the Alameda County Treasurer, as trustee (the "Revenue Trust Agreement") (collectively, the Definitional Annex and items (i) through (vii) are collectively referred to as the "Exhibits").

2. As of June 1, 1996, the Parties entered into Supplement No. 1 to Master Agreement and Other Agreements Defined Therein ("Supplement No. 1"), amending and modifying certain provisions of the Master Agreement and the Exhibits.

3. On or about March 28, 2006, the Parties entered into Supplement No. 2 to the Master Agreement and Other Agreements Defined Therein ("Supplement No. 2"), amending and modifying certain provisions of the Master Agreement and the Exhibits.

4. On or about November 1, 2009, the Parties entered into Supplement No. 3 to the Master Agreement and Other Agreements Defined Therein ("Supplement No. 3"), amending and modifying certain provisions of the Master Agreement and the Exhibits.

5. The Parties have been working collaboratively to discuss and explore options for a new stadium in Alameda County for the Raiders to hold Football Events following the end of the Term of the Master Agreement and Exhibits, but recognize that such options will not be sufficiently ready to hold Football Events prior to the 2015 Football Season.

6. The Parties desire to continue exploring and discussing such options for a new stadium in Alameda County for Raiders Football Events and other Bay Area events and desire to extend the term of the Master Agreement and Exhibits to allow such discussions to continue to occur.

7. On December 11, 2008, OACC dissolved. The Authority has and had previously assumed all the rights and responsibilities of OACC, including, but not limited to OACC's rights and responsibilities under the Master Agreement and the Exhibits. "Parties" for purposes of this Supplement No. 4 shall not include OACC.

8. The Parties desire to enter into this Supplement No. 4 to the Master Agreement and to the Exhibits ("Supplement No. 4"), dated as of December 2, 2013.

SUPPLEMENT

9. Master Agreement. The Master Agreement is hereby amended and supplemented as follows:

- a. Section 5.2(a), as amended by Section 2.1. of Supplement No. 2, and Section 1 a. of Supplement No, 3 is hereby amended in its entirety to read as follows:

- (a) Football Parking Net Revenue.

Subject to the foregoing, the JPA shall be authorized to collect, and shall be responsible for collecting, all Football Parking Net Revenue. The parties agree that after the conclusion of the 2005 Football Season, all Football Parking Net Revenues for subsequent seasons shall be split equally between the Raiders and the JPA; provided that the parties acknowledge and reconfirm that the Raiders' fifty percent (50%) share of such future revenues shall continue to secure the Raiders' payment obligations under the outstanding Loan Agreement and shall continue to be applied as amounts due from the Raiders under such Loan Agreement. The JPA shall be entitled to charge parking fees for Football Events of no more than \$20 for the 2006 and 2007 Football Seasons, of no more than \$25 for the 2008 and 2009 Football Seasons, of no more than \$30 for the 2010 – 2014 Football Seasons, and of no more than \$35 for the 2014-2015 football season; provided, however, that the parking charges shall in no event exceed the average parking charges for similar professional football events in the San Francisco Bay Area. The Parties acknowledge and agree that the maximum amounts JPA shall be entitled to charge and/or

collect for parking fees for Football Events include all taxes, user fees, assessments, or any other costs or expenses of any kind, and JPA shall not charge or collect any more than the amounts provided herein. The Raiders agree that to the extent JPA collects and pays any such taxes, fees, assessments, costs or expenses from such parking fees, Raiders shall make no claim for offset against amounts Raiders owes to JPA pursuant to Section 18 of the Operating License. The Coliseum shall provide parking services consistent with those of other premier NFL facilities.

- (b) Section 8.1(e)(ix), added to the Master Agreement by Supplement No. 3 is hereby deleted.

10. Operating License. The Operating License is hereby amended and supplemented as follows:

- a. Section 6.1 is hereby amended in its entirety to read as follows:

6.1 Term. Subject to the terms and conditions of the Agreements, the term of this License shall be for twenty (20) Football Seasons (which shall be consecutive unless otherwise permitted by the Agreements) commencing with the First Football Event in the OACC Stadium and such term shall end forty-five (45) days after the last Football Event of Raiders' last Football Season in the OACC Stadium under this License, which shall be the 2014-2015 Football Season, unless otherwise terminated by Raiders as provided in the Agreements. Raiders shall play all Football Events at the OACC Stadium during such term except as otherwise provided in the Agreements and except that Raiders may play one (1) preseason and/or regular season Football Event per season at a location other than OACC Stadium, provided that such location is approved by the NFL.

- b. Section 7.4 is hereby added to the Operating License as follows:

7.3 Raiders' Additional Payments for 2014-2015 Football Season. In addition to any other payments required by the Agreements, Raiders shall pay Licensor an Additional Payment of Four Hundred Thousand Dollars (\$400,000.00) Raiders' use of the OACC Stadium in the 2014-2015 Football Season, on or before December 1, 2014.

- c. Section 7.5 is hereby added to the Operating License as follows:

7.5 Additional Payments for Use of Permanent Training Facility and Training Site. If the Raiders announce a relocation or sign a lease

to play football games outside of the City of Oakland or Alameda County for the 2015 season prior to March 1, 2015, then, commencing on March 1, 2015, Raiders shall have the option of continuing to use the Permanent Training Facility and Training Site for up to twenty-four (24) months, up to and including February 28, 2017 as determined in Raiders' discretion and Raiders shall make an additional payment to Licensor each month for continued use of the Permanent Training Facility and Training Site in an amount equal to the fair market rental value of the Permanent Training Facility and Training Site on a monthly basis, as determined by a mutually agreeable licensed commercial real estate broker based on comparable rental space. Raiders and Licensor agree that the fair market rental value shall not exceed \$525,000.00 per year. In the event the Raiders and Licensor are engaged in good faith discussions concerning an extension of the Operating License or other arrangement for Raiders to play future Football Events in the OACC Stadium as of March 1, 2015, any obligation to make additional payments shall not commence while such discussions are continuing and the twenty-four (24) month period and obligation to make additional payments shall begin when Raiders agrees to play football games at a location other than OACC Stadium for the 2015 season; provided, however, that if Raiders agrees to play football at such other location, Raiders shall pay such rental payments retroactively from March 1, 2015.

11. Loan Agreement. The Loan Agreement is hereby amended and supplemented as follows:

a. Section 6 b.(7) is hereby amended in its entirety to read as follows:

(7) Following the termination of the Operating License, and upon the recording of a deed (including, but not limited to, a deed in lieu of foreclosure) in which ownership of the Permanent Training Facility and Training Site is transferred to the East Bay Entities (or is otherwise transferred in such form and/or manner as may then be reasonably directed or approved by the East Bay Entities), such conveyance shall be in full and complete satisfaction of all amounts then due or otherwise owing under the Training Facility Loan and Operations Loan (other than amounts previously due and required to be paid as identified in paragraph 4(A), 4(B) and 4(C), above, but which remain unpaid past due obligations) without regard to the then fair market value of such properties. The Raiders shall use reasonable efforts to execute and record appropriate documents transferring ownership of the Permanent Training Facility and Training Site to the East Bay Entities within one hundred eighty (180) days after termination of the Operating License. The East Bay Entities hereby covenant to provide to the Raiders, immediately

upon receiving confirmation of the Raiders' compliance with the property transfer provisions included herein, a written certificate confirming that such property transfer is in full and complete satisfaction of all amounts outstanding (or otherwise owing) on the Training Facility Loan and Operations Loan (other than any amount previously due and required to be paid as identified in paragraph 4(A), 4(B) and 4(C), above, but which remain unpaid past due obligations). The parties hereby confirm that the entirety of such debt shall be discharged in full as consideration for, and as a result of, the transfer of the subject properties to the East Bay Entities. The parties acknowledge that the language in this paragraph b.7 serves to clarify a potential unintended ambiguity in the Loan Agreement and comports with the parties' initial intentions and expectations regarding the matters addressed herein.

12. General Provisions.

- a. Except as otherwise specifically supplemented, interpreted or modified by this Supplement No. 4, all terms and provisions of the Agreements shall remain unmodified and in full force and effect. This Supplement No. 4 and the other agreements and schedules referred to herein (including the Settlement Agreement) shall constitute the entire agreement among the parties relating to the subject matter hereof and thereof, and shall supersede any negotiations, understandings, or agreements, written or oral, relating to the subject matter hereof and thereof, and shall not be changed or terminated orally. The parties further agree that the Agreements (as modified by this Supplement No. 4) shall be fairly and reasonably interpreted in the context of the time when the provision was drafted and applicable to the parties. To the extent there is any conflict between any provision in this Supplement No. 4 and any provision in the Master Agreement, any Exhibit or Supplement No. 1 or Supplement No. 2, or Supplement No. 3, the provision in this Supplement No. 4 shall control. In entering into this Supplement No. 4, no Party is relying on any representation, statement of fact or opinion concerning any matter, except those expressly set forth in this Supplement No. 4, of any.
- b. The parties agree, understand and acknowledge that no changes to the Master Agreement and Exhibits set forth in this Supplement No. 4 shall affect, or are intended to affect, the rights of any of the Parties with respect to the City's Parking Tax Ordinance (Oakland Municipal Code Chapter 4.16) or any other tax.
- c. This Supplement No. 4 may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall be deemed one and the same instrument.