

**CITY OF OAKLAND  
AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2004 DEC -9 PM 5:55

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Finance and Management Agency  
DATE: December 21, 2004

RE: **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION BY THE OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY OF THE AMENDED AND RESTATED STADIUM MASTER CONCESSION AGREEMENT WITH BAY AREA SPORTS CATERING**

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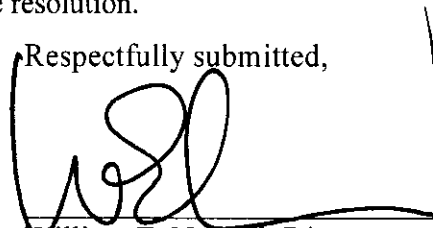
**SUMMARY**

The management agreement between the City of Oakland and Alameda County and the Oakland-Alameda County Coliseum Authority (JPA) requires City and County approval for any major concession contracts negotiated by the JPA. The JPA, in its meeting of November 18, 2004, voted to approve a contract with Bay Area Sports Catering (BASC) for stadium concessions by a vote of 7-0 (1 absent). The attached staff report from the Executive Director of the JPA describes the key elements of the contract. Also attached are copies of the JPA resolution and the concession agreement with BASC.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt the resolution.

Respectfully submitted,



William E. Noland, Director – Finance and Management Agency

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
OFFICE OF THE CITY ADMINISTRATOR

Item: \_\_\_\_\_  
City Council  
December 21, 2004



November 18, 2004

## STAFF REPORT

Item 5a: **Adoption of resolution approving and authorizing the execution of the Amended and Restated Stadium Master Concession Agreement with Bay Area Sports Catering**

### Background

In 1995, Oakland Alameda County Coliseum, Inc. ("OACC") entered into an Amended and Restated License Agreement (the "A's License") with the Oakland Athletics (the "A's") in connection the current A's owners' purchase of the team. The A's License has been amended several times since 1995, including an extension of the term of the Agreement in 2002. A component of the overall agreements contained in the License Agreement is to permit the A's to control the operations of the food and beverage in the Stadium for all events. (See Section 12 of the A's License.) While OACC reserves the right to be consulted about the selection of a concessionaire, the A's License provides ultimate control of the selection and the supervision of the food and beverage provider to the A's.

The A's initially selected Bay Area Sports Catering ("BASC"), a company related to the A's, as the concessionaire. The A's continue to delegate to BASC the provision of food and beverage concessions. BASC, in turn, subcontracts the operations of the concessions to nationally recognized companies. Prior to January 1, 2004, BASC subcontracted the operations of the premium food services to Levy Restaurants and the general concessions to ARAMARK. In January 2004, when Levy Restaurant's contract expired, BASC chose to consolidate all the food services with ARAMARK.

In 1996, the Authority entered into a contract with BASC to provide concession services for Raiders football games and other stadium events. While the Authority is required by the A's License to use the A's concessionaire for these events, the A's and the Authority thought it prudent to have an agreement that was more specific than the A's License spelling out the rights and responsibilities of the parties. This Agreement terminates December 31, 2004.

Staff has worked for many months to construct a new agreement with BASC that will better define the parties obligations and rights with respect to Raiders games and other Stadium events. The A's and BASC have been cooperative in trying to reach agreement on concession operating issues. Because the A's License allows the A's ultimate control over the selection process, the issues raised while drafting this agreement did not include whether or not BASC would be the concessionaire or what commission rate they would pay; those items are spelled out in the A's License. Nevertheless the A's, BASC and staff worked to make sure the provisions of the agreement are clear and provide the Authority with a measure of control and certainty about the operation of concession services during Raiders games and other events.

### **Key Elements of Proposed Contract**

*Please note: Attached is a copy of the form of the agreement for your review. Please refer to the attached agreement for the full terms of the agreement.*

1. **Term** – The Term of the Agreement is through the end of the Year 2010. The Agreement will terminate sooner if the A's current lease agreement ends for any reason (Section 9).
2. **Capital Investment** – BASC made investments in previous years totaling \$1,764,163.30, most of which has been depreciated over the past eight years. The Authority has an obligation to buyout the *undepreciated investment, when the agreement expires* (Sections 4.02, 4.03, 4.07 and Exhibit C).
3. **Ongoing Costs** – BASC is obligated to repair, maintain and replace Equipment. The Authority continues to pay utility costs, except for A's games which the A's pay prorated utility costs (Sections 4.05, 4.06 and 4.08).
4. **Commission Structure and Projected Revenue** (Section 5.01b) - General concessions commissions outlined in the contract are structured on a sliding scale of 40-48% based on sales volume. The previous agreement with BASC paid a straight 40% commission on all general concessions at Raiders home games. Premium services commissions were paid at 15% for all food and beverages in the previous contract. This new contract provides for a commission of 17.5% for food and 22% for alcohol served in the premium areas of the stadium.

2002 Actual Commissions

General Concessions	\$2,508,972
Premium Services	224,429
<u>Total</u>	<u>\$2,733,401</u>

Projected Commissions(based on actual 2002 sales and new %)

General Concessions	\$2,680,332
Premium Services	338,396
<u>Total</u>	<u>\$3,018,728</u>

Projected net increase \$285,327 (10.4%)

*Note: All figures are for Raiders home games only and listed prior to revenue sharing with Raiders.*

5. Payment Schedule – BASC has agreed to pay commissions to the Authority by the 20<sup>th</sup> day after the conclusion of the monthly accounting period. Interest accrues on payments not paid ten days after such payments are due (Section 5.01a).
6. Definition of Gross Receipts – BASC will pay commissions on all gross revenues except taxes, credit card fees and service charges passed on to employees as gratuities (Section 5.01b). Service charges retained by BASC are commissionable. There is also an exemption for local businesses (see 9 below).
7. Employee Retention – In the contract, BASC represents that it has used its “best reasonable efforts” to cause the Concessionaire (Aramark) to employ all qualified food service employees who were employed at the stadium as of December 31, 2003, subject to the personnel practices and benefits of the Concessionaire (Section 7.04).
8. Local Businesses – The Authority has provided a limited exemption from payment of commissions for “Small Local Businesses” who sell food and beverages at Stadium events. The amount and extent of this exemption for any particular Small Local Business will be determined by BASC. The annual cumulative dollar amount of sales that BASC may waive commissions for Small Local Businesses is

9. **\$250,000. Small Local Businesses** are defined, as businesses located in Alameda County with annual gross revenues of \$5 million or less (Section 5.02a). BASC will also use reasonable efforts to utilize Alameda County suppliers of products and services and will provide an annual report of such local business activity (Section 5.02b).
10. **Audit Requirement** – We have retained our rights to audit the BASC Group's books at any time during the Term and within one calendar year after the Term, at our own expense. This contract also adds the right to inspect cash collection procedures with access to all relevant records including daily bank deposits, register receipts, stand sheets and sales tax reports so that we will be able to verify the accuracy of reported Gross Receipts (Section 5.01c).
11. **Food Banks** – The BASC Group will use its best efforts to make available to local food banks and similar organizations excess food after events, subject to compliance with the corporate policies of the BASC Group and the Concessionaire (Section 2.06).
12. **Conflict of Interest** – In the contract, BASC states that neither BASC nor the A's have entered into any other agreement or partnership relative to this contract except its subcontract with the Concessionaire (Section 3.03).
13. **Extension of Credit** – BASC agrees to use its best efforts to ensure that Concessionaire (Section 2.01) pays any applicable commissions irrespective of any extension of credit.
14. **Customer Service** – Section 2.03 states "Concessionaire shall cooperate with Managing Agent (SMG) to optimize customer service. Further, the contract allows the Authority the right to conduct customer satisfaction surveys and that BASC will make all reasonable changes to its operations to improve customer satisfaction (Section 2.04c).

**Recommendation**

Staff recommends the Authority adopt the resolution approving and authorizing the execution of the contract with BASC to provide food and beverage services for the Stadium.

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Ann M. Haley

OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY

RESOLUTION NO. 2004-

**Resolution approving of and authorizing the execution of the Amended and Restated Stadium Master Concession Agreement, between the Oakland Alameda County Coliseum Authority and Bay Area Sports Catering**

WHEREAS, staff has provided a staff report and recommended to the governing board of the Authority that it enter into an Amended and Restated Stadium Master Concession Agreement (the "Agreement") with Bay Area Sports Catering ("BASC");

WHEREAS, form of the Agreement has been presented to this meeting;

WHEREAS, the Authority finds it advisable and now desires to approve the form of the Agreement and to authorize the execution of the Agreement;

NOW THEREFORE, the governing board of the Authority hereby finds, determines declares and resolves as follows:

Section 1. All of the recitals above set forth are true and correct, and the Board so finds and determines.

Section 2. The Authority hereby approves and authorizes the execution and delivery by the Authority's Chair of the Agreement, in substantially the form presented to this meeting with only those changes that the Chair, with the advice of counsel to the Authority, shall approve. The Authority's secretary is hereby authorized to attest, to the extent required, the Agreement.

Section 3. All action heretofore taken by the officers and agents of the Authority concerning the negotiations of the Agreement are hereby approved, confirmed and ratified, and the Executive Director and proper officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all agreements, and other documents which they, or any of them, may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect from and after its adoption and approval.

**PASSED AND ADOPTED** by the governing board of the Oakland-Alameda County Coliseum Authority, this 18th day November, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

**Chair**  
**Oakland-Alameda County**  
**Coliseum Authority**

**Attest:**

**Secretary**  
**Oakland-Alameda County**  
**Coliseum Authority**



## AMENDED AND RESTATED STADIUM MASTER CONCESSION AND MANAGEMENT AGREEMENT

This Amended and Restated Stadium Master Concession and Management Agreement (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, (“**Effective Date**”) by and between Bay Area Sports Catering LLC (“**BASC**”), a California Limited Liability Company, and the Oakland-Alameda County Coliseum Authority (the “**AUTHORITY**”) a Joint Powers Authority with offices at 7000 Coliseum Way, Oakland, California 94621 (Individually a “**Party**” or collectively the “**Parties**,” as the case may be).

### RECITALS

Whereas, the **AUTHORITY** is the entity which has been lawfully granted, by the “**City**” of Oakland and the “**County**” of Alameda, the right and responsibility to manage and operate the Oakland-Alameda County Coliseum Stadium (a.k.a. Network Associates Coliseum) (the “**Stadium**”); and

Whereas, pursuant to the Athletics Investment Group LLC’s (“**AIG**”) rights, including without limitation, to select the Stadium food and beverage provider, as provided for in that certain **Oakland-Alameda County Coliseum Oakland Amended and Restated Stadium License Agreement**, dated October 31, 1995, as amended and restated to the Effective Date, among the **AUTHORITY**, Oakland Alameda County Coliseum, Inc. and **AIG** (and **AIG** has selected and separately contracted with **BASC** to be the exclusive provider of concession services during Oakland Athletics Major League Baseball games played at the Stadium where the Oakland Athletics are in fact the home team [“**A’s Home Games**”]), the Parties are desirous of contracting for **BASC** to be the exclusive provider of “Concession Services” (as defined in Section 2.01 below) at the Stadium during games of the Oakland Raiders, a National Football League (“**NFL**”) franchise played at the Stadium where the Oakland Raiders are in fact the home team, as described in Section 3.04(b) hereof (“**Oakland Raiders Home Games**”), and all other public events and/or activities held at the Stadium (Oakland Raiders Home Games and such other public events and/or activities [specifically excluding any Major League Baseball (“**MLB**”) game and/or any Major League Baseball “Jewel Event”] are collectively referred to herein as “**Events**”), as provided for below; and

Whereas, notwithstanding **AIG**’s separate agreement with **BASC** to be the exclusive entity to provide or otherwise manage concessions during **A’s Home Games**, certain provisions of this Agreement (where necessarily applicable, e.g. [Section6]) shall be applicable to the provision of concessions at **A’s Home Games**;

Whereas, except as specifically provided for in this Agreement, this Agreement shall serve to replace in its entirety that certain Stadium Master Concession and Management Agreement (“**Prior Agreement**”), dated July 1, 1997 by and between **BASC** and the **AUTHORITY** (which **Prior Agreement** shall, except as specifically provided for in this Agreement, be of no further force and effect); and

Whereas, upon the full execution of this Agreement, BASC will enter into that certain Amended and Restated Stadium Concession Agreement (“**Concession Agreement**”), which is incorporated herein by this reference to the extent required to interpret this Agreement, with ARAMARK Entertainment, Inc. (the “**Concessionaire**”) for the provision of general and premium Concession Services in the Stadium at the “Premises” (as such are defined in Section 1.01 below), which Concession Agreement has not been approved or executed by the AUTHORITY; and

Whereas, pursuant to such Concession Agreement, BASC will sub-license/contract certain portions of its rights under this Agreement to Concessionaire which, on behalf of BASC, will operate and conduct the premium and general food and beverage concession business at the Stadium within the Premises in accordance with the terms thereof.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to the Parties, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

### 1. LICENSE OF PREMISES.

1.01. Subject to the terms and conditions set forth herein, the AUTHORITY agrees to and does hereby license to BASC and BASC hereby accepts, that certain space and premises at the Stadium as described and set forth on the attached “**Exhibit A**” (which is incorporated herein by this reference), and together with the appurtenances, easements, right of use and assets relating thereto as herein provided, all of which (including those items specified in Section 1.02 below) are hereinafter collectively referred to as the “**Premises.**” Such Premises (as identified on Exhibit A) shall include the “**General Concession(s)**” areas located throughout the Stadium concourses and the “**Premium Concession(s)**” areas which require Concession Services (including, but not limited to, the suites, “Clubs,” (as such are defined in Section 2.02 below) backstage, locker room and press areas at the Stadium).

1.02. As part of the Premises, the AUTHORITY shall permit and otherwise authorizes BASC and any sub-licensee/contractor/vendor (including without limitation the Concessionaire) of BASC pursuant to BASC’s agreement therewith (collectively hereinafter referred to as the “**BASC Group**”) to use or occupy other portions of the Stadium (which shall hereinafter be included in and made a part of the definition of Premises) as follows:

(a) Portions of the Stadium which would normally be used by a concessionaire: (i) for hawking, (ii) for the preparation and distribution of food, beverages and other products consistent with the operation of a “Concession,” as such is defined in Section 2.01 below (including but not limited to the kitchen and in-Stadium concession sales locations); (iii) the premium vending area; and (iii) for other purposes not inconsistent with the terms and conditions of this Agreement during Events; and

(b) A reasonably adequate number of parking spaces for the BASC Group and its agents/employees/sub-licensees/contractors/vendors/invitees, as well as those making deliveries and/or receiving merchandise in connection with BASC Group's activities at the Premises; and

(c) Use of service employee dressing rooms and toilet facilities located in the Stadium that by their nature are designed and/or constructed for all BASC Group personnel operating the Concessions at the Premises at locations directed and specified in writing by the AUTHORITY or through its Stadium Management Company/Operator (as of the Effective Date, the Oakland Coliseum Joint Venture ["**Managing Agent**"]), as more particularly described and provided for on Exhibit A; and

(d) Other assets owned or leased by the AUTHORITY and designed to be used in connection with the operations of the Concessions at the Stadium, including but not limited to all applicable improvements, counters, fixtures, custom built and other equipment situated at the Stadium; and

(e) The right of access by agents, contractors, invitees, sub-licensees, contractors, vendors and employees of the BASC Group to all parts of the Stadium to the extent necessary to operate the Concessions on the Premises, subject to the policies of: (i) the NFL for Oakland Raiders Home Games, and/or (ii) the reasonable security rules and regulations of the AUTHORITY or its Managing Agent, as such are provided to the BASC Group and which in all cases are applicable to all Events (including A's Home Games); and

(f) Exclusive use and possession of the office space as more specifically described and identified on Exhibit A. However, in the event such office space needs to be relocated because of any loss of use thereof beyond the reasonable control of the AUTHORITY, then the Parties shall cooperate in good faith to relocate the Concessionaire to office space within the Premises that is equal to or greater in size and utility and reasonably adequate to meet the office space needs of the BASC Group. Any such relocation shall be at the sole cost and burden of the AUTHORITY unless caused directly by the BASC Group in which case BASC shall pay the costs of such relocation.

## 2. GRANT OF EXCLUSIVE CONCESSIONS

2.01. The AUTHORITY hereby grants and confers upon BASC the exclusive right ("**Exclusivity**") at the Stadium, and within the Coliseum Complex grounds (except in the Oakland Arena and appurtenant facilities) and the "Malibu" parking lot (for so long as the AUTHORITY controls the Malibu parking lot) during Events and A's Home Games ("**Vicinity of the Stadium**") throughout the "Term" (as such is defined in Section 9 below) of this Agreement, to operate and conduct a business for the provision of the Concessions (and/or to subcontract for the operation and conduct of the Concessions with Concessionaire or another party), at the Premises in any manner consistent with the terms of this Agreement and as otherwise necessary for the sale of the "**Commodities**" (set

forth in Subsections [a] and [b] hereof) and “Premium Services” (set forth in Subsection [c] below) at the Stadium (hereinafter collectively referred to as the “Concession Services” or “Concession[s],” as the case may be), as follows:

(a) Premium Concession and General Concession foods of all kinds, including but not limited to candies, cooked foods, prepared foods, ready-to-serve foods, snacks, sweets, desserts, potato chips, nachos, pretzels, ice cream, popcorn, hot and cold sandwiches, barbequed foods, hot dogs, sausages and chicken, and as more particularly described from time to time in the “Food Service Plan” (as such is defined in Section 2.03 below); and

(b) Premium Concession and General Concession beverages of all kinds, including but not limited to alcoholic beverages and non-alcoholic beverages, to the extent they may be legally sold now or hereafter may become legally able to be sold, in accordance with applicable laws, ordinances, rules and regulations, and as more particularly described from time to time in the Food Service Plan; and

(c) Premium Concession services for the suites, Clubs, and backstage, locker room or press areas at the Stadium and/or any in-seat wait services, as more particularly described from time to time in the Food Service Plan (“Premium Services”).

During the Term, neither the AUTHORITY nor its Managing Agent shall authorize or permit any other person to, and shall not on its/their behalf, interfere with (and shall take all acts necessary to protect) the Exclusivity provided for herein above by not selling and/or offering for sale, at the Stadium or in the Vicinity of the Stadium during Events (with the exception of in the Oakland Arena and appurtenant facilities), any of the Commodities or the Premium Services specified in this Section 2.01, or any similar commodities, General Concessions or Premium Concessions, except as provided for in Sections 2.02 and 3.02 below. The AUTHORITY acknowledges and agrees that it has no right or obligation to approve any concession subcontract entered into by BASC pursuant to the rights granted it by the AUTHORITY by way of this Agreement. However, BASC agrees that it shall consult with the AUTHORITY with respect to the replacement of the Concessionaire and use its best efforts to ensure that any concession subcontract entered into during the Term with regard to the provision of Concession Services at the Stadium is consistent with the provisions of this Agreement. Moreover, BASC agrees to use its best efforts to ensure that the Concessionaire does not extend any credit to any of its customers except at the sole risk and liability of Concessionaire, such that any applicable commissions due BASC from Concessionaire are paid irrespective of any extension of credit by Concessionaire.

2.02. Notwithstanding the Exclusivity provided for in Section 2.01 above, the AUTHORITY shall be entitled to provide its own on-site (within the Stadium) catering food service up to six (6) times per year for the AUTHORITY, or AUTHORITY related, non-public (and non-Event) functions; provided, however, that such right shall not: (a) include the right to utilize any portion of the Premises other than the Eastside Club and

the Westside Club (collectively, the “Clubs”); (b) include the right to utilize suites or meeting rooms within the Stadium licensed to AIG under the Baseball License Agreement; or (c) be invoked during the occurrence of, or overlap with, any Event. In addition, the Exclusivity shall not include catering of backstage food service for Events other than Oakland Raiders Home Games that occur at the Stadium.

2.03. The quality, nature, character, quantity, selling price and brands of all of the Commodities and other items to be sold by the BASC Group at Events (other than Oakland Raiders Home Games, except as provided for herein below) shall be determined by the BASC Group in its absolute sole discretion. In the event that the AUTHORITY desires that certain items be served at Events (other than Oakland Raiders Home Games) that are not otherwise typically among the Commodities made available at the Stadium by the BASC Group, the BASC Group agrees to accommodate such requests provided that such requests do not result in an undue cost or burden to the BASC Group (and provided that the BASC Group shall provide such items to patrons at a price determined in its reasonable discretion). BASC shall submit to the AUTHORITY a “**Food Service Plan**” (subject to change from time to time as determined in BASC’s reasonable discretion, provided that the AUTHORITY shall reasonably approve any substantial modifications to the approved menu or pricing; provided, however, that to the extent that pricing of the Commodities is reasonable and the same for Oakland A’s Home Games and Oakland Raiders Home Games, such shall in no event constitute a substantial modification to the pricing of the Commodities) for Oakland Raiders Home Games. All prices for food and beverages shall be deemed reasonable if such prices are generally within the mean average range of prices charged in “**Similar Professional Sports Facilities**” in California; provided, however, such Similar Professional Sports Facilities shall be limited to and only include facilities that serve as the regular home venues in California for National Football League, Major League Baseball, National Basketball Association and National Hockey League teams. The Food Service Plan shall include menus, pricing of all items, estimated staffing levels, description of the quality of food used for menu items, estimated service levels and response time for food service in the suites and any other items specifically, reasonably and timely requested by the AUTHORITY or through its Managing Agent prior to June 1 of each year during the Term. BASC shall use its best reasonable efforts to submit the Food Service Plan by June 1 of each year of the Term provided Oakland Raiders Home Games are scheduled to be played in the Stadium during such year. The Executive Director or other designated representative of the AUTHORITY shall approve such Food Service Plan on or before July 1 of each year of the Term, which approval shall not be unreasonably withheld or delayed. However, any failure by the AUTHORITY to approve such Food Service Plan on or before July 1 of each year of the Term shall be deemed a conclusive approval by the AUTHORITY of such Food Service Plan. The Food Service Plan shall be in the form attached hereto as “**Exhibit B**” (which is incorporated herein by this reference) and such Food Service Plan shall provide that the Concessionaire shall cooperate with the Managing Agent to optimize customer service; provided, however, that nothing by way of this Agreement shall be construed as a requirement of and/or consent by the BASC Group to provide any employee or agent of the AUTHORITY any security pass or entrance into any Event, including but not limited to Oakland Raiders Home Games.

2.04. (a) The Parties acknowledge and agree that the number of Concession locations in the Stadium opened for each Event shall be determined in accordance with Food Service Plan. The BASC Group shall use commercially reasonable efforts to generate Concession revenue and foster customer satisfaction at Events. The BASC Group shall use commercially reasonable efforts to conduct the Concession such that persons who shall patronize the Stadium during Events shall be able to purchase, promptly and satisfactorily, the then available Commodities and/or the Premium Services, as the case may be.

(b) The BASC Group shall use its best efforts to ensure that all Commodities sold at the Stadium conform to the requirements of all applicable Federal, State and Municipal laws, statutes, ordinances and regulations. BASC shall make all reasonable efforts to protect the purchasing, storage, preparation and serving of the Commodities from adulteration or contamination, whether from terrorist acts or otherwise. BASC will cooperate with the AUTHORITY in connection with the foregoing. BASC shall immediately notify AUTHORITY of the occurrence of any such adulteration or contamination and of the steps taken and to be taken by BASC to control the spread of, and to eliminate, such adulteration or contamination.

(c) The AUTHORITY reserves the right to create and establish customer satisfaction surveys with questions related to all aspects of food service in the Stadium. The AUTHORITY shall conduct any such surveys so as to not interfere in any fashion with the ordinary conduct of the Concession; provided, however, such surveys shall only be conducted: (i) at Events; (ii) after providing BASC with no less than thirty (30) days advance written notice thereof; (iii) if such advance written notice has attached to it a full and complete form of the proposed survey, along with any instructions that will be given to the survey taker(s); and (iv) in all cases the location of any survey taking shall be restricted to in stadium areas specifically designated by BASC at Gate D and adjacent to the Concierge's Desk at the entrances to the West Side Club and East Side Club. The intent of the surveys will be to provide feedback to the AUTHORITY as to the BASC Group's performance as reviewed by its patrons. AUTHORITY and BASC will evaluate and review results of the surveys and BASC will make all reasonable changes to its operations to improve customer satisfaction.

2.05. (a) The BASC Group shall procure and maintain all licenses and permits required by Federal, State and local law for the operation of the Concessions, including, but not limited to, a license to sell alcoholic beverages at the Stadium. Upon the written request of the BASC Group, the AUTHORITY shall execute such documents and instruments and take such action as may be required to assist the BASC Group in obtaining such licenses and permits; provided, however, that such assistance shall not include the AUTHORITY's expenditure of any funds or the incurring of any other liability. BASC promptly shall notify the AUTHORITY of any pending or threatened investigation, proceeding or other action by any governmental authority that might result in the suspension or revocation of any license or permit necessary to operate the Concessions on the Premises.

(b) The AUTHORITY hereby reserves the non-exclusive right to determine (at its own risk, liability and burden) written alcohol management policies, including, but not limited to, number of units available, cut-off sales times and items sold; provided, however, that such policies shall at a minimum be compliant with any of BASC's license obligations to the Alcohol Beverage Control Board, the NFL and/or MLB. The Parties acknowledge that each Party has an obligation to implement and enforce such policies (to the extent implementation and enforcement is within the control of each Party) and shall do so without added cost, burden or risk to the other Party. Provided, further, that in the event that BASC's ability to sell alcoholic beverages is curtailed on account of the AUTHORITY's alcohol management policies (except in the case of any legal or compliance requirement caused by an Federal or State law or regulation or any MLB or NFL requirement/directive), then the Parties shall use good faith efforts to renegotiate the economic terms of this Agreement. However, the Parties acknowledge and agree that there may be some Events (e.g. high school sporting events) where the sale of alcoholic beverages will not be allowed and no adjustment to this Agreement is necessary.

2.06. The BASC Group will use its best efforts to make available to local food banks and similar organizations excess food after Events that would otherwise be discarded, subject to compliance with the corporate policies of the BASC Group and the Concessionaire.

3. STADIUM CONCESSIONS MANAGER; REPRESENTATIONS;  
OAKLAND RAIDERS HOME GAMES

3.01. AIG has selected, and the AUTHORITY hereby appoints BASC to act as exclusive Stadium Food Services Provider and Manager. As of the Effective Date, BASC employs James J. Wilson as its President. In the event that James J. Wilson ceases to act in such capacity, then BASC will appoint an experienced food service manager in his place, subject to the approval of the AUTHORITY, which approval shall not be unreasonably withheld or delayed. BASC will provide food and beverage Concession Services that may be through the Concessionaire or other subcontractor and, if so provided, BASC will manage the Concession operations of the Concessionaire or other subcontractor to insure the reasonable communication necessary to satisfactorily carry out this Agreement's terms with the AUTHORITY.

3.02. (a) The Parties agree that in order for the AUTHORITY to contract for the performance of certain Events (other than Oakland Raiders Home Games), modifications and/or waivers may be required to this Agreement; provided, however, in no case shall any modification be required of the BASC Group with regard to Events during, or adversely affecting, any A's Home Games or Oakland Raiders Home Games. BASC agrees to use its best efforts to reasonably accommodate the AUTHORITY and agree to such modifications and/or waivers. For this purpose modifications and/or waivers shall include, but not be limited to, non-material adjustments such as permitting the promoter to sell (exclusively) cotton candy, snow cones and/or other such items.

(b) BASC shall have the right, at its sole discretion, to offer for sale beverages in souvenir beverage cups. BASC shall use reasonable efforts to provide beverages in souvenir beverage cups at Events at the request of the AUTHORITY; provided, however, BASC may require the AUTHORITY to bear the net cost (i.e., all additional costs and burdens incurred by BASC in the procurement and production of the souvenir cups) of providing souvenir beverage cups so requested, and such cups will not contain material which would cause any Party to breach contractual obligations, including without limitation, any copyright, trademark or other obligation. BASC acknowledges and agrees that, except with respect to the sale of the Commodities, all rights and privileges to present, sell, display, advertise and/or promote non-food novelties, toys, souvenirs, binoculars, periodicals, programs, publications, seat cushions, clothing, garments and other items that would customarily be merchandise offered for sale or rent are excluded from the rights granted to BASC hereunder.

(c) The BASC Group has the right, without further consideration or payment to the AUTHORITY, to enter into any food and/or beverage sponsorship agreements with respect to the Premises and/or the Concessions. However, the BASC Group agrees that it shall not enter into food and/or beverage sponsorship agreements that: (1) would in fact materially interfere with the ability of the AUTHORITY to book concerts or other events, unless such agreements provide for the right of the AUTHORITY to book such events without such food or beverage sponsorship restrictions; (2) require display of advertising or other sponsorship material in the Clubs during Oakland Raiders Home Games; or (3) result in lower "Gross Receipts" (as such are defined in Section 5.01[b] below).

3.03. BASC represents and warrants to the AUTHORITY that: (i) the execution, delivery and performance of this Agreement have been duly authorized by BASC, (ii) this Agreement constitutes a valid and binding obligation of BASC in accordance with its terms and conditions, (iii) BASC has obtained all necessary corporate approvals for the execution, delivery and performance of this Agreement; and (iv) neither BASC, nor AIG has entered into any agreement, partnership, joint venture or similar arrangement with the Concessionaire with respect to the subject matter hereof, other than the Concession Agreement.

3.04. The AUTHORITY represents and warrants to BASC that:

(a) (i) The execution, delivery and performance of this Agreement have been duly authorized by the AUTHORITY, (ii) this Agreement constitutes a valid and binding obligation of the AUTHORITY in accordance with its terms and conditions, and (iii) the AUTHORITY has obtained all necessary approvals for the execution, delivery and performance of this Agreement; and

(b) The AUTHORITY has contracted with the Oakland Raiders to play, at the Stadium, one-half of its pre-season games and all its regular season home games and post-season games scheduled by the NFL during the NFL football season through 2010;



and

(c) neither the AUTHORITY, City or County has entered into any agreement, partnership, joint venture or similar arrangement with the Concessionaire or any other Party with respect to the subject matter hereof.

(d) Pursuant to the agreement between the AUTHORITY and the Oakland Raiders, the AUTHORITY is required to provide concessions at all Oakland Raiders Home Games.

3.05. In the event that the Oakland Raiders do not play at the Stadium at least the NFL football games for which the AUTHORITY has contracted during any year of the Term, then the Parties hereto agree that they shall use good faith efforts to renegotiate the economic terms of this Agreement, including but not limited to the terms set forth in Section 5 below. If the Parties are unable to renegotiate such terms, then the dispute shall be submitted to mediation as provided for in Section 12 below.

4. CAPITAL IMPROVEMENTS, EQUIPMENT REPAIR AND MAINTENANCE

4.01. The AUTHORITY represents and otherwise acknowledges that the Stadium has sufficient capital improvements (consistent with past practices and the condition of the Stadium as of the Effective Date) (the “**Capital Improvements**”) necessary for the commercial operation of the Concession Services by the BASC Group

4.02. (a) The Parties acknowledge that BASC owns or may purchase, as the case may be, all right, title and interest to all of the General Concessions and Premium Concessions food service equipment, fixtures, and improvements, including the method and schedule of depreciation, all as set forth in the attached “**Exhibit C**”, (which is incorporated herein by this reference). All of the food service equipment, fixtures and improvements described in Exhibit C are hereinafter referred to as the “**Equipment**.”

(b) The total amount expended by BASC in purchasing and installing such Equipment, is One Million Seven Hundred Sixty Four Thousand One Hundred Sixty Three Dollars and Thirty Cents (\$1,764,163.30). The amount expended by BASC for all Equipment, shall be referred to as the “**BASC Investment**.” BASC shall provide to the Authority an amended Exhibit C on or before the end of each calendar year during the Term, setting forth the BASC Investment adding any “**Additional Equipment**” (as such is defined in Section 4.03(a) below) purchased by BASC during that year.

(c) Upon execution of this Agreement, BASC agrees to pay AUTHORITY Eight Thousand Dollars (\$8,000) as compensation for the depreciated value of the dishwasher in the main kitchen.

4.03. BASC may from time to time propose to the AUTHORITY the purchase of equipment to be used in connection with the Concessions operations (the “**Proposed Additional Equipment Investment**”).

(a) BASC shall consult with the AUTHORITY concerning such Proposed Additional Equipment Investment and provide to the AUTHORITY a written request for approval of the Proposed Additional Equipment Investment which shall specifically describe the Proposed Additional Equipment Investment. If (1) the AUTHORITY approves, in writing, such Proposed Additional Equipment Investment (which approval shall not be unreasonably withheld or delayed if the Proposed Additional Equipment Investment is functionally necessary to operate the Concessions) and (2) BASC provides an amended Exhibit C, as provided in Section 4.02(b), then the Proposed Additional Equipment Investment shall become part of the BASC Investment (the “**Additional Equipment**”). If the AUTHORITY does not approve the Proposed Additional Equipment Investment within thirty (30) days after BASC provides written the written request for approval described above, then BASC shall have and otherwise retain all right, title and interest to such equipment, if purchased (the “**BASC Equipment**”). However, if such BASC Equipment results in material structural changes to the Premises (“**Permanent Fixtures**”), and the Premises cannot be restored to their original unaltered condition (reasonable wear and tear excepted) at BASC’s sole cost by the end of the Term, then notwithstanding that such Permanent Fixtures are BASC Equipment, in such case the AUTHORITY shall receive title to such Permanent Fixtures at the end of the Term;

(b) Any material physical alteration to any area of the Stadium open to the public and/or the Stadium structure (including the Premises) required for the installation or use of any Additional Equipment or BASC Equipment must be pre-approved by the AUTHORITY’s Executive Director or through its Managing Agent, as the case may be. Moreover, the BASC Group shall be responsible for the cost of making and maintaining all alterations or modifications to the Premises requested by the BASC Group and approved by the AUTHORITY unless the Parties agree in writing otherwise;

(c) The AUTHORITY’s Executive Director or through its Managing Agent shall have design review over all proposed material physical alterations to any area of the Stadium open to the public and/or the Stadium structure; and

(d) BASC and the Concessionaire shall be responsible for the installation and costs related to the installation of any utilities necessary for any Additional Equipment; provided, however, that the AUTHORITY shall be responsible for all monthly utility charges incurred for the operation of any Additional Equipment, as more specifically provided for in Section 4.05 below.

4.04. Prior to installing any Additional Equipment or BASC Equipment, the BASC Group shall obtain and maintain in effect all necessary or required permits, licenses, and approvals and appropriate construction insurance, all of which shall conform with all applicable laws and regulations.

4.05. Except to the extent of any damage caused by the willful misconduct or negligence of the AUTHORITY, its Managing Agent, or any of their agents or subcontractors, BASC shall, at its sole expense and burden, maintain and repair or replace (as determined in the absolute sole discretion of BASC) the Equipment and Additional Equipment; provided, however that any expenses covering the monthly usage and/or initial hook-up fees and/or fees and/or deposits of utilities used to operate any Equipment and any Additional Equipment shall be sole responsibility and burden of the AUTHORITY.

4.06. The AUTHORITY shall, at its sole expense and burden, repair and maintain the Stadium, and the structure of the Premises, including any Capital Improvements, in such a condition so as to permit BASC to operate the Concession Services in an efficient manner consistent with the terms of this Agreement and the Concession Agreement. The aforementioned responsibility to repair and maintain the Stadium shall include, but is not limited to, sewage, plumbing, fire suppressions systems, heating, air conditioning, electrical systems, any other utilities, painting areas of the Stadium open to the public, routine maintenance, preventive maintenance roof and structural repairs which may be necessary from time to time, all in accordance with: (a) good business practice, (b) a customary and efficient manner, and (c) the other terms and conditions of this Agreement. The BASC Group shall maintain and repair all equipment, furniture, plumbing and electrical fixtures within the immediate food service areas for the Concession Services including, but not limited to, painting and clearing stopped drains caused by grease or other foreign matter lodged in the area between the grease traps and the food service area. Upon termination of this Agreement, the BASC Group shall be responsible, at the BASC Group's sole expense, for restoring or bringing to its original condition as of the Effective Date, reasonable wear and tear excepted, floors, ceilings, air handling ducts, plumbing, electrical, walls, furniture, walkways, streets or other facilities or property of the AUTHORITY caused by its personnel, vendors or sub-contractors due to their willful misconduct or negligence; except to the extent of any damage caused by the willful misconduct or negligence of the AUTHORITY, its Managing Agent, or any of their agents or subcontractors.

4.07. The AUTHORITY agrees that upon the expiration of the Term (or if this Agreement is terminated before its expiration for any reason other than because of BASC's failure to pay to the AUTHORITY any sums required by Section 5 of this Agreement and/or any BASC default with respect to Sections 4.03(b) 4.04, 4.05, and 4.06 of this Agreement), the AUTHORITY shall pay to BASC the unamortized amount of the BASC Investment as such was incorporated in the BASC Investment pursuant to Section 4.03[a] above), amortized in accordance with a mutually agreed upon amortization schedule ("**Repurchase Obligation**"); provided, however, that the AUTHORITY shall not pay any portion of the BASC Investment related to Equipment that BASC does not have in its possession at the time the Repurchase Obligation arises.

4.08. Notwithstanding Section 4.06 above, BASC shall be responsible for ordinary housekeeping, cleaning, non-structural maintenance and non-structural repairs

(including non-structural utility repair) of the Premises and the Equipment and Additional Equipment within the Premises and shall provide its own set-up and maintenance crews. All trash resulting from such ordinary housekeeping shall be placed in containers, and BASC shall provide for the emptying of such containers into the trash compactor at the Stadium; provided, however, that BASC shall use its best reasonable efforts to cooperate and participate in the AUTHORITY's recycling program. BASC shall follow the AUTHORITY's reasonable written guidelines regarding trash removal at the Stadium. The AUTHORITY shall provide for the emptying of the dumpster trailer at the Stadium at no cost or burden to BASC. The BASC Group shall be responsible for all pest control within the Premises; provided, however that the Parties shall use their best efforts to facilitate the coordination of the pest control required herein with, and the abilities and efforts of, the AUTHORITY's pest control company to insure maximum effectiveness.

5. PAYMENTS AND REPORTING

5.01. (a) In consideration of the licensing of the Premises hereby licensed and the rights to operate the Concessions hereby granted to BASC, BASC hereby agrees to deliver to the AUTHORITY the following: (i) within two (2) business days of each Event at the Stadium a statement of Gross Receipts, including copies of the daily reports, (“**Gross Receipts Statement**”) for such Event; (ii) on the thirtieth (30<sup>th</sup>) day of each calendar month, the “Interim Accounting” (as described in Section 5.01[c] below); and (iii) by the 20<sup>th</sup> day of each calendar month, payment of Commissions (as defined in Section 5.01[b] below) earned during the preceding calendar month. BASC shall pay to the Authority interest equal to the Bank of America prime rate plus two percent (2%) per annum on any amounts due and payable to the AUTHORITY and not paid in full within ten (10) days of the date on which is due.

(b) As used in this Agreement, “**Gross Receipts**” shall mean all gross revenues (before shortages and payments to subcontractors) received by the BASC Group from its operation of the Concessions at the Stadium during all Events. Gross Receipts shall not include: (i) any city, county, state or federal use, excise or similar tax imposed on the sale or use of the food and beverage items collected and paid to applicable taxing authorities by the BASC Group, (ii) any and all “service charges” paid by the BASC Group to its employees as gratuities or other bonus compensation, (iii) any credit card fees charged to the BASC Group, (iv) any tax imposed on the resale of any items, and (v) the first One Hundred Twenty Five Thousand Dollars of “Small Business Revenue” (as defined in Section 5.02[a] below) collected with regard to Oakland Raiders Home Games and Events other than Oakland Raiders Home Games, respectively, as more particularly provided for in Section 5.02(a) below. “**Commissions**” shall mean the following percentages of all Gross Receipts (before shortages and payments to subcontractors) due and payable to the AUTHORITY:

<u>Annual Oakland Raiders Home Game Concession Receipts:</u>	
Up to \$1,000,000	40%
\$1,000,001 - \$2,000,000 (on the increment)	41%
\$2,000,001 - \$3,000,000 (on the increment)	42%

\$3,000,001 - \$4,000,000 (on the increment)	44%
\$4,000,001 - \$5,500,000 (on the increment)	45%
Over \$5,500,000 (on the increment)	48%

Concession Receipts –Events other than Oakland Raiders Home Games	30%
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Premium Services During Oakland Raiders Home Games:

Food and Non-Alcoholic Beverages	17.5%
Alcoholic Beverages	22.0%

Premium Services During Events other than Oakland Raiders Home Games:

Food and Non-Alcoholic Beverages	17.5%
Alcoholic Beverages	22.0%

Annual Non-Ticketed Event Concession Receipts:

Up to \$250,000	10.0%
\$250,001 - \$500,000 (on the increment)	12.5%
\$500,001 - \$750,000 (on the increment)	15.0%
\$750,001 - \$1,000,000 (on the increment)	17.5%
Over \$1,000,000 (on the increment)	20.0%

(c) On or before the thirtieth (30<sup>th</sup>) day of each calendar month during the Term, BASC shall provide the AUTHORITY with an accounting (the “**Interim Accounting**”), setting forth the Gross Receipts (including, if applicable, the Small Business Revenue) for the previous calendar month by entity and by Event, and the amount of payment, if any, due the AUTHORITY with respect to such calendar month. Within sixty (60) days following the conclusion of each calendar year during the Term, BASC shall provide the AUTHORITY with an audited statement of Gross Receipts (including, if applicable, Small Business Revenue) and Commissions for the preceding calendar year (the “**Final Accounting**”). The Interim Accounting and the Final Accounting shall be in accordance with a format reasonably agreed upon by the AUTHORITY and BASC. At any time during the Term, and for a period of one (1) calendar year thereafter, the AUTHORITY and its designated representatives or agents shall have the opportunity, at its sole cost and expense (and subject to the provisions set forth below), to inspect the books and records of the BASC Group requested by the AUTHORITY, including but not limited to daily bank deposits, register receipts, stand sheets, sales tax reports and any other information reasonably pertinent to the collection or maintenance of Gross Receipts and such records of the BASC Group for the purpose of verifying the figures contained in each Interim Accounting or Final Accounting, as the case may be. The AUTHORITY’s right to inspect the books and records of BASC shall include, without limitation, all agreements and subcontracts of BASC related to Gross Receipts. In the event that the AUTHORITY disputes such figures, the AUTHORITY shall deliver notice of such disputes to BASC (“**Dispute Notice**”). If the AUTHORITY and BASC are unable to resolve such dispute within ninety (90) days following the delivery of the Dispute Notice, the AUTHORITY and BASC shall immediately submit the dispute for resolution to a nationally recognized public accounting firm to be mutually agreed to by the AUTHORITY and BASC (the

**“Accounting Firm”**). If the Accounting firm finds that BASC has understated the Gross Receipts by more than 5%, BASC shall bear the costs of the dispute resolution, otherwise, the cost of any such dispute resolution to be borne solely by the AUTHORITY. The determination of the accuracy of any Interim Accounting and/or Final Accountings (as such are the subject of any dispute), in accordance with the terms hereof, made by the Accounting Firm after a full and complete inspection of BASC’s books and records with respect to the gross receipts, shall be final and binding upon the Parties.

5.02. (a) Notwithstanding anything to the contrary in this Agreement, any member of the BASC Group may contract with small local businesses (i.e. businesses located within Alameda County with annual gross revenues of \$5 million or less [**“Small Local Business(es)”**]) to sell Commodities at Events. So long as the revenue collected by such Small Local Businesses (**“Small Business Revenue”**) during any calendar year as a direct result of their operation at each of: (i) Oakland Raiders Home Games or (ii) Events other than Oakland Raiders Home Games, is less than One Hundred Twenty Five Thousand Dollars (\$125,000), then such Small Business Revenue shall be included in the Interim Accountings; provided, however that no member of the BASC Group shall owe any commission to the AUTHORITY thereupon (e.g., (A) if the Small Business Revenue collected by Small Local Businesses as a direct result of their operation at Oakland Raiders Home Games is less than \$125,000, then such shall be included in the Interim Accountings except that no commission shall be owed to AUTHORITY thereupon; and (B) if the Small Business Revenue collected by Small Local Businesses as a direct result of their operation at Events other than Oakland Raiders Homes Games is less than \$125,000, then such shall be included in the Interim Accountings except that no commission shall be owed to the AUTHORITY thereupon). In the event that Small Business Revenue exceeds One Hundred Twenty Five Thousand Dollars (\$125,000) with regard individually to (i) Oakland Raiders Home Games, or (ii) Events other than Oakland Raiders Home Games during any calendar year of the Term, then such excess shall be included in any subsequent Interim Accounting and the Final Accounting. In addition, in such event BASC shall pay to the AUTHORITY the applicable commission calculated by reference to the table found in Section 5.01(b) (e.g., the AUTHORITY would receive a 40% commission on all Small Business Revenue in excess of \$125,000 with regard to Oakland Raiders Home Games [provided that the aggregate of the excess over \$125,000 of the Small Business Revenue and the remainder of the **“Annual Raiders Home Game Concession Receipts”** is less than \$1,000,000], and a commission of 30% on all Small Business Revenue in excess of \$125,000 with regard to Events other than Oakland Raiders Home Games).

(b) The BASC Group agrees to make reasonable efforts (without cost or burden to the BASC Group) to utilize Alameda County producers (and/or businesses which are doing business through one (1) or more locations in Alameda County) of food and beverage products and providers of services in the performance of this Agreement to the extent these products and services are available on competitive terms and with equal quality and to the extent otherwise feasible considering the terms and conditions of this Agreement and the BASC Group’s quality control standards. The BASC Group shall provide (on or before February 1 of each calendar year during the Term) an annual

report of Alameda County business activity, which report shall include the names and locations of Alameda County businesses selling or otherwise providing the Commodities at the Stadium. In addition, within ten (10) business days of any written request from the AUTHORITY (provided that no more than four [4] requests may be made in any calendar year of this Agreement), BASC shall provide an interim report to the AUTHORITY which shall disclose the following: (i) the identities of Alameda County businesses doing business with BASC; (ii) the identity of any Alameda County business that has made written inquiries to BASC with regard to doing business with BASC; (iii) the identity of any Alameda County business that BASC has made written inquiries to with regard to doing business with such Alameda County business; and (iv) the then-current status of such inquiries described in items (ii) and (iii) herein above.

6. UTILITIES

6.01. Subject to the provisions of Section 4.03, 4.06 and 4.08 above, the AUTHORITY shall provide, at its sole cost and burden, to BASC (and all parties comprising the BASC Group) adequate and sufficient utilities (including, but not limited to, electricity, water, waste disposal and natural gas), except as provided for below, at and in the Premises, to permit the BASC Group to utilize all equipment (including all of the Equipment and Additional Equipment) customarily used in connection with the Premises and the undertaking of the Concession Services. Collectively, the aforementioned items and obligations of the Authority regarding utilities are hereinafter referred to as the "Utilities." The AUTHORITY, at its sole expense cost and burden, may, so long as such activities do not materially or adversely interfere with the conduct of the Concession Services: (a) install meters, boxes or other necessary related utility equipment, but shall pay all related hook-up fees, deposits and maintenance cost thereof; and (b) energy saving devices in the Concessions areas, which do not adversely affect the use and operation of Concession areas and/or the undertaking of the Concession Services. BASC will arrange for an energy audit of the Premises within one (1) year of the Effective Date and provide the results of such audit to the AUTHORITY. Thereafter, BASC will implement all recommendations contained in the audit that do not require the expenditure of funds and which do not materially or adversely interfere with the operation of the Concession. In addition, BASC will require that all employees of the BASC Group receive training in energy conservation. Where electrical, water and natural gas connections exist on the Premises, and BASC desires to relocate such connections to improve its operating efficiency, BASC may relocate such connections at its sole cost and expense with the AUTHORITY's prior written approval, which approval shall not be unreasonably withheld or delayed.

6.02. The AUTHORITY, at its sole cost and burden, as part of the Utilities, shall furnish adequate heat and air conditioning to the Premises and shall provide the BASC Group with an adequate potable hot and cold water supply and appropriate drainage and sewage facilities to permit the BASC Group to use the Premises to conduct of the Concession Services in the normal customary manner as provided for in this Agreement.

7. EMPLOYEES AND ACCESS

7.01. All employees of the BASC Group, its subcontractors, (including the Concessionaire) and all other agents, officers and representatives of the BASC Group on site shall abide by the AUTHORITY's written (delivered to BASC and/or posted at the Premises) procedures or those of the Authority's Managing Agent regarding attendance of events and building access related thereto. The AUTHORITY agrees to use its best efforts to provide that all properly identified employees of the BASC Group shall otherwise have, at all times, reasonably unimpeded ingress and egress to the Stadium and the Premises, including, but not limited to, delivery of merchandise to the Stadium. The BASC Group shall comply with the AUTHORITY's written security procedures (delivered to BASC and/or posted at the Premises) for entering the Stadium, including but not limited to displaying appropriate identification, obtaining prior security clearance or background checks, and keeping all gates and doors locked when not in use. BASC shall indemnify the AUTHORITY for losses incurred as a result of any willful or negligent failure on the BASC Group's part to comply with such security procedures.

7.02. The AUTHORITY shall not be liable to the BASC Group for loss or damage to, and the BASC Group shall be responsible for, securing all of its personal property relating to its personnel and operations at the Premises, including but not limited to, liquor, food and Equipment. The Parties acknowledge that BASC may make the Concessionaire responsible for securing all of their personal property by way of the Concession Agreement and any other subcontract.

7.03. If at any time any member of the BASC Group is prevented from operating the Concessions during any Event due to a "Force Majeure Event," (as defined and provided for in Section 14 below), and AUTHORITY is not in default hereunder, then the AUTHORITY shall not be liable for any loss suffered by the BASC Group on account of any such failure.

7.04. BASC represents that it has, as of the Effective Date, used its best reasonable efforts to cause the Concessionaire to employ all food service employees who meet the Concessionaire's qualifications for employment and who were employed at the Stadium as of December 31, 2003. All such employees shall be subject to the personnel practices and benefits of the Concessionaire.

## 8. INSURANCE

8.01. BASC shall, at its cost and expense, procure and maintain or, cause to be procured and maintained, insurance naming the AUTHORITY, the City of Oakland, the County of Alameda, the Oakland Alameda County Coliseum, Inc., Oakland Coliseum Joint Venture, and the Oakland Raiders as additional insureds against any damage, loss or liability arising or claimed to have arisen from the use, occupancy or operations of the Concessions at the Stadium and the sale of any of the Commodities by the BASC Group as follows (collectively, the "Insurance"):



(a) For bodily injury or damages, fatal or non-fatal, including product liability insurance coverage, to any one person to the extent of One Million Dollars (\$1,000,000);

(b) For bodily injury or damages, fatal or non-fatal including product liability insurance coverage, to two or more persons for any one (1) accident to the extent of Four Million Dollars (\$4,000,000);

(c) For property damage to the extent of One Million Dollars (\$1,000,000), each occurrence, and Four Million Dollars (\$4,000,000) aggregate; and

(d) Fire insurance with standard extended covering provisions and vandalism and malicious mischief endorsements in an amount equal to the replacement value (less physical depreciation) of the Equipment and Additional Equipment referred to in Section 4 above.

8.02. BASC shall provide the AUTHORITY on July 1 of each year of the Term a certificate of insurance evidencing the policies set forth in Section 8.01 above. If requested by the Authority, BASC shall provide the Authority with all such policies of insurance. If BASC fails to comply with the Insurance requirements set forth in Section 8.01 above, then the AUTHORITY may obtain and keep such Insurance in full force and effect. Upon the written request of the AUTHORITY, BASC shall reimburse the AUTHORITY for the direct cost of any such Insurance purchased by the AUTHORITY.

8.03. The AUTHORITY and BASC expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the occupancy of the Premises, and the operations conducted therein or thereabouts, caused by fire or other perils to the extent such claims are covered by insurance. Each insurance policy procured by or on behalf of BASC shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

## 9. TERM

The "Term" of this Agreement shall commence for all purposes on the Effective Date and terminate on December 31, 2010 without further notice or obligation from one Party to the other Party. Notwithstanding the foregoing herein, this Agreement shall be terminated without any further action or notice from one Party to the other Party in the event of (x) any termination of the Amended and Restated License Agreement between the Athletics Investment Group LLC and the Oakland-Alameda Coliseum Authority, Inc., dated October 31, 1995, as such has been and may be amended from time to time or (y) the Oakland Athletics no longer playing its home games in the Stadium.

## 10. SUCCESSORS AND ASSIGNS; ASSIGNMENT

Neither Party shall assign this Agreement without the written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the AUTHORITY and BASC, their respective legal representatives, successors and assigns.

#### 11. NATURE OF RELATIONSHIP

The relationship created in this Agreement is a Licensor-Licensee relationship. Nothing herein shall create a partnership, joint venture, trust or other fiduciary relationship between the AUTHORITY and BASC.

#### 12. DEFAULT OF BASC

12.01. In the event that: (i) BASC materially breaches any term, condition or covenant contained in this Agreement and shall fail to cure same within (20) days after receipt of written notice from the AUTHORITY specifically describing the nature of such breach (provided, however, that if such default by its nature cannot be cured within [20] days and does not involve the payment of money, then if BASC shall not immediately, upon notice from the AUTHORITY, commence curing such default and diligently and continuously pursue such remedy and cure such default within ninety [90] days); or (ii) BASC shall make an assignment for the benefit of creditors, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against BASC or if a trustee or receiver shall be appointed for BASC, then the AUTHORITY, at its option, may terminate this Agreement. The termination of this Agreement by the AUTHORITY because of the happening of said events of default provided for herein shall be without prejudice to any claims which the AUTHORITY may have against BASC growing out of the BASC default under this Agreement. No failure of the AUTHORITY to exercise any right, power or privilege shall operate as a waiver thereof, or as a waiver of any other right, power or privilege.

12.02. In the event that BASC fails to pay the AUTHORITY any amount due and payable pursuant to this Agreement within twenty (20) days of the payment date (as such is specified by this Agreement), the AUTHORITY shall provide BASC with a written notice describing such failure (including, but not limited to, a description of the amount due and applicable payment date) ("**Default Notice**"). Within five (5) days of its receipt of a Default Notice, BASC shall either (i) pay to the AUTHORITY the amount due as such is specified in the Default Notice, or (ii) in the event a good faith dispute or controversy exists between the Parties as to the payment date or amount due (as such are specified in the Default Notice), BASC shall pay all amounts that are not disputed and provide the AUTHORITY with a written notice stating that a good faith dispute or controversy exists as to the items delineated in the Default Notice and that BASC is requesting mediation of the dispute or controversy ("**Mediation Notice**"). So long as the AUTHORITY timely receives such Mediation Notice, the Parties shall each agree to a ninety (90) day mediation period ("**Mediation Period**") with the mediator to be selected by the mutual agreement of the Parties. In the event the Parties cannot agree on a

mediator within thirty (30) days of the AUTHORITY's receipt of a Mediation Notice, the Parties shall make a written request to JAMS to have it provide a mediator; provided, however, that in no event shall either Party make any suggestion or recommendation to JAMS as to who the mediator should be. The Mediation Period shall commence for all purposes upon the selection of a mediator by the Parties or by JAMS, as the case may be. BASC shall have and retain the right to cure any default during a Mediation Period by paying to the AUTHORITY the amount specified in the applicable Default Notice. Notwithstanding the above, should BASC fail to provide the AUTHORITY with a timely (as required by this Section 12.02) Mediation Notice, the AUTHORITY shall have the right to provide BASC with written notice of such failure ("**Failure Notice**"). Upon its receipt of a Failure Notice, BASC shall have ten (10) days to cure its breach of this Section 12.02; in the event that BASC fails to cure its breach of this Section 12.02 within such ten (10) day period, then the AUTHORITY shall have the right to terminate this Agreement by providing written notice thereof to BASC.

### 13. DEFAULT OF THE AUTHORITY

In the event that (i) if the AUTHORITY shall fail to pay to BASC any amount due and payable hereunder within twenty (20) days of the due date of such payment as provided for herein in this Agreement; or (ii) if the AUTHORITY shall commit a material breach of any other term, condition or covenant contained in this Agreement and shall fail to cure same within twenty (20) days after receipt of written notice from BASC to do so (provided, however that if such default by its nature cannot be cured within twenty [20] days, then if the AUTHORITY shall not immediately upon notice from BASC commence curing such default within ninety [90] days); or (iii) if the AUTHORITY shall make an assignment for the benefit of creditors, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against the AUTHORITY or if a trustee or receiver shall be appointed for the AUTHORITY, BASC may, at its option, terminate this Agreement and remove its equipment, merchandise, money, coins, and other goods and chattels from the Stadium; provided, however, that if the Authority complies with Section 4.07 hereof, BASC shall not remove the Equipment subject to the Repurchase Obligation. The termination of this Agreement by BASC because of the happening of said events of default provided for herein shall be without prejudice to any claims which BASC may have against the AUTHORITY growing out of the AUTHORITY default under this Agreement. No failure of BASC to exercise any right, power or privilege shall operate as waiver thereof or as a waiver of any other right, power or privilege.

### 14. FORCE MAJEURE

In the event that the Stadium, or any part of the Stadium, is substantially destroyed or is rendered untenable unusable by fire, explosion, earthquake, severe weather, hurricane, tornado, flood, acts of God or other natural disaster, or other casualty, or war, terrorism, civil disobedience, riot, labor strife, strike or lockout, condemnation, governmental order/decrees, state of emergency, or similar typical event or other event beyond the BASC Group's or the AUTHORITY's reasonable control (collectively or

individually, as the case may be, "Force Majeure Event") and the AUTHORITY fails to rebuild, repair and reopen the Stadium for business within twelve (12) months after the happening of said Force Majeure Event or other casualty, then and in said event, BASC shall have the right (but not the obligation) to cancel and terminate this Agreement without further obligation by either Party to the other Party. No failure of BASC to exercise any right, power or privilege shall operate as a waiver thereof or as a waiver to any other right, power or privilege.

15. CONSENTS AND APPROVALS

*In each instance where the consent or approval of the AUTHORITY or BASC is required the Party giving such consent or approval shall have 30 days from the date of a written request by the other Party to provide the consent or approval, such consent or approval should not be unreasonably withheld or delayed.*

16. NOTICES

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given if hand delivered, sent by facsimile transmission or mailed certified mail, return receipt requested:

If to BASC:

Bay Area Sports Catering, LLC  
7000 Coliseum Way  
Oakland, CA 94621  
Attn: James J. Wilson

If to the AUTHORITY:

Oakland-Alameda County Coliseum Authority  
7000 Coliseum Way  
Oakland, CA  
Attn: Executive Director

17. RELEASE, DISCHARGE OR WAIVER

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party hereto unless in writing and executed by both Parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either Party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants, terms or conditions.

18. INDEMNIFICATION

The Parties (individually an "indemnitor") shall and hereby save, defend (with legal counsel reasonably acceptable to the indemnitee), protect, indemnify and hold the other and each other's owners, officers, members, directors, agents and employees (individually an "indemnitee") harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by an indemnitee and, directly or indirectly, arising out of or as a result of (a) any breach of this Agreement by the indemnitor, or (b) any act or omission by the indemnitor (or any owner, officer, director, agent, employee, or representative of the indemnitor) in performing any of its obligations under this Agreement, except in the case of the willful misconduct, or sole reckless or negligent acts or omissions of indemnitee.

19. EFFECT OF HEADINGS; CONSTRUCTION; SEVERABILITY

The headings and subheadings of the Sections and Subsections are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner. This Agreement has been fully reviewed and negotiated by the Parties and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which Party or its counsel drafted the provision being interpreted. If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the Parties had not included the severed term herein.

20. COMPLETENESS

Collectively, this Agreement, which includes its Recitals and Exhibits, constitutes the entire agreement of the Parties. Therefore, this Agreement is the final, complete and exclusive statement and expression of the agreement among the Parties hereto with relation to the subject matter of this Agreement, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supercedes, and cannot be varied, contradicted or supplemented by evidence of, any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind. Notwithstanding the above, in the event of a conflict the terms and conditions set forth in this Agreement shall supercede and/or control any and all terms and conditions set forth in any and all Exhibits.

21. AMENDMENTS AND SUPPLEMENTS

BASC and the AUTHORITY may amend, modify, supplement or waive any provision of this Agreement in such a manner as may be agreed upon in written instrument executed by the AUTHORITY and BASC. No such amendment,

modification, supplement or waiver shall be effective unless it is in writing and signed by the Parties hereto.

22. APPLICABLE LAW

This Agreement is governed by and is to be interpreted pursuant to the laws of the State of California without regard for the conflicts of law principles thereof. The venue of any claim and/or dispute arising out of this Agreement shall be in Alameda County, California.

23. COUNTERPARTS

This Agreement may be executed several counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into as of the date above written.

OAKLAND-ALAMEDA COUNTY  
COLISEUM AUTHORITY

BAY AREA SPORTS CATERING, LLC

By: \_\_\_\_\_  
Ignacio De La Fuente, Chair

By: \_\_\_\_\_  
James J. Wilson, President

Attest:

\_\_\_\_\_  
Secretary

Approved by:

CITY OF OAKLAND

COUNTY OF ALAMEDA

OAKLAND CITY COUNCIL

*Handwritten initials*

RESOLUTION NO. \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
C.M.S.  
2004 DEC -9 PM 5:55

RWH:ssl

**RESOLUTION APPROVING OF AND AUTHORIZING THE EXECUTION BY THE OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY OF THE AMENDED AND RESTATED STADIUM MASTER CONCESSION AGREEMENT, BETWEEN THE OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY AND BAY AREA SPORTS CATERING (OFFICE OF THE CITY ADMINISTRATOR)**

WHEREAS, the Board of Commissioners of the Oakland Alameda County Coliseum Authority (the "Authority") has approved and authorized the execution of an Amended and Restated Stadium Master Concession Agreement (the "Agreement") with Bay Area Sports Catering ("BASC");

WHEREAS, pursuant to the Management Agreement among the Authority the City of Oakland (the "City"), and the County of Alameda (the "County"), dated as of July 31, 1996, the City and the County are required to approve license agreements for concessions services proposed to be entered into by the Authority;

WHEREAS, the Authority has requested and recommended that the City approve the Agreement ;

WHEREAS, the City finds it advisable and now desires to approve the form of the Agreement and to authorize the execution of the Agreement by the Authority;

NOW THEREFORE, the City Council of the City hereby finds, determines, declares and resolves as follows:

Section 1. All of the recitals above set forth are true and correct, and the Council so finds and determines.

Section 2. The City hereby approves and authorizes the execution and delivery by the Authority of the Agreement, in substantially the form presented to this meeting according to the resolution adopted by the Authority on November 18, 2004.

Section 3. All actions heretofore taken by the officers and agents of the City concerning the negotiations of the Agreement are hereby approved, confirmed and ratified, and the City Administrator, for and on behalf of the City is hereby authorized, to do any and all things and take any and all actions and execute and deliver any and all agreements, and other documents which they, or any of them,

may deem necessary or advisable in order to effectuate the purposes of this resolution.

**Section 4.** This resolution shall take effect from and after its adoption and approval.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

334648