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CITY OF OAKLAND



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Office of the City Attorney
John A. Russo
City Attorney

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June 21, 2011

Honorable City Council
Oakland, California

Re: **Background Information and Explanation of the Necessity for City of Oakland Approval of Amendment No. 3 of the Oakland-Alameda County Coliseum Arena License Agreement Golden State Warriors (Office of The City Administrator)**

Dear City Council President Reid and Members of the City Council:

I. INTRODUCTION

On May 20, 2011 the Board of Commissioners of the Oakland-Alameda County Coliseum Authority ("Authority") approved settlement ("Settlement") of the claims at issue in the arbitration dispute ("Arbitrated Claims") between the Authority and Golden State Warriors ("GSW"). The Settlement requires *Amendment No. 3 of the Oakland-Alameda County Coliseum Arena License Agreement Golden State Warriors* ("the License Agreement"). Pursuant to the Management Agreement of the Oakland-Alameda County Coliseum Arena, no amendment to the License Agreement may be made unless approved by the City of Oakland and the County of Alameda. The purpose of the resolution to which this staff report is attached is to authorize and approve Amendment No. 3 of the License Agreement.

II. BACKGROUND

In May 2009, GSW served an arbitration claim on the Authority asserting that the Authority was required to pay for the scoreboard GSW installed in the Arena in 2006 and that the Authority had breached certain obligations to book events in the Arena. The Authority presented a cross-claim asserting that GSW had breached its duty to pay its obligations under the License Agreement and owed the Authority approximately \$10 million.

In late 2010, the Authority's cross-claim was heard before an arbitrator who awarded the Authority substantially the entire amount of this claim. In addition to the

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damages awarded to it, the Authority is entitled to receive attorneys' fees. GSW has paid the entire damages award of approximately \$10 million to the Authority.

In December 2010, ownership of the team changed hands and settlement talks ensued. Over a period of months, the Authority's outside counsel, together with the Authority Chair and Vice Chair structured the Settlement.

III. SUMMARY OF THE PROPOSED SETTLEMENT

The Settlement was approved by the Authority on May 20, 2011. (A copy of the Settlement is attached.) The incorporation of substantive terms of the Settlement into the License Agreement constitutes a change of the License Agreement. As such, the License Agreement must be amended in order for the Settlement to be finalized. The proposed Amendment No. 3 of the License Agreement will allow the Authority and GSW to finalize the Settlement. Amendment of the License Agreement requires approval by the City of Oakland and the County of Alameda as a condition precedent for the Settlement to be final and binding.

The Settlement Agreement includes the following substantive terms:

- The Authority will pay the GSW \$3 million to resolve GSW's outstanding damages claims.
- GSW will pay the Authority's Phase I legal fees of almost \$580,000, subject to GSW's option to arbitrate the amount.
- The Authority agrees to allow GSW to have input into the selection of the operator the Authority engages at the expiration or renewal of the OCJV contract.
- The Authority and GSW will enter into Amendment No. 3 of the License Agreement, subject to approval of the City of Oakland and the County of Alameda.

Amendment No. 3 to the License Agreement includes the following terms:

- These amendments are only applicable for the remainder of the Initial Term on of the License Agreement (until June 30, 2017).
- The "Applicable Standard" requirement for maintenance is deleted and substituted with the continuing obligation to maintain the Arena to the standard of maintenance over the past 5 years.

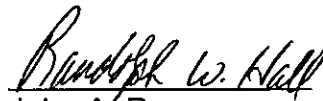
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June 21, 2011

- The standard for bookings is clarified: the Authority agrees to use best efforts to maximize events without reference to the Applicable Standard.
- The Authority agrees to make repairs/improvements to the Arena audio system and corner boards during the 2012 fiscal year.
- The Authority agrees to establish an "Upgrade Fund" of \$4 million (\$1.33 deposited in each of next three fiscal years, commencing with Fiscal Year 2012) to be used to make improvements in the inner bowl of the Arena that affect the fan experience. GSW selects the improvements that the Authority makes from this fund.
- GSW agrees to a procedure for additional capital expenses within the parameters of the Authority's capital budgeting process.

IV. RECOMMENDATION

For the foregoing reasons, the City Attorney recommends that Council enact the attached resolution authorizing Amendment No. 3 of the Oakland-Alameda County Coliseum Arena License Agreement Golden State Warriors.

Very truly yours,


John A. Russo
City Attorney

Enclosures: The Resolution
The License Agreement
Amendment No. 3 to the License Agreement
Oakland-Alameda County Authority Resolution No. 2011-6

Attorney Assigned: Randolph W. Hall

Re: **Background Information and Explanation of the Necessity for City of
Oakland Approval of Amendment No. 3 of the Oakland-Alameda County
License Agreement Golden State Warriors**
June 21, 2011

ATTACHMENT 1:

The Resolution

FILED
OFFICE OF THE CITY CLERK
OAKLAND

RWH
Approved as to Form and Legality

JUN -9 PM 1:58

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RWH:ssl

RESOLUTION APPROVING AND AUTHORIZING AMENDMENT NO. 3 OF THE OAKLAND-ALAMEDA COUNTY COLISEUM ARENA LICENSE AGREEMENT GOLDEN STATE WARRIORS (OFFICE OF THE CITY ADMINISTRATOR)

WHEREAS, on May 20, 2011, the Oakland Alameda County Coliseum Authority (“the Authority”) approved settlement of the claims at issue in the arbitrated dispute (“Arbitrated Claims”) between the Authority and Golden State Warriors (“GSW”); and

WHEREAS, a true and accurate copy of the agreement settling the Arbitrated Claims titled: *The Settlement Agreement ("Settlement Agreement") entered into by and among (i) Oakland Alameda County Coliseum Authority, a joint exercise of powers authority (the "Authority" or the "Licensor"); (ii) Oakland Alameda County Coliseum, Inc., a California non-profit corporation ("OACC"); and (iii) Golden State Warriors, LLC (the "Warriors" or the "Licensee")* is attached to the Staff Report attached to this resolution; and

WHEREAS, the Authority determined that the approved settlement of the Arbitrated Claims is in the best interest of the Authority; and

WHEREAS, a true and accurate copy of Oakland-Alameda County Authority Resolution No. 2011- 6 authorizing settlement of the Arbitrated Claims is attached to the Staff Report attached to this Resolution; and

WHEREAS, settlement of the Arbitrated Claims requires: *Amendment No. 3 Oakland-Alameda County Coliseum Arena License Agreement Golden State Warriors* (“the License Agreement”); and

WHEREAS, the Management Agreement for the Coliseum Complex requires the approval of the City of Oakland and County of Alameda for amendment of the License Agreement; and

WHEREAS, staff has provided the attached Staff Report recommending to the Oakland City Council that it approve and authorize the recommended Amendment No. 3 of the License Agreement; and

WHEREAS, staff has provided the attached true and correct copy of the recommended Amendment No. 3 of the License Agreement; and

WHEREAS, implementation of Amendment No. 3 of the License Agreement will not have a negative impact on the City of Oakland finances; and

WHEREAS, City of Oakland finances will benefit because settlement of the Arbitrated Claims will eliminate the need for the City of Oakland and the County of Alameda subsidies to fund legal costs of pursuing this arbitration.

NOW, THEREFORE, the City of Oakland finds, determines, declares and

RESOLVES, that all the recitals above set forth are true and correct, and the City of Oakland so finds and determines; and be it

FURTHER RESOLVED, that the City of Oakland approves and authorizes *Amendment No. 3 of the Oakland-Alameda County Coliseum Arena License Agreement Golden State Warriors*, in substantially the form as attached to this Resolution, with only those changes that the Authority shall approve; and be it

FURTHER RESOLVED, that the City of Oakland authorizes 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 the Authority may deem necessary or advisable in order to effectuate the purposes of this resolution; and be it

FURTHER RESOLVED, that the City of Oakland authorizes and directs the City Administrator, for and on behalf of the City of Oakland, to do any and all things necessary or advisable in order to effectuate the purposes of this resolution.

In Council, Oakland, California, , 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, BRUNNER, and PRESIDENT REID

NOES-

AB SENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Doc No. 817299

Re: *Background Information and Explanation of the Necessity for City of
Oakland Approval of Amendment No. 3 of the Oakland-Alameda County
License Agreement Golden State Warriors*
June 21, 2011

ATTACHMENT 2:

The License Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into by and among (i) Oakland Alameda County Coliseum Authority, a joint exercise of powers authority (the "Authority" or the "Licensor"); (ii) Oakland Alameda County Coliseum, Inc., a California non-profit corporation ("OACC"); and (iii) Golden State Warriors, LLC (the "Warriors" or the "Licensee").

Whereas, on May 29, 2009, the Warriors served an arbitration demand commencing an arbitration proceeding before JAMS ("Warriors' Demand"). The Authority served a response and counterclaim on July 10, 2009 ("Authority's Counterclaim"). Arbitrator William Cahill severed the proceedings into two phases and held hearings ("Phase I") on just the Authority's Counterclaim in July 2010. An award in Phase I of the JAMS Arbitration (the "Phase I JAMS Award") was issued on September 16, 2010 which, among other things, awarded the Authority money damages for the Warriors' failure to pay certain amounts under the 1996 License Agreement. The Warriors have paid in full all damages, including interest, awarded the Authority in the Phase I JAMS Award.

Whereas, as part of the Phase I JAMS Award, the Arbitrator held that the "Authority is the prevailing party in this action and may seek an award of attorneys' fees pursuant to Paragraph 39.3.5 of the License Agreement." To date, the Authority has not yet sought recovery of any Phase I fees and costs, and the Warriors have not yet paid any such fees and costs.

Whereas, hearings on the Warriors' affirmative claims ("Phase II") commenced in February 2011 and were scheduled to recommence in April 2011.

Whereas, the parties desire to compromise and resolve this matter.

Wherefore, the parties agree as follows:

1. **Payment.** The Authority shall pay GSW the sum of Three Million Dollars on or before June 30, 2011. The parties agree to be responsible for their respective attorney's fees and costs incurred in or related to this matter except as expressly set forth in Paragraph 2 below.

2. **Phase I Fees and Costs.** The Authority reserves the right to recover from the Warriors its reasonable and recoverable fees and costs incurred to prosecute the Authority's Counterclaim through the end of the JAMS Phase I hearing and any post-hearing proceedings or activities directed to recovery of the Phase I award ("Recoverable Fees and Costs"). The Authority has agreed to accept \$579,224.66 ("Stipulated Amount") in full satisfaction of this right to such fees and costs, unless the Warriors fail to pay said amount by the due date for its payment, thereby triggering the arbitration procedure that is further set forth in this Paragraph 2. The Warriors have until June 15, 2011 to agree to and pay the Stipulated Amount. If the Warriors pay the Stipulated Amount by June 15, 2011, the Authority's right to Recoverable Fees and Costs shall be deemed fully satisfied and released. If the Warriors have not paid the Stipulated Amount by June 15, 2011, the Authority shall have the right to file an application for recovery of attorney's fee and costs ("Fee Application") in the pending arbitration in order to have Judge

Cahill set the full amount of the Recoverable Fees and Costs which, if appropriate, may include a request for fees and costs incurred in bringing the Fee Application. The Authority shall not have the right to recover any fees or costs incurred solely in defending or responding to the Warriors' Demand, including any fees or costs incurred in connection with the Motion to Dismiss filed by the Authority on September 19, 2010. The parties acknowledge and agree that, in the event the amount of fees and costs due the Authority for Phase I is arbitrated, it will be for Judge Cahill to decide based on the record presented to him what to allocate to Phase I and what to allocate Phase II. The parties expressly agree that Judge Cahill shall retain jurisdiction over this limited portion of the dispute. The Warriors shall have the right to file a response to the Fee Application, and the Authority shall have the right to file a reply to any such response. The parties agree to be bound by Judge Cahill's decision as the amount of the Recoverable Fees and Costs except that the parties agree as follows: (a) if Judge Cahill awards less than Three Hundred Thousand Dollars in Recoverable Fees and costs, the Warriors shall be obligated to pay the Authority and the Authority shall accept as full satisfaction of its claim to such Recoverable Fees and Costs the sum of Three Hundred Thousand Dollars and (b) if the Judge Cahill awards more than One Million Dollars in Recoverable Fees, the Warriors shall be obligated to pay the Authority and the Authority shall accept as full satisfaction of its claim to such Recoverable Fees and Costs the sum of One Million Dollars. The parties agree that none of the financial terms of this Settlement Agreement-- including the Stipulated Amount and the high/low amounts set forth above-- shall be disclosed to Judge Cahill Arbitrator prior to his ruling on the Fee Application. If the Warriors elect to arbitrate the Fee Application by declining to pay the Stipulated Amount, they agree to pay 100% of Judge Cahill's fees and any other JAMS costs for the Fee Application arbitration.

3. Arena Management. The Authority expects to distribute a request for proposal to potential contractors for a new or renewed arena management contract (the "Management RFP") sometime prior to the end of the term of the current OCJV Management Agreement. The Authority agrees that the Management RFP will not contain or address any material contract terms other than price.

(a) Input Into Selection of Contractor. Provided that the Warriors have not submitted a bid in response to the Management RFP, the Authority agrees that the Warriors will have the right to provide timely written input into the selection of any arena manager or the renewal of OCJV as the arena manager. The Authority will consider all such input but will not be bound by it in making its selection decision. Although the Authority hopes and expects to engage the Warriors in dialogue about the selection of any arena manager or the renewal of OCJV as the arena manager, to the greatest extent feasible and appropriate, nothing in this provision shall be construed as: (i) providing the Warriors with a right to approve or veto the selection of any arena manager or the renewal of OCJV as arena manager or (ii) altering or diminishing rights the Warriors have under the existing License Agreement, if any, concerning any new arena management agreement or the selection or retention of any arena manager. In the event that the Warriors are entitled to have input under this Paragraph 3(a), the Authority will provide the Warriors copies of all bid packages received from bidders promptly following the close of the bid period. To be timely, any input submitted by the Warriors under this Paragraph 3(a) must be submitted in writing within 30 days of their receipt of said bid packages.

(b) **Input Into Contract Terms.** Whether or not the Warriors have submitted a bid in response to the Management RFP, following the Authority's selection of a winning bidder the Authority agrees that the Warriors will have the right to provide timely written input into the terms of the Management Contract. The Authority will consider all such input but will not be bound by it in determining the terms of the Management Contract. Although the Authority hopes and expects to engage the Warriors in dialogue about any such contract terms to the greatest extent feasible and appropriate, nothing in this provision shall be construed as: (i) providing the Warriors with a right to approve or veto the terms of any arena management contract or (ii) altering or diminishing rights the Warriors have under the existing License Agreement, if any, concerning approval or veto of the terms of a management contract. The Authority will notify the Warriors of the identity of the winning bidder promptly following selection of that bidder. To be timely, any input provided by the Warriors must be submitted in writing within 7 days following their receipt of notice of the identity the winning bidder and the material terms of the proposed Management Contract.

4. **Execution of Amendment to the License Agreement and Effectiveness of Settlement Agreement.** The Warriors and the Authority agree to execute, subject to required approvals by the City of Oakland and the County of Alameda, Amendment No. 3 to the License Agreement in the form attached hereto as Exhibit A. Pursuant to Paragraph 7, the effectiveness of this Agreement is conditioned upon the required approvals of Amendment No. 3 to the License Agreement.

6. **Limited Mutual Releases** Except as expressly set forth herein, as of the effective date of this Settlement Agreement, (a) the Authority and the OACC, for themselves and on behalf of their predecessors, agents, other representatives, shareholders, partners, members, officers, directors, predecessors, successors and assigns fully and forever release and discharge the Warriors, and each of its employees, agents, other representatives, shareholders, partners, members, officers, directors, predecessors, successors and assigns, and (b) the Warriors, for itself and on behalf of their predecessors, successors and assigns, fully and forever release and discharge the Authority and the OACC, and each of the Authority's and the OACC's employees, agents, other representatives, shareholders, partners, members, officers, directors, commissioners, predecessors, successors and assigns, from any and all claims, rights, demands, liabilities, obligations, damages, actions, and causes of action, of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, which any of the parties now has or claims to now have based upon or related to the Warriors' Demand and the Authority's Counterclaim, PROVIDED THAT the foregoing limited mutual releases and discharges shall not apply to or affect the enforceability of any judgment that has been entered on behalf of or against any party or any obligations of the parties under this Settlement Agreement, all of which obligations are in full force and effect, or that may arise hereafter under the License Agreement, or that have heretofore arisen under the License Agreement but have not arisen out of or are not in any way connected with, based upon or related to the Claims. Specifically, and without limitation, the parties agree that the Warriors do not hereby waive or release and fully reserve all rights, including all rights of deduction under Paragraph 21.3 of the License Agreement, concerning the City of Oakland's efforts to collect any parking tax at the Coliseum Complex. The parties acknowledge that the Authority has taken the position that the Warriors have no such right of offset as to any City of Oakland parking tax imposed at the Coliseum Complex.

With respect to the foregoing limited mutual releases and discharges, the parties waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Parties understand that if the facts with respect to which this Settlement Agreement is executed are found hereafter to be different from the facts now believed to be true, this Settlement Agreement shall be and remain effective and not subject to termination, rescission or any other remedy by virtue of any such differences in facts. The Parties also understand and acknowledge that it is possible that unknown losses or claims exist, or that present losses may have been underestimated in amount or severity. The Parties explicitly took these possibilities into account in entering into this Settlement Agreement, and the releases given herein were given in exchange for a full accord, satisfaction and discharge relating to the matters released in this Settlement Agreement.

7. Required Approvals, Effective Date, and Dismissals of Pending Proceedings Promptly following execution and delivery of this Settlement Agreement, approval by the Authority's Board of Commissioners of the Settlement Agreement, approval by the City of Oakland and the County of Alameda of the amendments to the License Agreement that are called for by the Settlement and the final conclusion of any arbitration on any Fee Application pursuant to Paragraph 2 above, the Warriors, OACC and the Authority shall duly execute and submit to JAMS requests for dismissal of the pending AAA Phase II arbitration, with prejudice, with all parties thereto bearing their own attorney's fees and costs except as set forth above in Paragraph 2, above. This Settlement Agreement shall be effective as of the date of the last approval required under this Paragraph 7 by the Authority's Board of Commissioners, the City and the County.

8. Miscellaneous Provisions.

Successors and Assigns. This Settlement Agreement is binding upon and shall inure to the benefit of each Party to this Settlement Agreement and to all employees, agents, other representatives, shareholders, partners, members, officers, directors, predecessors, successors, and assigns of each Party to this Settlement Agreement.

Acknowledgement and Cooperation. Each of the Parties hereby affirms and acknowledges that it has read this entire Settlement Agreement, understand it, and has had it fully explained to it by its counsel. Each of the Parties acknowledges that this Settlement Agreement is executed without reliance upon any representation by any person concerning the nature or the extent of the damages sustained by such Party or the legal liability therefore, and, except as expressly set forth in Paragraph 2, above, each of the Parties shall pay its own attorneys' fees and other legal expert and consultant expenses incurred in connection with the JAMS Arbitration and the settlement reflected in this Settlement Agreement. The Parties shall cooperate in the

preparation and execution of all documents reasonably necessary to effectuate the terms of this Settlement Agreement.

No Assignment of Covered Claims/Further Approval. Each Party individually represents and warrants that (a) no person other than such Party has, or has had, any interest in the Claims released herein; and (b) such Party has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims released herein.

Waiver. No breach of any provision of this Settlement Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver any other breach of the same or any other provision of this Settlement Agreement.

Integration/Entire Agreement. This Settlement Agreement and the License Agreement, as amended, contain the entire agreement of the Parties with respect to the JAMS Arbitration and the Claims released herein, and supersede any and all prior contemporaneous understandings or agreements with respect to the same. In entering into this Settlement Agreement, no Party is relying on any representation, statement of fact or opinion, except those expressly set forth in this Settlement Agreement, if any.

Severability. In the event any immaterial provision of this Settlement Agreement is held to be void or unenforceable by a court of competent jurisdiction or any arbitrator, the remaining provisions of this Settlement Agreement shall have the same force and effect as though the void or unenforceable parts had been deleted.

Governing Law. This Settlement Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of California, except that this Settlement Agreement shall be given a fair and reasonable construction in accordance with the intentions of the Parties and without regard to which Party may have initially drafted any particular portion of this Settlement Agreement and without regard to the provisions of Section 1654 of the California Civil Code.

Capitalized Terms. Capitalized Terms used herein but not defined shall have the meaning, if any, set forth in the 1996 License Agreement.

Authority to Execute Agreement. Each individual executing this Settlement Agreement on behalf of his or her respective Party represents and warrants that he or she has the authority of such entity to execute, deliver and perform under this Settlement Agreement on its behalf and that all necessary governmental, corporate or other approvals for such entity to execute, deliver and perform under this Settlement Agreement have been obtained.

Alteration and Counterparts. This Settlement Agreement may not be altered, amended or modified in any respect, except in writing duly executed by each of the Parties expressly reciting such intent. This Settlement Agreement may be executed in counterparts, each of which shall be deemed original, but such counterparts together shall constitute one and the same instrument. The executed Settlement may be delivered by means of facsimile transmission

CAUTION: THIS IS A RELEASE – READ BEFORE SIGNING. DO NOT SIGN IF YOU DO NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.

Dated:

For the Golden State Warriors LLC

By: _____

Robert R. Rowell

President

Dated

For the Oakland Alameda County Coliseum Authority and Oakland Alameda County Coliseum, Inc.

By: _____

Ignacio De La Fuente

Chair

Exhibit A

AMENDMENT NO. 3
OAKLAND-ALAMEDA COUNTY COLISEUM ARENA LICENSE AGREEMENT
GOLDEN STATE WARRIORS

This Amendment No. 3 ("Amendment") is made as of _____, 2011, by and among Oakland-Alameda County Coliseum Authority ("Authority"), for itself and as successor to Oakland Alameda County Coliseum, Inc. ("Licensor") and Golden State Warriors ("Licensee"), in respect of that certain Oakland-Alameda County Coliseum Arena License Agreement, dated as of July 15, 1996 ("Agreement"), among the Authority, Licensor and Licensee.

RECITALS

1. The Oakland Alameda County Coliseum, Inc. ("Licensor"), the Oakland Alameda County Coliseum Authority ("the Authority") and the Golden State Warriors (formerly known as CC Partners) ("Licensee") have previously entered into a License Agreement, dated as of July 15, 1996 and have subsequently entered into Amendment No. 1 and Amendment No. 2 to License Agreement (together, the "License Agreement").
2. The Authority has succeeded to all the rights and obligations of the Licensor under the License Agreement and therefore all references to Authority and Licensor in the License Agreement are references to the Authority.
3. The Licensor, the Authority and the Licensee have entered into a Settlement Agreement, dated effective _____, 2011 (the "Settlement Agreement") pursuant to which the parties thereto agreed to modify and amend certain provisions of the License Agreement.
4. The Licensor, the Authority and the Licensee desire to enter into this Amendment No. 3 to the License Agreement (the "Amendment") to satisfy the agreements made in the Settlement Agreement.

AMENDMENT

1. All defined terms in this Amendment shall have the meanings ascribed to such terms in the License Agreement unless defined herein.
2. Except as may otherwise be specifically provided herein, the effective date of this Amendment shall be _____, 2011.

3. Section 15.1 of the License Agreement is hereby amended in its entirety to read as follows:

“15.1 General. Licensor shall be responsible, at its own cost, for the day-to-day physical operation and maintenance of the New Arena, the systems and equipment in the New Arena, and the areas immediately adjacent to the New Arena, in a manner that, subject to Paragraph 15.2 and 15.3, is consistent with the quality of physical operation and maintenance that the Licensor has carried out since 2006. Licensor’s operation and maintenance obligations under this Paragraph 15.1 shall include an obligation, at its cost, to repair worn out or broken systems and equipment, as more specifically addressed in Paragraph 17.1, or to replace said systems and equipment if necessary to maintain their functionality (the “Capital Expenses”). To ensure that funds will be available for such Capital Expenses, the Coliseum Entities shall deposit each New Arena Fiscal Year into a capital reserve fund (“Capital Reserve Fund”) an amount equal to \$400,000, escalated at an amount not less than four percent (4%) of the prior year after the first year of the Term. All interest earned on any funds in the Capital Reserve Fund shall remain a part thereof and shall not be included in Net New Arena Revenues. Notwithstanding this funding obligation, Licensee waives any right to claim a breach of this Section 15.1 for failure to adequately fund the Capital Reserve Fund during the remainder of the Initial Term unless the failure to adequately fund the Capital Reserve Fund causes the Licensor to breach any other obligation set forth in this License Agreement. The overall goal of all of the Licensor’s obligations under this Paragraph 15.1 is that the New Arena and the systems and equipment contained in it shall at all times continue to function in the same manner that they have been functioning since 2006, subject to Paragraph 15.2 and 15.3. For the avoidance of doubt, (a) nothing in this Paragraph 15.1 shall be construed to mean that the scheduling or booking of events or any other aspect of the executive management of the New Arena is in any way controlled by, addressed by, or embraced within Paragraph 15.1, and (b) nothing in this Paragraph 15.1 shall be construed to set an operation and maintenance standard that requires the Authority to undertake or shall otherwise involve a comparison with, observation of, or visits to the Applicable Standard arenas. The Coliseum Entities shall take no action in the Complex that materially adversely affects the New Arena without the prior written approval of Licensee, which approval shall not be unreasonably withheld.

”

4. Section 15.3.1 of the License Agreement shall be amended in its entirety to read as follows:

“15.3.1 Requested by the Licensee. If requested by Licensee, the systems and equipment contained in the New Arena which affect the experience of patrons attending Home Games, such as the scoreboard, shall be upgraded at no cost to Licensee at any time after the fifth year of the Term when significantly more advanced systems or equipment are in use in at least twenty per cent (20%) of the other arenas which are homes to NBA franchises. Notwithstanding the foregoing, the Coliseum Entities only shall be required to make such upgrades to the systems and equipment in the New Arena under this Paragraph 15.3.1 where funding therefore is reasonably available for such use in the Capital Reserve Fund, the Arena Operating Fund, the Arena Operating Reserve Fund and/or the Arena Complex Account. The parties agree that except as set forth in Paragraph 15.3.4, this Paragraph 15.3.1 is the sole and exclusive basis on which the Licensor may be required to pay for upgrades to the scoreboard or the systems and equipment necessary to operate or control the scoreboard.”

5. A new Section 15.3.4 shall be added to the License Agreement to read as follows:

“15.3.4 Systems and Equipment. In addition to the rights and duties set forth in the License Agreement, including but not limited to those set forth in Paragraphs 15.1, 15.2, 15.3.1 and 15.3.2, so long as the Licensee presents any request for upgrades or new equipment purchases to the Authority, as set forth below, in the Authority’s annual capital expenditure process, and so long as the Licensee gives the Authority the opportunity to provide input into, to collaborate with the Licensee on, or to carry out on its own (should the Licensee wish it to do so), any purchase, design or installations that may be required, the Authority agrees to the following:

“(a) New Arena Audio System. The Authority agrees to upgrade the existing New Arena audio system with current audio technology, and will use its best efforts to accomplish said upgrade by September 1, 2011. The Authority acknowledges and agrees that the process of negotiating this Settlement Agreement shall be deemed to fully satisfy the Licensee’s obligation under this Paragraph 15.3.4 to present their request for a New Arena audio system upgrade and their obligation to provide the Authority an opportunity for participation and control in the purchase, design and

installation process. The audio system upgrade will be paid for at the Authority's cost, and funding for it will not come out of the Upgrade Fund (as hereinafter defined).

“(b) New Cornerboards. The Authority agrees to replace the existing cornerboards with current video technology, and will use its best efforts to accomplish said replacement by September 1, 2011. The Authority acknowledges and agrees that the process of negotiating this Settlement Agreement shall be deemed to fully satisfy the Licensee's obligation to present its request for a new cornerboards under this Paragraph 15.3.4 and its obligation to provide the Authority an opportunity for participation and control in the purchase, design and installation process. The new cornerboards will be paid for at the Authority's cost, and funding for them will not come out of the Upgrade Fund.

“(c) Upgrade Fund. The Authority shall create a new reserve fund (the “Upgrade Fund”) and shall deposit into the Upgrade Fund \$1,333,333.33 per year for the next three fiscal years, first on July 1, 2011, next on July 1, 2012, and next on July 1, 2013. The Upgrade Fund shall be capped at a total of Four Million dollars plus any accumulated interest (the “Upgrade Cap”). The Licensee may direct the Authority to use monies from the Upgrade Fund during the Initial Term of the License Agreement for the acquisition and installation of: (i) one or more new systems or equipment in the inner bowl or, (ii) one or more upgrades to existing systems and equipment in the inner bowl, so long as said systems and equipment or said upgrades affect the experience of patrons attending home games. Provided that the Licensee has otherwise complied with the terms of this Paragraph 15.3.4, the Licensee may direct that monies from the Upgrade Fund be used for any acquisition and installation of any such system, equipment or upgrade acquired and installed at any time during the Initial Term. If any such system, equipment or upgrade is acquired or installed at a time when the Authority's payments into the Upgrade Fund have not yet reached the Upgrade Cap (as hereinafter defined) and the cost of the system, equipment or upgrade exceeds the funds then available in the Upgrade Fund, the Licensee will be entitled to direct that the Authority reimburse them for all amounts expended by the Licensee until the Upgrade Cap is reached.

“(d) LED fascia ring. Licensor shall continue to be responsible for maintaining and repairing the existing LED fascia ring, but at its option, since the LED fascia ring is equipment used for advertising, the Licensor may seek reimbursement from the Licensee for any maintenance or repair costs that are materially more than the Licensor's highest annual cost of maintenance and repair for the LED fascia ring under

the existing service contract, as measured from the ring's original installation date through June 30, 2011. This subparagraph 15.3.4 (d) shall not amend the parties' responsibilities under Paragraph 10.1 or the subparagraphs thereto.

"(e) Effect of Warriors' Failure to Comply with Paragraph 15.3.4 ("Unilateral Purchase"):
The Warriors' purchase of any system, equipment or upgrade otherwise covered under Paragraph 15.3.4 without first: (a) presenting their request for such system, equipment or upgrade purchase to the Authority, as set forth herein, in the Authority's annual capital expenditure process or (b) providing the Authority the opportunity for participation and control in the purchase, design and installation process of any such system, equipment or upgrade, shall permanently relieve the Authority of any obligation to pay for such system, equipment or upgrade (or the equivalent of any such items in a renewed or subsequent funding request) out of the Upgrade Fund or at all under Paragraph 15.3.4.

6. Section 4.1 of the License Agreement shall be amended in its entirety to read as follows:

"4.1 Other Events. Licensor shall be responsible for booking and scheduling all events to be held in the New Arena. Licensor will use its best efforts to maximize the number of events to be held in the New Arena. Licensor shall not be required to consult with Licensee prior to booking or scheduling any event to be held in the New Arena other than Home Games or Warriors Events except for (i) Proposed Teams as set forth in Paragraph 3.10 and (ii) other events to be scheduled to occur during any Basketball Season as set forth in Paragraph 4.3.1(e). Paragraph 4.1 is the only section of this agreement that applies to the Licensor's obligations regarding the booking and scheduling of events."

8. Effect of Amendment: Absent further agreement of the parties, amended Paragraphs 15.1, 15.3.1 and 15.3.4 shall be in effect only during the remainder of the Initial Term of the License Agreement. Thereafter, absent further agreement of the parties, the existing Paragraphs 15.1 and 15.3.1 shall be in effect. Except as otherwise specifically supplemented or modified by this Amendment, all terms and provisions of the License Agreement shall remain unmodified and in full force and effect. This Amendment shall constitute the entire agreement among the parties relating to the subject matter hereof, and shall supersede any negotiations, understandings, or agreements, written or oral, relating to the subject matter hereof, and shall not be changed or terminated orally.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Amendment No. 3 to the License Agreement as of _____, 2011.

OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY

By _____

Chair

Attest: _____

Secretary

GOLDEN STATE WARRIORS (formerly CC Partners)

By _____

Approved by:

CITY OF OAKLAND

By: _____

COUNTY OF ALAMEDA

By _____

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

OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY,
a Joint Powers Authority

By: _____

Name:

Title:

OAKLAND-ALAMEDA COUNTY COLISEUM, INC.,
a California non-profit corporation

By: _____

Name:

Title:

GOLDEN STATE WARRIORS,
a California general partnership

By: _____

By: _____

Approved by:

CITY OF OAKLAND

Approved as to form:

Oakland City Attorney

By _____

City Administrator

COUNTY OF ALAMEDA

Approved as to form:

Alameda County County Counsel

By _____

Chairman of Board of Supervisors

Re: **Background Information and Explanation of the Necessity for City of
Oakland Approval of Amendment No. 3 of the Oakland-Alameda County
License Agreement Golden State Warriors**
June 21, 2011

ATTACHMENT 3:

Amendment No. 3 to the License Agreement

AMENDMENT NO. 3
OAKLAND-ALAMEDA COUNTY COLISEUM ARENA LICENSE AGREEMENT
GOLDEN STATE WARRIORS

This Amendment No. 3 ("Amendment") is made as of _____, 2011, by and among Oakland-Alameda County Coliseum Authority ("Authority"), for itself and as successor to Oakland Alameda County Coliseum, Inc. ("Licensor") and Golden State Warriors ("Licensee"), in respect of that certain Oakland-Alameda County Coliseum Arena License Agreement, dated as of July 15, 1996 ("Agreement"), among the Authority, Licensor and Licensee.

RECITALS

1. The Licensor, the Authority and the Licensee have previously entered into a License Agreement, dated as of July 15, 1996 and have subsequently entered into Amendment No. 1 and Amendment No. 2 to License Agreement (together, the "License Agreement").
2. The Authority has succeeded to all the rights and obligations of the Licensor under the License Agreement and therefore all references to Authority and Licensor in the License Agreement are references to the Authority.
3. The Licensor, the Authority and the Licensee have entered into a Settlement Agreement, dated effective _____, 2011 (the "Settlement Agreement") pursuant to which the parties thereto agreed to modify and amend certain provisions of the License Agreement.
4. The Licensor, the Authority and the Licensee desire to enter into this Amendment No. 3 to the License Agreement (the "Amendment") to satisfy the agreements made in the Settlement Agreement.

AMENDMENT

1. All defined terms in this Amendment shall have the meanings ascribed to such terms in the License Agreement unless defined herein.
2. Except as may otherwise be specifically provided herein, the effective date of this Amendment shall be _____, 2011.

3. Section 15.1 of the License Agreement is hereby amended in its entirety to read as follows:

“15.1 General. Licensor shall be responsible, at its own cost, for the day-to-day physical operation and maintenance of the New Arena, the systems and equipment in the New Arena, and the areas immediately adjacent to the New Arena, in a manner that, subject to Paragraph 15.2 and 15.3, is consistent with the quality of physical operation and maintenance that the Licensor has carried out since 2006. Licensor’s operation and maintenance obligations under this Paragraph 15.1 shall include an obligation, at its cost, to repair worn out or broken systems and equipment, as more specifically addressed in Paragraph 17.1, or to replace said systems and equipment if necessary to maintain their functionality (the “Capital Expenses”). To ensure that funds will be available for such Capital Expenses, the Coliseum Entities shall deposit each New Arena Fiscal Year into a capital reserve fund (“Capital Reserve Fund”) an amount equal to \$400,000, escalated at an amount not less than four percent (4%) of the prior year after the first year of the Term. All interest earned on any funds in the Capital Reserve Fund shall remain a part thereof and shall not be included in Net New Arena Revenues. Notwithstanding this funding obligation, Licensee waives any right to claim a breach of this Section 15.1 for failure to adequately fund the Capital Reserve Fund during the remainder of the Initial Term unless the failure to adequately fund the Capital Reserve Fund causes the Licensor to breach any other obligation set forth in this License Agreement. The overall goal of all of the Licensor’s obligations under this Paragraph 15.1 is that the New Arena and the systems and equipment contained in it shall at all times continue to function in the same manner that they have been functioning since 2006, subject to Paragraph 15.2 and 15.3. For the avoidance of doubt, (a) nothing in this Paragraph 15.1 shall be construed to mean that the scheduling or booking of events or any other aspect of the executive management of the New Arena is in any way controlled by, addressed by, or embraced within Paragraph 15.1, and (b) nothing in this Paragraph 15.1 shall be construed to set an operation and maintenance standard that requires the Authority to undertake or shall otherwise involve a comparison with, observation of, or visits to the Applicable Standard arenas. The Coliseum Entities shall take no action in the Complex that materially adversely affects the New Arena without the prior written approval of Licensee, which approval shall not be unreasonably withheld.

”

4. Section 15.3.1 of the License Agreement shall be amended in its entirety to read as follows:

“15.3.1 Requested by the Licensee. If requested by Licensee, the systems and equipment contained in the New Arena which affect the experience of patrons attending Home Games, such as the scoreboard, shall be upgraded at no cost to Licensee at any time after the fifth year of the Term when significantly more advanced systems or equipment are in use in at least twenty per cent (20%) of the other arenas which are homes to NBA franchises. Notwithstanding the foregoing, the Coliseum Entities only shall be required to make such upgrades to the systems and equipment in the New Arena under this Paragraph 15.3.1 where funding therefore is reasonably available for such use in the Capital Reserve Fund, the Arena Operating Fund, the Arena Operating Reserve Fund and/or the Arena Complex Account. The parties agree that except as set forth in Paragraph 15.3.4, this Paragraph 15.3.1 is the sole and exclusive basis on which the Licensor may be required to pay for upgrades to the scoreboard or the systems and equipment necessary to operate or control the scoreboard.”

5. A new Section 15.3.4 shall be added to the License Agreement to read as follows:

“15.3.4 Systems and Equipment. In addition to the rights and duties set forth in the License Agreement, including but not limited to those set forth in Paragraphs 15.1, 15.2, 15.3.1 and 15.3.2, so long as the Licensee presents any request for upgrades or new equipment purchases to the Authority, as set forth below, in the Authority’s annual capital expenditure process, and so long as the Licensee gives the Authority the opportunity to provide input into, to collaborate with the Licensee on, or to carry out on its own (should the Licensee wish it to do so), any purchase, design or installations that may be required, the Authority agrees to the following:

“(a) New Arena Audio System. The Authority agrees to upgrade the existing New Arena audio system with current audio technology, and will use its best efforts to accomplish said upgrade by September 1, 2011. The Authority acknowledges and agrees that the process of negotiating this Settlement Agreement shall be deemed to fully satisfy the Licensee’s obligation under this Paragraph 15.3.4 to present their request for a New Arena audio system upgrade

and their obligation to provide the Authority an opportunity for participation and control in the purchase, design and installation process. The audio system upgrade will be paid for at the Authority's cost, and funding for it will not come out of the Upgrade Fund (as hereinafter defined).

“(b) New Cornerboards. The Authority agrees to replace the existing cornerboards with current video technology, and will use its best efforts to accomplish said replacement by September 1, 2011. The Authority acknowledges and agrees that the process of negotiating this Settlement Agreement shall be deemed to fully satisfy the Licensee's obligation to present its request for a new cornerboards under this Paragraph 15.3.4 and its obligation to provide the Authority an opportunity for participation and control in the purchase, design and installation process. The new cornerboards will be paid for at the Authority's cost, and funding for them will not come out of the Upgrade Fund.

“(c) Upgrade Fund. The Authority shall create a new reserve fund (the “Upgrade Fund”) and shall deposit into the Upgrade Fund \$1,333,333.33 per year for the next three fiscal years, first on July 1, 2011, next on July 1, 2012, and next on July 1, 2013. The Upgrade Fund shall be capped at a total of Four Million dollars plus any accumulated interest (the “Upgrade Cap”). The Licensee may direct the Authority to use monies from the Upgrade Fund during the Initial Term of the License Agreement for the acquisition and installation of: (i) one or more new systems or equipment in the inner bowl or, (ii) one or more upgrades to existing systems and equipment in the inner bowl, so long as said systems and equipment or said upgrades affect the experience of patrons attending home games. Provided that the Licensee has otherwise complied with the terms of this Paragraph 15.3.4, the Licensee may direct that monies from the Upgrade Fund be used for any acquisition and installation of any such system, equipment or upgrade acquired and installed at any time during the Initial Term. If any such system, equipment or upgrade is acquired or installed at a time when the Authority's payments into the Upgrade Fund have not yet reached the Upgrade Cap (as hereinafter defined) and the cost of the system, equipment or upgrade exceeds the funds then available in the Upgrade Fund, the Licensee will be entitled to direct that the Authority reimburse them for all amounts expended by the Licensee until the Upgrade Cap is reached.

“(d) LED fascia ring. Licensor shall continue to be responsible for maintaining and repairing the existing LED fascia ring, but at its option, since the LED fascia ring is equipment used for advertising, the Licensor may seek reimbursement from the Licensee for any maintenance or repair costs that are materially more than the Licensor’s highest annual cost of maintenance and repair for the LED fascia ring under the existing service contract, as measured from the ring’s original installation date through June 30, 2011. This subparagraph 15.3.4 (d) shall not amend the parties’ responsibilities under Paragraph 10.1 or the subparagraphs thereto.

“(e) Effect of Licensee’s Failure to Comply with Paragraph 15.3.4 (“Unilateral Purchase”): The Warriors’ purchase of any system, equipment or upgrade otherwise covered under Paragraph 15.3.4 without first: (a) presenting their request for such system, equipment or upgrade purchase to the Authority, as set forth herein, in the Authority’s annual capital expenditure process or (b) providing the Authority the opportunity for participation and control in the purchase, design and installation process of any such system, equipment or upgrade, shall permanently relieve the Authority of any obligation to pay for such system, equipment or upgrade (or the equivalent of any such items in a renewed or subsequent funding request) out of the Upgrade Fund or at all under Paragraph 15.3.4.

6. Section 4.1 of the License Agreement shall be amended in its entirety to read as follows:

“4.1 Other Events. Licensor shall be responsible for booking and scheduling all events to be held in the New Arena. Licensor will use its best efforts to maximize the number of events to be held in the New Arena. Licensor shall not be required to consult with Licensee prior to booking or scheduling any event to be held in the New Arena other than Home Games or Warriors Events except for (i) Proposed Teams as set forth in Paragraph 3.10 and (ii) other events to be scheduled to occur during any Basketball Season as set forth in Paragraph 4.3.1(e). Paragraph 4.1 is the only section of this agreement that applies to the Licensor’s obligations regarding the booking and scheduling of events.”

8. Effect of Amendment: Absent further agreement of the parties, amended Paragraphs 15.1, 15.3.1 and 15.3.4 shall be in effect only during the remainder of the Initial Term of the License Agreement. Thereafter, absent further agreement of the parties, the existing Paragraphs 15.1 and 15.3.1 shall be in effect. Except as otherwise specifically supplemented or modified by this Amendment, all terms and provisions of the License Agreement shall remain unmodified and in full force and effect. This Amendment shall constitute the entire agreement among the parties relating to the subject matter hereof, and shall supersede any negotiations, understandings, or agreements, written or oral, relating to the subject matter hereof, and shall not be changed or terminated orally.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Amendment No. 3 to the License Agreement as of _____, 2011.

OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY

By _____

Chair

Attest: _____

Secretary

GOLDEN STATE WARRIORS. LLC (formerly CC Partners)

By _____

Approved by:

CITY OF OAKLAND

By _____
City Administrator

COUNTY OF ALAMEDA

By _____
Chairman of Board of Supervisors

Approved as to form:

Oakland City Attorney

Approved as to form:

Alameda County Counsel

Re: *Background Information and Explanation of the Necessity for City of
Oakland Approval of Amendment No. 3 of the Oakland-Alameda County
License Agreement Golden State Warriors*

June 21, 2011

ATTACHMENT 4:

Oakland-Alameda County Authority Resolution No. 2011-6

OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY

RESOLUTION NO. 2011- 6

Resolution approving and authorizing the execution of a Settlement between the Oakland Alameda County Coliseum Authority and the Golden State Warriors and the related Amendment No. 3 to the License Agreement between the Oakland Alameda County Coliseum Authority and the Golden State Warriors and certain related matters

WHEREAS, the Authority desires to enter to settle its arbitration disputes with the Golden State Warriors (“GSW”);

WHEREAS, the staff has presented a staff report to the Board of Commissioners recommending entering into a Settlement Agreement (the “Agreement”) with the GSW;

WHEREAS, the Agreement requires the Authority and the GSW to enter into Amendment No. 3 to the License Agreement (the “Amendment”);

WHEREAS, the Authority has determined that it is in the best interests of the Authority to enter into the Agreement and the Amendment;

WHEREAS, the Authority desires to approve and authorize the execution of the Agreement and the Amendment;

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 modifications approved by the Chair, upon consultation with counsel. The Authority’s secretary is hereby authorized to attest, to the extent required, the Agreement.

Section 3. Subject and after the approval of the Amendment by the Board of Supervisors of Alameda County and the City Council of the City of Oakland, the Authority hereby approves and authorizes the execution and delivery by the Authority’s Chair of the Amendment in substantially the form presented to this meeting with only those modifications approved by the Chair, upon consultation with counsel. The Authority’s secretary is hereby authorized to attest, to the extent required, the Agreement.

Section 4. All action heretofore taken by the officers and agents of the Authority concerning the agreement are hereby approved, confirmed and ratified, and the 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 20th day May 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chair
Oakland-Alameda County
Coliseum Authority

Attest:

Secretary
Oakland-Alameda County
Coliseum Authority