

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



12 MAY 24 PM 4:59

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500

June 5, 2012

TTY/FDD: (510) 238-7367

HONORABLE CITY COUNCIL
Oakland, California

Subject: RESOLUTION APPROVING SETTLEMENT OF COUNTY OF ALAMEDA V. CITY OF OAKLAND, CITY OF OAKLAND V. COUNTY OF ALAMEDA (SAN FRANCISCO SUPERIOR COURT CASE NO. CPF-11-511142, PREVIOUSLY ALAMEDA SUPERIOR COURT CASE NO. RGO9460907), BY: (1) PAYMENT TO THE COUNTY OF ALAMEDA OF 50% OF THE PARKING TAXES COLLECTED AT THE OAKLAND-ALAMEDA COUNTY COLISEUM (COLISEUM) PURSUANT TO OAKLAND MUNICIPAL CODE (OMC) SECTION 4.16.030 (THE 10% GENERAL PARKING TAXES), WHICH IS \$1,121,115 FROM JULY 1, 2009 THROUGH APRIL 30, 2012, (2) REMITTANCE TO THE OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY (COLISEUM AUTHORITY), ON A GOING-FORWARD BASIS AS OF MAY 1, 2012, OF THE 10% GENERAL PARKING TAXES COLLECTED AT THE OAKLAND-ALAMEDA COUNTY COLISEUM, (3) RETENTION BY THE CITY OF THE PARKING SURTAX COLLECTED AT THE COLISEUM PURSUANT TO OMC SECTION 4.16.031 (THE 8.5% SPECIAL TAX), (4) AGREEMENT BY THE PARTIES TO WORK COOPERATIVELY THROUGH THE COLISEUM AUTHORITY TO OPPOSE ANY RENT DEDUCTION CLAIMS BY THE COLISEUM AUTHORITY'S LICENSEES, AND (5) DISMISSAL OF THE LITIGATION BETWEEN THE CITY AND COUNTY (FINANCE AND MANAGEMENT AGENCY; PARKING TAXES IMPOSED UNDER OMC CHAPTER 4.16)

Dear President Reid and Members of the City Council:

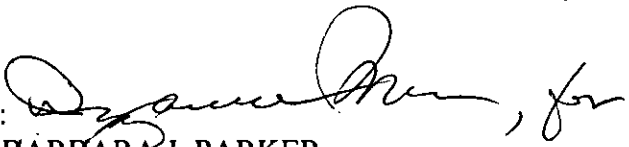
Pursuant to section 401 of the City Charter, and the direction of the City Council at closed session on May 15, 2012, the City Attorney has prepared and requests your approval of a resolution authorizing settlement of the above-entitled lawsuit by the entry of a settlement agreement which provides, among other things: the County does not challenge the City's authority to enforce the Parking Tax Ordinance (which includes the 10% general tax and the 8.5% surtax imposed by Measure Y as a special tax); the City will convey to the County 50% of the 10% general taxes collected to date at the Coliseum and will on a going-forward basis remit to the Coliseum Authority 100% of the 10% general taxes collected at the Coliseum (such that

Oakland City Council
City of Oakland
June 5, 2012
Page 2

the City and County will effectively share the benefit of the .10% general taxes since, generally speaking, the parties share revenues and expenses associated with Coliseum operations); the City will retain the 8.5% surtax; the City and the County will work cooperatively through the Coliseum Authority to oppose any rent deduction claims by the Coliseum Authority's licensees/tenants relative to the parking taxes; and dismissal of the litigation.

Attached hereto are the proposed Resolution and Settlement Agreement.

Very truly yours,

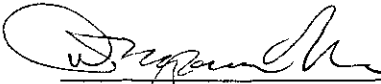
By:  , for
BARBARA J. PARKER
City Attorney

Attorney Assigned:
Kevin D. Siegel

OFFICE OF THE CITY CLERK
OAKLAND

12 MAY 24 PM 4:59

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING SETTLEMENT OF COUNTY OF ALAMEDA V. CITY OF OAKLAND, CITY OF OAKLAND V. COUNTY OF ALAMEDA (SAN FRANCISCO SUPERIOR COURT CASE NO. CPF-11-511142, PREVIOUSLY ALAMEDA SUPERIOR COURT CASE NO. RGO9460907), BY: (1) PAYMENT TO THE COUNTY OF ALAMEDA OF 50% OF THE PARKING TAXES COLLECTED AT THE OAKLAND-ALAMEDA COUNTY COLISEUM (COLISEUM) PURSUANT TO OAKLAND MUNICIPAL CODE (OMC) SECTION 4.16.030 (THE 10% GENERAL PARKING TAXES), WHICH IS \$1,121,115 FROM JULY 1, 2009 THROUGH APRIL 30, 2012, (2) REMITTANCE TO THE OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY (COLISEUM AUTHORITY), ON A GOING-FORWARD BASIS AS OF MAY 1, 2012, OF THE 10% GENERAL PARKING TAXES COLLECTED AT THE OAKLAND-ALAMEDA COUNTY COLISEUM, (3) RETENTION BY THE CITY OF THE PARKING SURTAX COLLECTED AT THE COLISEUM PURSUANT TO OMC SECTION 4.16.031 (THE 8.5% SPECIAL TAX), (4) AGREEMENT BY THE PARTIES TO WORK COOPERATIVELY THROUGH THE COLISEUM AUTHORITY TO OPPOSE ANY RENT DEDUCTION CLAIMS BY THE COLISEUM AUTHORITY'S LICENSEES, AND (5) DISMISSAL OF THE LITIGATION BETWEEN THE CITY AND COUNTY (FINANCE AND MANAGEMENT AGENCY; PARKING TAXES IMPOSED UNDER OMC CHAPTER 4.16)

WHEREAS, the County of Alameda (the "County") and the City of Oakland (the "City") jointly own the real property underlying the Oakland-Alameda County Coliseum ("the Coliseum"), which is located along and near Highway 880, Hegenberger Road and 66th Avenue; and

WHEREAS, the Oakland-Alameda County Joint Powers Authority ("Coliseum Authority") operates the Coliseum pursuant to various agreements between the City and the County, including a Joint Powers Exercise of Powers Agreement, which generally

provide that the City and the County equally share revenues and liabilities associated with the Coliseum operations (though parking or other taxes imposed on third parties, e.g., Coliseum patrons, are not expressly discussed); and

WHEREAS, Oakland Municipal Code (“OMC”) Chapter 4.16 (the “Parking Tax Ordinance”) imposes parking taxes on the rental of parking spaces in the City, including at the Coliseum; and

WHEREAS, the parking taxes include (1) a 10% general tax (OMC § 4.16.030), adopted in 1992, and (2) an 8.5% surtax (OMC § 4.16.031) as a special tax imposed by Measure Y, adopted in 2004 and which is set to expire after 2014; and

WHEREAS, the City took action in the summer of 2009 to enforce the Parking Tax Ordinance at the Coliseum; and

WHEREAS, on or about July 2, 2009, the County filed a lawsuit in Alameda Superior Court (RG 09460907) challenging the City’s authority to enforce the Parking Tax Ordinance at the Coliseum and asserting, among other things, that enforcement damaged the County, including because the Coliseum Authority’s licensees/tenants (e.g., the Oakland Athletics, Oakland Raiders and Golden State Warriors) allegedly had a right to deduct from license payments/rent they owe to the Coliseum Authority the amount of parking taxes paid by their patrons, and seeking to “reform”, i.e., to rewrite, Coliseum-related contracts between the City and the County; and

WHEREAS, on or about December 3, 2010, the City filed a cross-complaint against the County, alleging that the County had violated the City’s rights and damaged the City by encouraging the Coliseum Authority’s licensees/tenants to deduct from license payments/rent the amount of parking taxes their patrons pay, among other things; and

WHEREAS, on or about March 24, 2011, the lawsuit was transferred to the Superior Court of the State of California, County of San Francisco, and assigned Case No. CPF-11-511142; and

WHEREAS, representatives of the City and the County engaged in settlement discussions in an effort to reach a mutually agreeable compromise of the issues in the litigation; and

WHEREAS, the City Council and the County’s Board of Supervisors considered the principal terms of a proposed settlement at their respective closed sessions, on or about May 15, 2012; and

WHEREAS, consistently with the direction provided by the City Council in closed session, the City Attorney’s Office and counsel for the County have prepared a Settlement Agreement to resolve the lawsuit, the form of which is attached hereto, and which provides, among other things: the County does not challenge the City’s authority to enforce the Parking Tax Ordinance (which includes the 10% general tax and the 8.5% surtax imposed by Measure Y as a special tax); the City will convey to the County 50% of the 10% general taxes collected to date at the Coliseum and will on a going-forward basis remit to the Coliseum Authority 100% of the 10% general taxes collected at the

Coliseum (such that the City and County will effectively share the benefit of the 10% general taxes since, generally speaking, the parties share revenues and expenses associated with Coliseum operations); the City will retain the 8.5% surtax; the City and the County will work cooperatively through the Coliseum Authority to oppose any rent deduction claims by the Coliseum Authority's licensees/tenants relative to the parking taxes; and dismissal of the litigation; now therefore be it resolved

RESOLVED: The City Administrator, or his designee, is authorized to enter the Settlement Agreement, in substantially the same form as attached hereto, subject to final approval by the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -
ABSENT -
ABSTENTION -

ATTEST:

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

12 MAY 24 PM 4:59

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made by, between the County of Alameda ("the County") and the City of Oakland ("the City") (collectively, the "Parties").

RECITALS

A. The County and the City jointly own in fee the real property adjoining the Nimitz Freeway (Hwy 880), Hegenberger Road and 66th Avenue, which has been improved with the Oracle Arena (the "Arena"), Exhibit Hall, Oakland-Alameda County Coliseum Stadium (the "Stadium"), Parking Area, and related roadways and facilities (collectively, the "Coliseum").

B. In or about 1992, the City adopted a parking tax ordinance, set forth in Chapter 4.16 ("Parking Tax Ordinance") of the Oakland Municipal Code. Section 4.16.030 of the Oakland Municipal Code imposes a general tax of 10% (ten percent) on the rental of every parking space in a parking station in the City. This 10% (ten percent) tax is referred to herein as the "General Parking Tax."

C. The Parking Tax Ordinance was amended in 2004 to add Section 4.16.031, upon the passage by the City's electorate of Measure Y, as special tax. Section 4.16.031 imposes an additional 8.5% (eight and a half percent) surtax on the rental of every parking space in a parking station in the City. This surtax is referred to herein as the "Measure Y Parking Tax."

D. Oakland Municipal Code section 4.16.110(A) requires parking facilities operators to remit the parking taxes to the City on or before the “twentieth day of the month following” the month for which the operator collected the taxes.

E. The City issued delinquency notices to Coliseum Parking Lot Operators in June 2009, and enforced the Parking Tax Ordinance at the Coliseum as of July 1, 2009.

F. The County filed a lawsuit in the Superior Court of the State of California, County of Alameda, on or about July 2, 2009 against the City and Finance Director William E. Nolan (“the Action”), arising out of the City’s action to enforce the Parking Tax Ordinance at the Coliseum. The County filed an original Complaint, First Amended Complaint and Second Amended Complaint. The City demurred to the Second Amended Complaint, which the court sustained in part and overruled in part. The County filed a Third Amended Complaint and a Fourth Amended Complaint. The County’s Fourth Amended Complaint was filed on July 19, 2011, asserting claims against the City for Breach of Fiduciary Duty, Breach of Implied Covenant of Good Faith and Fair Dealing, Reformation of Contract, Constructive Fraud, and Promissory Estoppel. Finance Director William E. Nolan and his successor, Joseph Yew, are no longer parties to the Action. The City’s demurrer to the Fourth Amended Complaint was overruled, and the City answered the Fourth Amended Complaint.

G. The City filed a Petition for Writ of Mandate and Cross-Complaint (asserting claims for a Writ of Mandate, Breach of Fiduciary Duty, Breach of Implied Covenant of Good Faith and Fair Dealing, Indemnification, and Declaratory Relief) against the County in the Action on or about December 3, 2010 (“the Cross-Complaint”). The action by the County against the City, together with the cross-action by the City against the County, are referred to collectively herein as “the Action.”

H. The Action was transferred to the Superior Court of the State of California, County of San Francisco, on or about March 24, 2011, and assigned Case No. CPF-11-511142. (Previously, the matter was Alameda County Superior Court Case No. RG09460907.)

I. The Parties wish to settle the Action as described below.

TERMS AND CONDITIONS OF SETTLEMENT

1. DEFINITIONS

The following definitions control the use of these terms throughout this Agreement:

1.01. The definitions set forth in Recitals A-G are incorporated by reference herein.

1.02. "The Coliseum Authority" means, for purposes of this Agreement, the Oakland-Alameda County Joint Powers Authority, its employees, officials, representatives, agents, and persons authorized to act on its behalf. The City and the County acknowledge that the Authority is a third party beneficiary of this Agreement.

1.03. "Effective Date" means the first date on which this Agreement has been signed by all Parties.

1.04. "General Parking Tax Funds" means and refers to the funds due to the City pursuant to the General Parking Tax as applied at the Coliseum, and any part thereof.

2. **PURPOSE, SCOPE AND NON-WAIVER.** This Agreement is the result of a compromise of disputed claims and defenses and is not and shall not be construed as an admission or concession of liability, non-liability or wrongdoing by any of the Parties. This Agreement involves compromises of previously stated legal positions. With respect to rights and obligations regarding all matters outside the scope of this Agreement, or regarding any person or

entity not a party to this Agreement, the County and the City reserve all positions and all rights, defenses and privileges.

3. **GENERAL PARKING TAX.** With respect to the General Parking Tax, the parties agree as follows:

3.01. **Future General Parking Tax Proceeds.** The Parties hereby acknowledge and agree that beginning on May 1, 2012, the Coliseum Authority shall be entitled to receive one hundred percent (100%) of all General Parking Tax Funds remitted to the City from operators of parking facilities at the Coliseum. The City shall remit such funds to the Coliseum Authority on a quarterly basis, beginning July 31, 2012.

3.02. **Collected Taxes and Past General Parking Tax Funds.** The City shall pay to the County an amount equal to one-half (1/2) of all General Parking Tax Funds remitted to the City by Coliseum parking facility operators for the time period of July 1, 2009 through the April 30, 2012, which is \$1,121,115.20 (One Million One Hundred Twenty One Thousand One Hundred Fifteen Dollars and Twenty Cents) (hereinafter "the Settlement Payment"). The City shall make the Settlement Payment to the County by June 15, 2012.

4. **DISMISSAL OF ACTION.** Concurrently with execution of this Agreement, the Parties shall execute a Request for Dismissal, requesting dismissal with prejudice of all claims and causes of action asserted by the Parties. The County shall file the Request for Dismissal within 5 business days of receipt of the Settlement Payment per section 3.02.

5. **MEASURE Y TAX.** The City shall retain one hundred percent (100%) of all Measure Y Parking Taxes remitted to the City from operators of parking facilities at the Coliseum.

6. **RENTAL DEDUCTIONS.** In the event of any claim by a licensee of the Coliseum Authority (e.g., the Oakland A's, the Oakland Raiders or the Golden State Warriors) or operator

of a parking facility at the Coliseum Complex (e.g., OCJV/SMG) against the Coliseum Authority – whether asserted offensively or defensively – that it may deduct from payments to the Coliseum Authority monies which represent the parking taxes remitted to the City, the City and the County agree that the Coliseum Authority is responsible for protecting the Coliseum Authority’s interest, as well as the City’s and the County’s collective interests as represented by the Coliseum Authority, in opposing any such deduction claim by a licensee or parking facility operator.

7. **NEW PARKING TAXES.** In the event that the City enacts any new parking taxes not in effect as of the Effective Date of this Agreement (hereinafter “New Parking Taxes”), consistent with Section 8 of this Agreement, and the Golden State Warriors take the position that they are entitled to deduct any such New Parking Taxes from their license payments under the Warriors’ Oakland Alameda County Coliseum Arena License Agreement, dated July 15, 1996, the City shall reimburse the Coliseum Authority for all such deductions. The City’s reimbursement obligation to the Coliseum Authority shall be triggered at the time any deductions are made by the Warriors, and such reimbursements shall be made within 30 days of written notice (which expressly references this Agreement) by the Coliseum Authority or the County of Alameda to the City’s Finance Director, with a copy to the City Attorney, of any such deductions and the amount thereof. However, the City shall be entitled to recover from the Coliseum Authority any reimbursed funds in the event that the Coliseum Authority successfully opposes the Warriors’ claimed right to deduct as set forth in section 6.

8. **DUTY OF COOPERATION.** The City and the County agree to consult each other on issues materially affecting the finances or operations of the Coliseum and to discuss such issues

at the Coliseum Authority board meetings before taking any action, to the extent practicable and feasible.

9. RELEASES

9.01. In consideration of the agreements set forth in Sections 3-8 of this Agreement, the County and the City hereby release, acquit and forever discharge one another from all past or present actions, claims, rights, counts, lawsuits, causes of action, obligations, debts, demands or liabilities of any kind or nature, known or unknown, foreseen or unforeseen, matured or unmatured, which in any manner relate to the enforcement of the General Parking Tax and Measure Y Parking Tax at the Coliseum or actions of the Coliseum licensees or operators in relation thereto. This release extends to the City and the County's respective employees, officials, representatives, agents, and persons authorized to act on its behalf. Notwithstanding any provision to the contrary in this Agreement, the City and the County expressly acknowledge and agree that by entering this Agreement, they in no way abandon or release their respective rights to assert any and all legal theories, arguments, or positions, including those asserted in the Action, with respect to any tax, levy, assessment, or other cost imposed directly or indirectly on the Coliseum Authority by either the City or the County (save and except the General Parking Tax, the Measure Y Parking Tax, or any New Parking Tax, to the extent those issues are addressed in this Agreement); the Parties reserve all rights with respect to any other tax, levy, assessment or cost, including but not limited to an admissions tax, and neither Party shall assert against the other Party this Agreement or the dismissal of the Action as a bar to any legal theory, argument, or position in any dispute between the Parties that does not concern the General Parking Tax, the Measure Y Parking Tax, or any New Parking Tax.

9.02. The Parties acknowledge that they are familiar with the provisions of California Civil Code § 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive their rights as to any claims unknown to them as of the Effective Date that are otherwise released under this Agreement and specifically agree on the non-application of California Civil Code § 1542 to this Agreement.

10. **REPRESENTATIONS AND WARRANTIES.** Each of the Parties signing this Agreement through a representative represents and warrants that the person signing on its behalf (i) has read this Agreement; (ii) has the authority to execute it on behalf of the Party on whose behalf he or she has signed; and (iii) understands its contents and is signing it freely and voluntarily with the intent to legally bind the Party he or she represents.

11. **ATTORNEYS' FEES.** The Parties to this Agreement agree to bear their own attorneys' fees and costs incurred in resolving the Action and reaching this Settlement Agreement. In the event of any dispute arising out of this Agreement or any action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of attorneys' fees and costs incurred in prosecuting or defending the action.

12. **GENERAL PROVISIONS.**

12.01. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective predecessors, successors and assigns.

12.02. This Agreement shall in all respects be governed by and construed and interpreted in accordance with the laws of the State of California without regard to choice of law rules.

12.03. Except as otherwise provided in this Agreement, this Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior written or oral understandings, negotiations and agreements.

12.04. This Agreement may be modified only by a written amendment signed by the Parties, and no waiver of any provision of this Agreement or of a breach thereof shall be effective unless expressed in a writing signed by the waiving Party. The waiver by any Party hereto of any of the provisions of this Agreement or of the breach thereof shall not operate or be construed as a waiver of any other provision or any other breach.

12.05. This Agreement was jointly drafted by the Parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to its meaning and not strictly for or against any of the Parties.

12.06. Nothing in this Agreement shall be construed to make any person or entity not a Party to this Agreement a third-party beneficiary of this Agreement, except the Coliseum Authority and those persons or entities who are express beneficiaries of the releases set forth herein; such persons and the Coliseum Authority are intended third party beneficiaries of this Agreement.

12.07. Section headings are included for purposes of organization only and shall not be construed as a part of this Agreement.

12.08. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be signed by a signature delivered by fax or other electronic image, which shall bind the Party so signing.

12.09. The Parties agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

12.10. This Agreement shall be effective upon the Effective Date.

12.11 If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties. Notwithstanding the foregoing, if any of the releases set forth herein is found to be unenforceable or invalid by a court of competent jurisdiction, then it shall be the intent of the Parties that such invalidity or unenforceability shall be cause for rescission of the entire Agreement at the election of the Party whose interests are injured by the finding of invalidity or unenforceability.

IN WITNESS WHEREOF, the Parties have hereunto signed their names on the dates indicated.

THE COUNTY OF ALAMEDA

By: _____

Title: _____

Dated: _____

Witness: _____

APPROVED AS TO FORM

DONNA R. ZIEGLER
COUNTY COUNSEL

By _____

THE CITY OF OAKLAND

By: _____

Title: _____

Dated: _____

Witness: _____

APPROVED AS TO FORM
BARBARA PARKER
CITY ATTORNEY

By _____