

OFFICE OF THE CITY ATTORNEY
2006 OCT 31 PM 2:43

CITY OF OAKLAND



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October 31, 2006

HONORABLE CITY COUNCIL

Oakland, California

Subject: Resolution Approving and Authorizing the Execution of the Seventh Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement

President De La Fuente and Members of the City Council:

I. INTRODUCTION

On October 13, 2006 the Board of Commissioners of the Oakland-Alameda County Joint Powers Authority (the "Authority") approved the Seventh Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement (the amendment is referred to as the "License Amendment"). The License Amendment extends the Stadium License Agreement between the Authority and the Oakland Athletics Baseball (the "A's") through December 31, 2010 (the "Fixed Term"). It also grants an option to the A's at the team's sole discretion, after December 31, 2010, to elect to extend the License Agreement on a year-by-year basis through December 31, 2013 (the "Option Period"). The A's are required to give Notice of such election by July 15 of the preceding year.

The Management Agreement between the City of Oakland (the "City"), the County of Alameda (the "County") and the Authority, requires the City and the County to formally approve Amendment of the License Agreement. Passage of the proposed Resolution will accomplish formal City of Oakland approval of the License Amendment.

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II. BACKGROUND

On April 14, 2006, the Board of Commissioners of the Oakland-Alameda County Coliseum Authority (the "Authority") designated Gail Steele and Ignacio De La Fuente, the Chair and Vice Chair of the Board respectively, to negotiate a lease extension with the Oakland A's. As a result of those negotiations, such a lease extension has been prepared as set forth in the attached Seventh Amendment to the License Agreement (the "License Amendment"). As set forth above, the Authority approved the License Amendment on October 13, 2006. The Authority Resolution is attached as Exhibit A and the License Amendment is attached as Exhibit B.

III. SUMMARY OF PROVISIONS OF THE LICENSE AMENDMENT

Term. The License Amendment extends the term of the License Agreement through December 31, 2010 (the "Fixed Term"). It also grants an option to the A's at the team's sole discretion, after December 31, 2010, to elect to extend the License Agreement on a year-by-year basis through December 31, 2013 (the "Option Period"). The A's are required to give Notice of such election by July 15 of the preceding year.

Early Termination. Notwithstanding the extended term of the License Agreement, the A's may terminate the License Agreement:

- (1) If the A's contract to use another baseball facility in Alameda County, without payment of any fees or penalty; or
- (2) At the A's sole discretion for any reason upon payment of the license fees due through the end of 2010 plus \$250,000.

License Fees. The A's will pay the following fixed license fees by June 30 of each year:

2007	\$600,000
2008	\$750,000
2009	\$750,000
2010	\$750,000
2011	\$1,200,000
2012	\$1,000,000
2013	\$800,000

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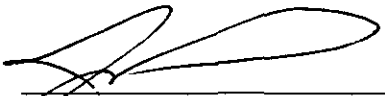
The A's will no longer pay any amounts based on paid attendance¹.

Concessions. Subject to the provisions of the License Agreement, A's will have control over the provision of food and beverage for all events in the stadium. However, if the A's announce their intention to leave Alameda County during the Option Period, these rights revert to the Authority, except that the A's will continue to receive all revenues from the sale of food and beverages at all Athletics games played in the Coliseum during the Option Period.

IV. RECOMMENDATION

Staff recommends that the City of Oakland approve the attached resolution approving and authorizing the execution of the License Amendment.

Respectfully submitted,



John A. Russo
City Attorney

Attorney Assigned:
Randolph W. Hall
Doc. No. 385638

¹ The previous Agreement provided that the Authority would receive \$0.50 (fifty cents) for each ticket sold over 2,000,000. This arrangement did not generate appreciable revenue to the Authority.

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EXHIBIT A

OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY

RESOLUTION NO. 2006-008

Resolution Approving and Authorizing the Execution of the Seventh Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement

WHEREAS, pursuant to a staff report, staff has recommended the governing board of the Authority approve and accept the Seventh Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement (the "Amendment");

WHEREAS, a form of the Amendment has been presented to this meeting

WHEREAS, the Authority finds it advisable and now desires approve the form of the Amendment and to authorize the execution of 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. Subject to the approval of the Amendment by the City of Oakland and the County of Alameda, 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 changes that the Chair, with the advice of counsel to the Authority, shall approve.

Section 3. The Authority hereby recommends to the City Council of the City of Oakland and the Board of Supervisors of the County of Alameda the approval of the Amendment.

Section 3. All action heretofore taken by the officers and agents of the Authority concerning the negotiations of this Amendment 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 13th day of October, 2006, by the following vote:

AYES: *Steele, Warren, Kong-Brown, Reid, Haggerty*
NOES:
ABSENT:
ABSTAIN: *1, Brown*

Gail Steele

Chair
Oakland-Alameda County
Coliseum Authority

Attest:



Secretary
Oakland-Alameda County
Coliseum Authority

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EXHIBIT B

**SEVENTH AMENDMENT
TO
OAKLAND –ALAMEDA COUNTY COLISEUM
OAKLAND ATHLETICS
AMENDED AND RESTATED STADIUM LICENSE AGREEMENT**

This **Seventh Amendment** (the “**Seventh Amendment**”) to the **Oakland-Alameda County Coliseum—Oakland Athletics—Amended and Restated Stadium License Agreement** (as more particularly described in the Recitals below) is entered into as of the ___ day of _____, 2006 between **Oakland-Alameda County Coliseum Authority**, a joint exercise of powers authority established by the City of Oakland, a municipal corporation and a charter city duly organized and existing under the laws and the constitution of the State of California, and the County of Alameda, a political subdivision of the State of California (“**Licensor**”), and **Athletics Investment Group LLC**, a California limited liability company (“**Licensee**”).

Recitals

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

Coliseum—Oakland Athletics Amended and Restated Stadium License Agreement.

- G. On September , 2002, Licensor, Former Licensor and Licensee entered into a Fifth Amendment To The Oakland-Alameda County Coliseum—Oakland Athletics Amended and Restated Stadium License Agreement.
- H. On March 23, 2006, Licensor, Former Licensor, Licensee and ASOC entered into a Sixth Amendment To The Oakland-Alameda County Coliseum—Oakland Athletics Amended and Restated Stadium License Agreement.
- I. On July 31, 2006, all rights of Former Licensor to license the Stadium terminated pursuant to the terms of the Operating Agreement, dated as of July 31, 1996, between the Licensee and the Former Licensee.
- J. Licensor and Licensee desire to extend the term of, and otherwise further amend, the License Agreement as provided below.
- K. The parties recognize that Section 31 of the License Agreement requires the approval of the Office of the Commissioner of Baseball of any such amendment.
- L. The parties recognize that the Licensor is required to obtain the approval of the City of Oakland and the County of Alameda prior to entering to any such amendment.
- M. As used herein, the term “License Agreement” shall mean the original License Agreement and all amendments to it as recited above; “Licensee” shall refer to Athletics Investment Group LLC; Licensor shall refer to the Oakland Alameda County Coliseum Authority; and capitalized terms used but not defined herein shall have the meaning ascribed to them in the License Agreement.

Agreement

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

1. Term of License Agreement.

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

“This License Agreement shall be for a term commencing November 1, 1995 and ending on December 31, 2010 (the “**Fixed Term**”); provided, however, Licensee shall have the right to elect, as such right may be exercised in its

absolute sole discretion, to continue the License Agreement on a “year-by-year” basis after the end of the Fixed Term through the end of the 2013 Baseball Season and to December 31st of such applicable year (the “**Option Period**”) on the terms and conditions applicable under this License Agreement. The Fixed Term and the Option Period are sometimes referred to in the License Agreement as the “**Term.**” If Licensee elects for any reasons, as determined in its absolute sole discretion, to continue the License Agreement on a “year-by-year” basis after the end of the Fixed Term, then Licensee shall give Licensor written notice of its election to continue the License Agreement on or before July 15 preceding each year during which the License Agreement shall be continued.”

Section 7.2 of the License Agreement is hereby amended to read, and is replaced in its entirety, as follows:

“Provided Licensee is not in material default under the terms of this License Agreement and notwithstanding Section 7.1 above, Licensee, may at any time terminate the License Agreement, including this Seventh Amendment, as follows:

“(a) If Licensee evidences an intent to use, and thereafter does secure and/or otherwise contracts for the use of, a baseball facility to play its Home Games located within Alameda County, (i) upon providing to Licensor written notice One Hundred Twenty (120) days prior to the date of such termination and (ii) without the payment of any amounts otherwise due or payable or of any penalty or other consideration to, and without recourse by, Licensor and/or Authority or any other party; or

“(b) Notwithstanding and except as provided in Section 7.1 above, and as determined in its absolute sole discretion, upon (i) providing to Licensor written notice One Hundred Twenty (120) days prior to the date of such termination and (ii) the payment of all amounts due and all amounts that would become due through the end of the Fixed Term as provided in Section 8.1(a) of the License Agreement, as amended by this Seventh Amendment, plus an additional Two Hundred Fifty Thousand Dollars (\$250,000); provided, however, with respect to such termination, in no case shall Licensee be obligated to pay any “Paid Attendance” amount provided in Section 8.1(c) below.”

2. **License Fees.**

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

“License Fees. As consideration for all of the use of areas licensed as described in Section 3, and Licensor’s other covenants and promises under this License Agreement, Licensee shall pay “License Fees” to Licensor as follows:

“(a) During the portion of the Fixed Term beginning January 1, 2003, Licensee shall pay the sums of (i) Five Hundred Thousand Dollars (\$500,000) not later than each June 30 of and for the years 2003 through 2005; (ii) Five Hundred Fifty Thousand Dollars (\$550,000) not later than June 30 of and for the year 2006; (iii) Six Hundred Thousand Dollars (\$600,000) not later than June 30 of and for the year 2007; and (iv) Seven Hundred Fifty Thousand Dollars (\$750,000) of and for the years 2008 through 2010;

“(b) Not later than June 30 of each year for which Licensee has given notice of continuation of the License Agreement during the Option Period pursuant to Section 7.1 above, Licensee shall pay the sums of (i) One Million Two Hundred Thousand Dollars (\$1,200,000) for the year 2011; (ii) One Million Dollars (\$1,000,000) for the year 2012; and (iii) Eight Hundred Thousand Dollars (\$800,000) for the year 2013;

“(c) Not later than December 15 of each respective year during the portion of the Fixed Term beginning January 1, 2003 and ending December 31, 2006, Licensee shall pay the sum equal to Fifty Cents (\$0.50) multiplied by the number by which the “Paid Attendance” (as defined below) during the preceding Regular Season exceeds two million. For purposed of this section, “**Paid Attendance**” shall mean the number representing paid attendance for the Regular Season as reported by Licensee to the Office of the Commissioner of Baseball. Together with each such payment, Licensee shall provide to Licensor an officer’s certificate certifying that the Paid Attendance used to calculate the payment required by this Section 8.1(c) is the true and correct Paid Attendance as reported to the Office of the Commissioner of Baseball.”

3. Concessions.

The License Agreement is hereby amended to add a new Section 12.5 to read as follows:

“Effect of Termination of the License Agreement. Notwithstanding the foregoing and regardless of whether Licensee has provided the notice required under Section 7.2 above, if Licensee announces its intent or agrees to commence playing its Home Games at any location outside of Alameda County during the Option Period, all rights granted the Licensee under Section 12 shall immediately terminate, (if such announcement occurs during the Option Period), or shall terminate at the end of the Fixed Term (if such announcement occurs during the Fixed Term) and the Licensor shall succeed to all such rights, except that Licensee shall continue to have the sole right to all revenues received from the sale of food and beverage at Home Games. Licensee agrees that, during the Option Period, all contracts to provide or sell food and beverages at the Stadium, including at Home Games, shall terminate on December 31 of each year unless Licensee has given notice pursuant to Section 7.1 of Licensee’s election to continue the License Agreement.”

4. Continuing Effect of License Agreement.

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

5. Counterparts.

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

LICENSOR:

Oakland Alameda County Coliseum Authority,
A joint powers authority

By: _____
Gail Steele, chair

LICENSEE:

ATHLETICS INVESTMENTS GROUP LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

By: _____
Manager

Approved by:

CITY OF OAKLAND

By: _____
City Administrator

COUNTY OF ALAMEDA

By: _____
Chairman, Board of Supervisors

Reviewed and Approved:

**OFFICE OF THE COMMISSIONER
OF BASEBALL**

By: _____

Title: _____

Dated: _____, 2006

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 OCT 19 PM 2:43

Approved as to Form and Legality

BWH
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RWH:ssl

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE SEVENTH AMENDMENT TO THE OAKLAND-ALAMEDA COUNTY COLISEUM OAKLAND ATHLETICS AMENDED AND RESTATED STADIUM LICENSE AGREEMENT

WHEREAS, on October 13, 2006 the Board of Commissioners of the Oakland-Alameda County Joint Powers Coliseum Authority (the "Authority") approved the Seventh Amendment to the Oakland-Alameda County Coliseum Oakland Athletics Amended and Restated Stadium License Agreement (the Amendment is referred to as the "License Amendment"); and

WHEREAS, the License Amendment extends the Stadium License Agreement between the Authority and the Oakland Athletics Baseball (the "A's") through December 31, 2010 (the "Fixed Term"); and

WHEREAS, the License Amendment grants an option to the A's at the team's sole discretion, after December 31, 2010, to elect to extend the License Agreement on a year-by-year basis through December 31, 2013 (the "Option Period"); and

WHEREAS, the A's are required to give Notice of such election by July 15 of the preceding year; and

WHEREAS, the Management Agreement between the City of Oakland (the "City"), the County of Alameda (the "County") and the Authority, requires that License Amendment is not effective until formally approved by the City and the County; and

WHEREAS, the Authority approved the License Amendment subject to the approval of the Amendment by the City of Oakland and the County of Alameda; and

WHEREAS, the Authority recommends formal approval by the City and County of the License Amendment; and

WHEREAS, adoption of this Resolution will accomplish formal City of Oakland approval of the License Amendment; and

WHEREAS, staff has included in the materials accompanying this recommended resolution, a report explaining the provisions of the License Amendment; and

WHEREAS, the accompanying report summarizes the proposed terms and conditions under which the Authority, may enter into the License Amendment; and

WHEREAS, forms of the License Amendment have been presented to this meeting; and

WHEREAS, the City finds it advisable and now desires to approve such terms and conditions and authorize the execution of the License Amendment; and now, therefore, be it

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

FURTHER RESOLVED, that the City hereby approves and authorizes the execution of the License Amendment, in substantially the form presented to this meeting with only those changes that the Chair of the Authority with the advice of counsel to the Authority, shall approve; and be it

FURTHER RESOLVED, that the City Clerk is hereby authorized to attest, if required, the License Amendment; and be it

FURTHER RESOLVED, that all action heretofore taken by the officers and agents of the Authority concerning the negotiations of the License Amendment are hereby approved, confirmed and ratified, and the City recommends that the

Authority direct and authorize its proper officers, 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,
CHANG, and PRESIDENT DE LA FUENTE

NOES –
ABSENT –
ABSTENTION –

ATTEST:

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

Doc. No. 385702