



REPORT TO THE CITY COUNCIL AND REDEVELOPMENT AGENCY

AGENDA ITEM NO. 5:30pm A
 COUNCIL MEETING 12/17/2009
 APPROVED BY _____
 EXECUTIVE DIRECTOR _____
 CITY MANAGER *Andrew Souza*

December 17, 2009

FROM: ANDREW T. SOUZA, City Manager
 Office of the City Manager

MARLENE MURPHEY, Executive Director
 Redevelopment Agency

Presented to City Council
 Date 12/17/09
 Disposition Approved

SUBJECT: APPROVE THE TERM SHEET AMENDING THE FRESNO BASEBALL CLUB STADIUM LEASE AGREEMENT, AND AUTHORIZE THE CITY MANAGER AND CITY ATTORNEY TO COMPLETE AND EXECUTE ALL NECESSARY DOCUMENTATION IN SUBSTANTIAL COMPLIANCE WITH THE APPROVED TERM SHEET

RECOMMENDATION

Staff recommends that the City Council approve the term sheet amending the Fresno Baseball Club stadium lease agreement, and authorize the City Manager and City Attorney to complete and execute all necessary documentation in substantial compliance with the approved term sheet.

EXECUTIVE SUMMARY

In August, 2009, the City retained Barrett Sports Group, LLC (Barrett) to assist the City in renegotiating the terms and conditions of the stadium lease with the Fresno Baseball Club (FBC). The Mayor and City Council appointed a lease negotiation committee, which was tasked to oversee the work of Barrett in performing nationwide benchmarking of the existing stadium lease, financial analysis of the existing terms and conditions of the lease, and due diligence review of the operations of FBC and the major interest holders of FBC. Upon completion of the due diligence and benchmarking, the lease negotiation team determined that a realignment of lease terms was necessary for Fresno's lease to be competitive in the triple-A franchise market. Negotiations ensued between the City and FBC, and the terms and conditions were agreed upon and publicly presented on December 3, 2009. Staff is recommending that the City Council approve the terms and conditions, and requests authority to amend and execute all related documents in substantial compliance with the approved terms.

BACKGROUND

The City executed a lease agreement with FBC in August, 2005. That lease was amended in November, 2008. In Spring 2009, FBC indicated a desire to further amend it's existing lease with the City to mitigate financial and operating concerns.

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Approve The Term Sheet Amending The Fresno Baseball Club

Stadium Lease Agreement

December 17, 2009

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- Team shall charge APES fees of \$1 per ticket on all paid tickets except season tickets and mini plans. City may increase APES fees up to \$0.50 every 5 years.
- Team shall receive parking revenues from City controlled parking for Team events.
- City to receive 35% of concession revenues from Ovations for City events at the Stadium.
- City to receive certain advertising rights in Stadium.
- City to receive the greater of the following as profit sharing:
 - 20% of earnings before interest, taxes, depreciation, and amortization over \$500,000
 - 20% of Team gross revenues over \$7,250,000
 - \$2.00 per ticket for paid attendance over 300,000 at Team events
- City to receive the following percentages of net profit on sale of Team or interest therein:
 - 2009/2010 – 50%
 - 2011 – 30%
 - 2012 – 20%
 - 2013 and thereafter – 10%
- If Team attempts to renegotiate Stadium Sublease during its term, City may either purchase the Team or find a buyer for Team at Fair Market Value.
- New owner(s) must assume obligations of Team upon sale or transfer.
- Team to use best efforts to host exhibition game with Giants and All Star game.
- Team to pay City all outstanding obligations as due under the current Stadium Sublease (approximately \$863,786 through the end of 2009).
- Team shall have an annual audit of its financial statements by a CPA. If first audit shows variation from representations by Team during negotiations, City can annul amendment.
- Team shall comply with terms of Better Business Act, including providing information and reimbursement to City for consulting fees. Team shall also provide either an irrevocable letter of credit or personal guarantees in the amount of \$1,500,000.
- Team must receive City approval of any transaction with an affiliate over \$25,000.

Next Steps

Upon approval of the terms and conditions by the City Council, the lease negotiation team will direct the City's consultants and City Attorney staff to finalize all documents related to the lease amendment. All changes to the documents will be in substantial compliance to the terms and conditions approved by Council. These documents will not need to return to Council for approval. It is expected that these documents will be finalized by December 31, 2009.

FBC will provide payment of all outstanding debt obligations to the City in the amount of \$863,786, including the balloon rent payment and all outstanding parking revenue. FBC will also provide payment to the City for reimbursement of all consultant fees related to this lease transaction.

Better Business Act Report by the City Manager

The Better Business Act was enacted by Council in May, 2009. The Act requires that an entity seeking assistance of over \$1,000,000 be thoroughly evaluated and investigated, with a subsequent vetting by the City Council. The Act also calls for the City Manager to issue a final written report that includes an overall summary of the documents scrutinized, fiscal impact of the transaction, finding of the economic impact, a rating of 1 through 10 about the risk of the transaction, and a recommended level of ongoing oversight. The following addresses these requirements:

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FISCAL IMPACT

As proposed, the terms and conditions constitute approximately \$700,000 annually in concessions to FBC based upon the existing lease. FBC will pay any outstanding debt obligations before the end of December, 2009, and will continue to pay an annual rent payment of \$1,500,000. The new terms of the lease will return all parking revenue to the team. This means that the general fund will be required to repay the parking fund an amount equal to what is forwarded to FBC each year. This is approximately \$360,000 annually. Additionally, the City will utilize existing funds to purchase a new scoreboard for the stadium, which is expected to cost \$500,000. FBC will repay this cost at \$50,000 each year. The City will also contribute \$100,000 to a capital fund, with FBC retaining the obligations for repair and maintenance of the facility. The new terms call for the City to share in profits made by FBC, as well as capturing a substantial percent of concession revenue. In addition, the City will now have the rights to certain advertising opportunities for additional City revenue, as well as rights to share in any profits generated by the sale of the team.

Attachments:

A – Term Sheet, dated December 1, 2009, containing recommended amendments to the existing lease and related documents

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 1, 2009**

	<ul style="list-style-type: none"> ▪ Stadium Cleaning ▪ Operations Housekeeping ▪ Supplies ▪ Video Board and Equipment (Not Capital) ▪ Pest Control <p>Reimbursable Expenses shall generally consist of the items identified above, and shall be consistent with the Team's account numbers identified in Exhibit A. The Team shall account for Reimbursable Expenses in a manner consistent with historical practice.</p> <p>The Team and City shall meet and confer at least annually, but no later than October 31 of each year, on general operating and maintenance standards and the City shall provide feedback on the Team's performance. City shall have the authority to require the Team to modify the policies/approach to general operating and maintenance as appropriate to meet the standards required in the Stadium Sublease Agreement, as amended hereby.</p> <p>The City shall have the right to invoke a "self-help" remedy pursuant to Team Failure to Perform below.</p> <p>If the City's share of operating expenses and routine maintenance and repair is less than \$500,000 in any given year, the City may elect, in its sole and absolute discretion, to contribute the difference between \$500,000 and the City's share in that given year into a capital repair, replacement and improvement reserve fund (Capital Reserve Fund).</p>
<p>Capital Repairs, Replacements and Improvements</p>	<p>The Team and the City shall continue to be responsible for capital repairs, replacements and improvements (Capital Improvements) as set forth in the Stadium Sublease Agreement. The Team shall maintain the Stadium in a safe, clean, attractive, and first class manner so as to cause it to remain in a condition comparable to that of other MiLB facilities of similar design and age, ordinary wear and tear excepted. The Team shall maintain (or cause others to maintain) the Stadium in a manner that is consistent with all applicable requirements imposed by MiLB and all other entities and agencies with jurisdiction over the Team or Stadium, and with the original design and construction program of the Stadium. The Team shall make (or cause others to make) all necessary or appropriate repairs, renewals and replacements as required by the Stadium Sublease Agreement, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen, in a prompt and timely manner. The Team shall maintain any and all insurance policies, warranties, and other similar policies as may be</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 1, 2009**

	<p>of such Force Majeure delay or extended cure period, as the case may be, and for so long thereafter as the Team continues diligently to prosecute such cure or the resolution of such event of Force Majeure; provided, however, that the City shall not be required to forbear if the Team's failure to perform poses a reasonably perceived threat to public health, safety or welfare.</p>
<p>Team Obligation to Reimburse City</p>	<p>If the City performs any obligation required to be performed by Team, the Team shall reimburse City within thirty (30) business days following demand, the sum so paid, or the reasonable expense incurred by the City in performing such obligation, together with interest thereon at the maximum legal per annum rate, if such payment is not made within such period, computed from the date of the City's demand until payment is made. Alternatively, the City may, in its sole and absolute discretion, elect to offset/reduce any payments otherwise due to the Team from the City to reimburse the City for reasonable expenses incurred by the City in performing Team's obligation, together with interest thereon at the maximum legal per annum rate.</p>
<p>New Video Board / Scoreboard</p>	<p>The City shall provide the Team up to a maximum of \$500,000 to replace the Stadium video board / scoreboard with a first class, state-of-the-art system approved by the City, which approval will not be unreasonably withheld, conditioned or delayed. The City's investment shall only be used to replace the Stadium video board / scoreboard and for no other purpose. The Team shall replace the video board / scoreboard prior to the 2010 baseball season. Commencing December 1, 2010 and for nine (9) consecutive years thereafter on such date, the Team shall reimburse the City \$50,000. The Team may elect to reimburse the City out of the Capital Reserve Fund. The Team shall pay to the City any non-reimbursed amounts immediately upon sale or other transfer of the controlling interest in the Team.</p>
<p>Arts/Park/Entertainment /Sports (APES) Fee</p>	<p>The Team shall impose and collect a \$1.00 APES fee on all paid tickets (including trade/barter) for all Team events, except as noted below. The City shall exercise its right to waive the APES fee for Grizzlies full season ticket holders and partial season ticket holders (mini plans that include 10 or more regular season games). The City shall have the option to increase the APES fee by up to, but not more than, \$0.50 every five years after the execution of this agreement. The Team shall remit to the City the APES fees collected on a quarterly basis.</p> <p>APES fees shall be validated through annual audit (see below) and/or through other sources such as Pacific Coast League reports</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 1, 2009**

	<p>2) 20% of Team gross revenues over \$7,250,000; or</p> <p>3) \$2.00 per ticket for paid attendance over 300,000 at Team events.</p> <p>EBITDA and gross revenues shall be determined by the Team's independent Certified Public Accountant (CPA), consistent with Generally Accepted Accounting Principles (GAAP). Gross revenues shall be defined as any and all revenues related to the Team and Stadium operations received by the Team (and affiliated entities) including trade/barter.</p> <p>The gross revenue and per ticket figures above are subject to annual escalation equal to the lesser of 3.0% or the regional CPI. The net income benchmark is not subject to escalation.</p> <p>Benchmark figures above shall be validated through annual audit (see below) and/or through other sources such as Pacific Coast League reports submitted by the Team and/or Tickets.com (or equivalent) reports submitted to the Team as reasonably requested by the City.</p>
<p>Profit Sharing – Team Sale</p>	<p>Upon the sale or transfer by:</p> <p>(a) the Fresno Baseball Club, LLLP (the "LLLPP") or Fresno Baseball Club Management, LLC (the "LLC") of its stock or assets; and/or</p> <p>(b) any partner in the LLLP or member of the LLC (an "Interest Owner") of its partnership interest in the LLLP or membership interest in the LLC,</p> <p>(any such sale or transfer pursuant to (a) or (b) to be defined as a Capital Transaction) the City shall be entitled to receive a share of the excess of such proceeds from any such Capital Transaction over the total net investment, as set forth below. The total net investment shall be defined as the initial cash investment made in the Team, plus any operating losses, less any operating profits (such profits and losses collectively defined as EBITDA), less any distributions made to the Interest Owners (Total Net Investment). The Total Net Investment as of December 31, 2008 is \$9,334,156. The excess of the proceeds from any Capital Transaction over the Total Net Investment shall be defined as the Net Surplus.</p> <p>The City shall receive the following amounts upon consummation of any Capital Transaction:</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 1, 2009**

	<ul style="list-style-type: none"> ▪ Parking Payment (\$63,786) ▪ City Consulting/Legal Fees (Estimated at \$125,000 - \$150,000 to Date) ▪ Other
Audit Rights	<p>Commencing with the year 2010 and for each year thereafter during the Term, the Team shall have an annual audit of its financial statements completed by a CPA, consistent with GAAP. The audit shall be completed in a timely manner. The City shall have the right to review the audit and supporting work papers to assess ongoing viability of the Team and to validate compliance with the terms and conditions of the Stadium Sublease Agreement, as amended hereby. The City review shall be conducted at the Team's offices. The Team shall timely provide to the City a copy of the opinion letter for each annual audit. If the Team fails to comply with the foregoing, the City shall have the right to conduct such audit at the Team's expense and the Team shall cooperate with the City in the performance of such audit.</p> <p>Upon completion of the Team's audit for the 2010 season, the City shall engage an independent financial advisor or accountant with sports industry experience to review the Team's audited financial statements. If it is reasonably determined by the independent financial advisor or accountant, in consultation with the City and the Team's auditors, that the audited financial statements materially vary from the representations made by the Team, and the historical and projected financial statements provided for review by the Team in connection the Stadium Sublease Agreement, as amended hereby, the City shall have the right to annul this amendment. The City shall have 30 days after its review of the Team's 2010 audit to exercise this right. If the City exercises its right to annul this amendment to the Stadium Sublease Agreement, the Team shall reimburse the City as if this amendment did not exist and the current Stadium Sublease Agreement was in place for the 2010 season.</p>
Better Business Act Compliance	<p>In connection with the implementation of this Term Sheet and prior to the execution and delivery of the proposed Sublease Amendment, the Team shall cooperate with the City to meet the requirements of the Better Business Act, including providing information required by the City to protect its interests under the Act and reimbursing the City for the fees and expenses of the consultants retained by the City to assist in evaluating, negotiating and documenting the proposed Sublease Amendment.</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 1, 2009**

	and Restated Stadium Sublease Agreement.
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CITY OF FRESNO

By: _____

Title: _____

Date: _____

FRESNO BASEBALL CLUB MANAGEMENT, LLC

By: _____

Title: _____

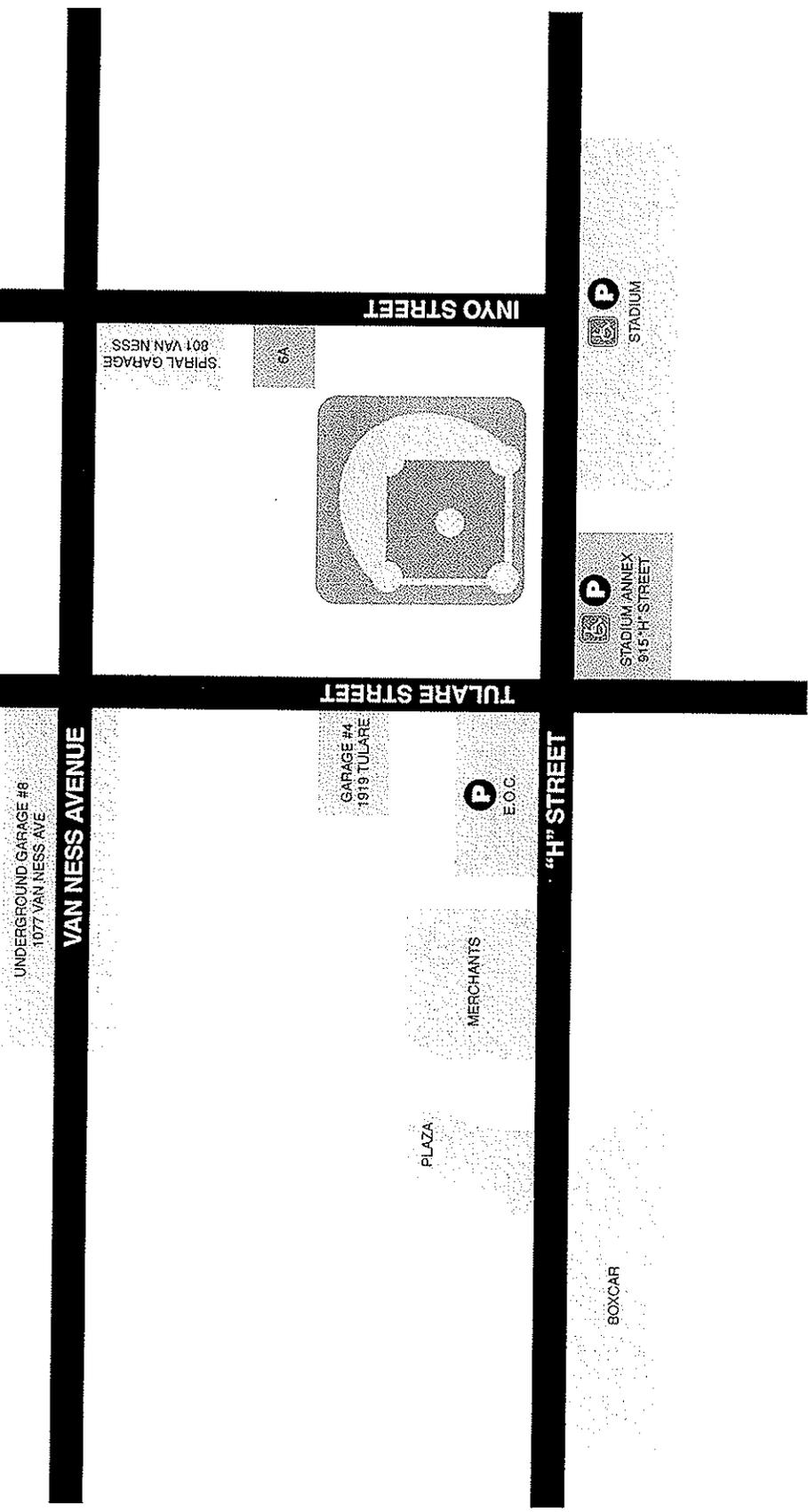
Date: _____

City of
FRESNO




-  Handicap
-  Seasonal Pass
-  Parking Facilities
-  Players & Employees Only

STADIUM EVENT RATE \$5.00



DEPARTMENT DIRECTOR _____

CITY MANAGER



December 17, 2009

FROM: Andrew T. Souza, City Manager
City Manager's Office

James C. Sanchez, City Attorney
City Attorney's Office

BY: Laurie A. Avedisian, Deputy City Attorney
City Attorney's Office *LAA*

SUBJECT: FRESNO BASEBALL CLUB SUBLEASE AMENDMENT

On December 3, 2009, following lengthy negotiations between the City negotiation committee and the Fresno Baseball Club ("FBC"), the Fresno City Council received a Term Sheet proposing to amend the existing Sublease between the City and FBC dated October 13, 2005 and amended on November 18, 2008. Highlights of the December 1, 2009 Term Sheet included the following points:

1. Term extended for additional 5 years.
2. Rent remains at \$1,500,000, paid monthly.
3. Team remains responsible for costs of operations, but City will reimburse Team for 50% of certain operating expenses up to \$500,000 annually.
4. Team's repair and maintenance obligations remain same, however City will invest \$100,000 in a capital reserve fund.
5. If Team fails to perform any obligation, City has right to perform on behalf of Team and seek reimbursement from Team.
6. City shall provide up to \$500,000 to replace the video scoreboard, which shall be paid back by Team at \$50,000 per year.
7. Team shall charge APES fees of \$1 per ticket on all paid tickets except season tickets and mini plans. City may increase APES fees up to \$0.50 every 5 years.
8. Team shall receive parking revenues from City controlled parking for Team events.
9. City to receive 35% of concession revenues from Ovations.
10. City to receive certain advertising rights in Stadium.
11. City to receive the greater of the following as profit sharing:
 - a) 20% of earnings before interest, taxes, depreciation, and amortization over \$500,00
 - b) 20% of Team gross revenues over \$7,250,000
 - c) \$2.00 per ticket for paid attendance over 300,000 at Team events
12. City to receive the following percentages of net profit on sale of Team or interest therein:
 - a) 2009/2010 – 50%
 - b) 2011 – 30%
 - c) 2012 – 20%
 - d) 2013 and thereafter – 10%
13. If Team attempts to renegotiate Stadium Sublease during its term, City may either purchase the Team or find a buyer for Team at Fair Market Value.

14. New owner(s) must assume obligations of Team upon sale or transfer.
15. Team to use best efforts to host exhibition game with Giants and All Star game.
16. Team to pay City all outstanding obligations as due under the current Stadium Sublease (approximately \$863,786 through the end of 2009).
17. Team shall have an annual audit of its financial statements by a CPA. If first audit shows variation from representations by Team during negotiations, City can annul amendment.
18. Team shall comply with terms of Better Business Act, including providing information and reimbursement to City for consulting fees. Team shall also provide either an irrevocable letter of credit or personal guarantees in the amount of \$1,500,000.
19. Team must receive City approval of any transaction with an affiliate over \$25,000.

The attached Term Sheet dated December 11, 2009 contains the following refinements prepared by the City negotiation committee to the December 1, 2009 Term Sheet:

1. Fresno Baseball Club ("FBC") is required to structure any future sale of the team as a stock sale, rather than an asset sale, so as not to trigger the termination right set forth in the Chukchansi Naming Rights Agreement. This allows for a transfer that will leave intact the Chukchansi Naming Rights Agreement and associated \$1,000,000 per year revenue.
2. The outstanding obligations were updated to reflect that November rent was paid, as well as the actual cost to date of outside consulting and legal fees.

The negotiation committee recommends that Council approval of the Term Sheet be conditioned upon submission of a Business Plan by January 31, 2009.

The above-noted items complete the Better Business Act process and can be approved by a five vote majority of the Council.

The letter from Chukchansi clarifying that the termination rights under the Sponsorship, Marketing Rights and Stadium Naming Rights Agreement dated August 19, 2006 apply only in the event of an asset sale and not in the event of a stock sale is also attached.

Attachments: Fresno Grizzlies Sublease Amendment Proposed Term Sheet dated December 11, 2009
Letter from Chukchansi Economic Development Authority dated December 9, 2009

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

Term	The Term of the Stadium Sublease Agreement shall be extended by five (5) years (35 years from Commencement Date) on the terms and conditions set forth in the Stadium Sublease Agreement, except as amended hereby.
Fixed Rental	Fixed Rental shall remain \$1,500,000 per year. Rent shall be paid in twelve (12) monthly payments of \$125,000.
Annual Maintenance and Repair	<p>The Tenant (Team) shall continue to be responsible for all operating expenses and routine maintenance and repairs of the Stadium as set forth in the Stadium Sublease Agreement. The Team shall operate the Stadium in a safe, clean, attractive, and first class manner comparable to that of other AAA MiLB facilities. The Team shall operate (or cause others to operate) the Stadium in a manner that complies with all applicable requirements imposed by MiLB and all other entities and agencies with jurisdiction over the Team or Stadium.</p> <p>In order to provide financial relief to the Team and to protect the City's original investment in the Stadium, the City shall reimburse the Team for 50% of the operating expenses and routine maintenance and repairs of the Stadium to a maximum of a \$500,000 annual reimbursement (not subject to escalation). Reimbursements shall be made quarterly, subject to annual adjustment based on the Team's audit. The operating expenses and routine maintenance and repairs of the Stadium subject to reimbursement (Reimbursable Expenses) shall include:</p> <ul style="list-style-type: none"> ▪ General Repair and Maintenance (Not Capital) <ul style="list-style-type: none"> ○ Grounds Maintenance ○ Field Maintenance ○ Vehicle Maintenance ○ Other ▪ Utilities <ul style="list-style-type: none"> ○ Electricity ○ Gas ○ Water ○ Waste Disposal ○ Cable Television ▪ Security ▪ Alarm

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<ul style="list-style-type: none"> ▪ Stadium Cleaning ▪ Operations Housekeeping ▪ Supplies ▪ Video Board and Equipment (Not Capital) ▪ Pest Control <p>Reimbursable Expenses shall generally consist of the items identified above, and shall be consistent with the Team's account numbers identified in Exhibit A. The Team shall account for Reimbursable Expenses in a manner consistent with historical practice.</p> <p>The Team and City shall meet and confer at least annually, but no later than October 31 of each year, on general operating and maintenance standards and the City shall provide feedback on the Team's performance. City shall have the authority to require the Team to modify the policies/approach to general operating and maintenance as appropriate to meet the standards required in the Stadium Sublease Agreement, as amended hereby.</p> <p>The City shall have the right to invoke a "self-help" remedy pursuant to Team Failure to Perform below.</p> <p>If the City's share of operating expenses and routine maintenance and repair is less than \$500,000 in any given year, the City may elect, in its sole and absolute discretion, to contribute the difference between \$500,000 and the City's share in that given year into a capital repair, replacement and improvement reserve fund (Capital Reserve Fund).</p>
<p>Capital Repairs, Replacements and Improvements</p>	<p>The Team and the City shall continue to be responsible for capital repairs, replacements and improvements (Capital Improvements) as set forth in the Stadium Sublease Agreement. The Team shall maintain the Stadium in a safe, clean, attractive, and first class manner so as to cause it to remain in a condition comparable to that of other MiLB facilities of similar design and age, ordinary wear and tear excepted. The Team shall maintain (or cause others to maintain) the Stadium in a manner that is consistent with all applicable requirements imposed by MiLB and all other entities and agencies with jurisdiction over the Team or Stadium, and with the original design and construction program of the Stadium. The Team shall make (or cause others to make) all necessary or appropriate repairs, renewals and replacements as required by the Stadium Sublease Agreement, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen, in a prompt and timely manner. The Team shall maintain any and all insurance policies, warranties, and other similar policies as may be</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<p>appropriate for major equipment and other components at the Stadium.</p> <p>In order to provide financial relief to the Team and to protect the City's original investment in the Stadium, the City shall invest \$100,000 annually in the Capital Reserve Fund that shall be used to meet the obligations of the Team. The City's investment shall be made in four (4) equal quarterly installments of \$25,000. Prior to the start of the 2010 baseball season, the City and the Team shall meet and jointly develop a five (5) year Capital Improvements plan. The five (5) year Capital Improvements plan will be modified, as appropriate, on an annual basis, no later than October 31st of each year, as determined jointly by the City and the Team. The Team shall submit its requests for Capital Improvements to the City. The City shall retain final approval over Capital Improvements and expenditures from the Capital Reserve Fund, which approval will not be unreasonably withheld. The Capital Improvements plan may be modified from time to time during each year as necessary and appropriate to address required and necessary. Capital Improvements, subject to the approval of the City, which approval will not be unreasonably withheld.</p> <p>During the last five (5) years of the Term, the City will act reasonably in imposing requirements for Capital Improvements, recognizing the age and useful life of the Stadium; provided, however, that the Team's repair and maintenance obligations shall not be diminished during this period.</p> <p>The City shall have the right to invoke a "self-help" remedy pursuant to Team Failure to Perform below.</p>
<p>Team Failure to Perform</p>	<p>Without limiting any other provision of this Term Sheet, and in addition to any other rights or remedies available to City for any default on the part of the Team under the Stadium Sublease Agreement, if at any time the Team fails to perform any obligation to be performed under the Stadium Sublease Agreement (including, but not limited to: Stadium management, maintenance, repairs, replacements, improvements, etc.), which failure continues without cure following written notice from City for a period of thirty (30) days, then, the City may, at its sole option, but shall not be obligated to, perform such obligation for and on behalf of the Team. Notwithstanding the foregoing, however, if within such period the Team gives notice to the City that such failure is caused by Force Majeure or that cure of such failure cannot reasonably be completed within such period, then the City will not perform such obligation during the continuation</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<p>of such Force Majeure delay or extended cure period, as the case may be, and for so long thereafter as the Team continues diligently to prosecute such cure or the resolution of such event of Force Majeure; provided, however, that the City shall not be required to forbear if the Team's failure to perform poses a reasonably perceived threat to public health, safety or welfare.</p>
<p>Team Obligation to Reimburse City</p>	<p>If the City performs any obligation required to be performed by Team, the Team shall reimburse City within thirty (30) business days following demand, the sum so paid, or the reasonable expense incurred by the City in performing such obligation, together with interest thereon at the maximum legal per annum rate, if such payment is not made within such period, computed from the date of the City's demand until payment is made. Alternatively, the City may, in its sole and absolute discretion, elect to offset/reduce any payments otherwise due to the Team from the City to reimburse the City for reasonable expenses incurred by the City in performing Team's obligation, together with interest thereon at the maximum legal per annum rate.</p>
<p>New Video Board / Scoreboard</p>	<p>The City shall provide the Team up to a maximum of \$500,000 to replace the Stadium video board / scoreboard with a first class, state-of-the-art system approved by the City, which approval will not be unreasonably withheld, conditioned or delayed. The City's investment shall only be used to replace the Stadium video board / scoreboard and for no other purpose. The Team shall replace the video board / scoreboard prior to the 2010 baseball season. Commencing December 1, 2010 and for nine (9) consecutive years thereafter on such date, the Team shall reimburse the City \$50,000. The Team may elect to reimburse the City out of the Capital Reserve Fund. The Team shall pay to the City any non-reimbursed amounts immediately upon sale or other transfer of the controlling interest in the Team.</p>
<p>Arts/Park/Entertainment /Sports (APES) Fee</p>	<p>The Team shall impose and collect a \$1.00 APES fee on all paid tickets (including trade/barter) for all Team events, except as noted below. The City shall exercise its right to waive the APES fee for Grizzlies full season ticket holders and partial season ticket holders (mini plans that include 10 or more regular season games). The City shall have the option to increase the APES fee by up to, but not more than, \$0.50 every five years after the execution of this agreement. The Team shall remit to the City the APES fees collected on a quarterly basis.</p> <p>APES fees shall be validated through annual audit (see below) and/or through other sources such as Pacific Coast League reports</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	submitted by the Team and/or Tickets.com (or equivalent) reports submitted to the Team as reasonably requested by the City.
Parking	The Team shall receive net parking revenues from the City controlled spaces as set forth in Exhibit B for Team events at the Stadium. The Team shall have the right to establish parking rates for Team events. The City shall receive net parking revenues from the City controlled spaces for City events. The City shall have the right to establish parking rates for City events.
Concessions	If the City elects to use Ovation (or a successor concessionaire) to provide concessions for City events, the City shall receive 35% of gross concessions revenues for City events, as originally set forth in the First Amendment to the Concessions Agreement that was not executed. The City acknowledges that the Team cannot assure such percentage; however, the Team shall cooperate with City in its efforts to achieve such result.
Advertising	<p>The City shall receive signage at the Stadium to promote City entities and/or events. The City shall also receive scoreboard time and announcements during Team events to promote such entities and/or events.</p> <p>The Team shall permanently display, in a visible and tasteful manner, "City of Fresno" on the video board / scoreboard.</p> <p>The City shall have the right, at its sole cost and expense, to prominently display on fixed signage the following message at the main entrance of the Stadium.</p> <ul style="list-style-type: none"> ▪ "The City of Fresno Welcomes You to Chukchansi Park" <p>Signage size, frequency and timing of messages shall be negotiated in good faith by the parties.</p> <p>City shall retain game day / temporary advertising for City events – subject to exclusivity agreements for Team sponsorships in excess of \$200,000 (subject to escalation on an annual basis equal to the lesser of 3.0% or regional Consumer Price Index (CPI)).</p>
Profit Sharing – Operations	<p>The Team shall pay to the City annually as additional consideration the greater of:</p> <ol style="list-style-type: none"> 1) 20% of earnings before interest, taxes, depreciation, and amortization (EBITDA) over \$500,000; or

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<p>2) 20% of Team gross revenues over \$7,250,000; or</p> <p>3) \$2.00 per ticket for paid attendance over 300,000 at Team events.</p> <p>EBITDA and gross revenues shall be determined by the Team's independent Certified Public Accountant (CPA), consistent with Generally Accepted Accounting Principles (GAAP). Gross revenues shall be defined as any and all revenues related to the Team and Stadium operations received by the Team (and affiliated entities) including trade/barter.</p> <p>The gross revenue and per ticket figures above are subject to annual escalation equal to the lesser of 3.0% or the regional CPI. The net income benchmark is not subject to escalation.</p> <p>Benchmark figures above shall be validated through annual audit (see below) and/or through other sources such as Pacific Coast League reports submitted by the Team and/or Tickets.com (or equivalent) reports submitted to the Team as reasonably requested by the City.</p>
<p>Profit Sharing – Team Sale</p>	<p>Upon the sale or transfer by:</p> <p>(a) the Fresno Baseball Club, LLLP (the "LLL") or Fresno Baseball Club Management, LLC (the "LLC") of its stock or assets; and/or</p> <p>(b) any partner in the LLLP or member of the LLC (an "Interest Owner") of its partnership interest in the LLLP or membership interest in the LLC,</p> <p>(any such sale or transfer pursuant to (a) or (b) to be defined as a Capital Transaction) the City shall be entitled to receive a share of the excess of such proceeds from any such Capital Transaction over the total net investment, as set forth below. The total net investment shall be defined as the initial cash investment made in the Team, plus any operating losses, less any operating profits (such profits and losses collectively defined as EBITDA), less any distributions made to the Interest Owners (Total Net Investment). The Total Net Investment as of December 31, 2008 is \$9,334,156. The excess of the proceeds from any Capital Transaction over the Total Net Investment shall be defined as the Net Surplus.</p> <p>The City shall receive the following amounts upon consummation of any Capital Transaction:</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<p>2009/2010 – 50% of Net Surplus</p> <p>2011 – 30% of Net Surplus</p> <p>2012 – 20% of Net Surplus</p> <p>2013 and thereafter – 10% of Net Surplus</p> <p>The Total Net Investment shall be determined and agreed upon annually by the City and Team after annual audit (see below) is completed and/or through other sources such as Pacific Coast League reports submitted by the Team.</p>
<p>Renegotiation of Lease Triggers Purchase Right</p>	<p>If the Team or any of its owners attempts, directly or indirectly, to renegotiate the Stadium Sublease Agreement at any time during the Term, the City shall have the right to purchase the Team or identify a potential buyer for the Team at fair market value. Such right must be exercised, if at all, within 120 days after the attempt to renegotiate. Fair market value shall be determined by an independent valuation expert that has substantial experience valuing sports franchises/assets.</p>
<p>Team Transfer</p>	<p>Upon any sale or other transfer of the Team, or any controlling interest therein, the new owner(s) must assume any and all obligations under the Stadium Sublease Agreement. The City shall have a reasonable right of approval of any new controlling Team owner(s). FBC shall be required to structure any sale or other transfer of the Team as a sale of ownership interests (stock) in the Team, or a merger or other similar transaction involving the Team pursuant to which the surviving entity continues to be obligated to perform under the Agreement so as not to trigger the termination right set forth in paragraph 11 of the Sponsorship, Marketing Rights and Stadium Naming Rights Agreement dated August 19, 2006 between the Chukchansi Economic Development Authority (CEDA) and FBC. The Team shall make reasonable efforts to sell to local ownership interests if possible.</p>
<p>SF Giants</p>	<p>Team shall use best efforts to host an exhibition game with its MLB affiliate (Giants) each year during the Term.</p>
<p>All Star Game</p>	<p>Team shall use best efforts to host the Triple A All Star game in Fresno within the next five (5) years and, upon execution and delivery of the Sublease Amendment, shall deliver to the City a letter from the President of the Pacific Coast League supporting an All Star game for Fresno within such time frame.</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

Outstanding Obligations	<p>The Team shall timely make any and all payments due to the City as required by the Stadium Sublease Agreement. Such payments include, but may not be limited to, the following:</p> <ul style="list-style-type: none"> ▪ November Rent (\$75,000) - Paid ▪ December Rent (\$75,000) ▪ December Clean Up Payment (\$650,000) ▪ Parking Payment (\$63,786) ▪ City Consulting/Legal Fees (\$156,663) ▪ Other
Audit Rights	<p>Commencing with the year 2010 and for each year thereafter during the Term, the Team shall have an annual audit of its financial statements completed by a CPA, consistent with GAAP. The audit shall be completed in a timely manner. The City shall have the right to review the audit and supporting work papers to assess ongoing viability of the Team and to validate compliance with the terms and conditions of the Stadium Sublease Agreement, as amended hereby. The City review shall be conducted at the Team's offices. The Team shall timely provide to the City a copy of the opinion letter for each annual audit. If the Team fails to comply with the foregoing, the City shall have the right to conduct such audit at the Team's expense and the Team shall cooperate with the City in the performance of such audit.</p> <p>Upon completion of the Team's audit for the 2010 season, the City shall engage an independent financial advisor or accountant with sports industry experience to review the Team's audited financial statements. If it is reasonably determined by the independent financial advisor or accountant, in consultation with the City and the Team's auditors, that the audited financial statements materially vary from the representations made by the Team, and the historical and projected financial statements provided for review by the Team in connection the Stadium Sublease Agreement, as amended hereby, the City shall have the right to annul this amendment. The City shall have 30 days after its review of the Team's 2010 audit to exercise this right. If the City exercises its right to annul this amendment to the Stadium Sublease Agreement, the Team shall reimburse the City as if this amendment did not exist and the current Stadium Sublease Agreement was in place for the 2010 season.</p>
Better Business Act Compliance	<p>In connection with the implementation of this Term Sheet and prior to the execution and delivery of the proposed Sublease</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

	<p>Amendment, the Team shall cooperate with the City to meet the requirements of the Better Business Act, including providing information required by the City to protect its interests under the Act and reimbursing the City for the fees and expenses of the consultants retained by the City to assist in evaluating, negotiating and documenting the proposed Sublease Amendment.</p> <p>In order to further protect the interests of the City, the amendment shall also provide that:</p> <p>(a) the partners of the LLLP shall deliver to the City, at the partners' election, either unconditional, irrevocable bank letters of credit or personal guarantees in the aggregate amount of \$1,500,000 (Guaranteed Amount) as security for default under the Stadium Sublease Agreement. If the Team has not defaulted on any of its obligations, the Guaranteed Amount shall only remain in place until after the City's review of the Team's audit for the year including the 2014 season.</p> <p>(b) in addition to any rights in the Stadium Sublease Agreement, if at any time during the Term the Team defaults under any debt obligation or material contract to which it is a party, the City shall have the right to declare a default under the Stadium Sublease Agreement and all related agreements (including the Pledge Agreement) and pursue all of its remedies thereunder.</p> <p>(c) in addition to the limitations and restrictions regarding Team debt as outlined in the Stadium Sublease Agreement, the Team shall be prohibited from obtaining any loans or advances or accepting any investment in the Team from the Chukchansi Economic Development Authority or any of its departments or affiliates, without the prior written consent of the City.</p>
<p>Transactions with Affiliates</p>	<p>During the Term of the Stadium Sublease Agreement, the Team must obtain the prior written approval of the City before entering into any transaction with an affiliate of the Team which involves any payment or provision of goods or services by the Team in excess of \$25,000. The Team and any affiliates shall maintain separate business operations and financial records with no commingling of funds. The Team shall cause any affiliates with which it does transactions to deliver to the City its annual financial statements (unaudited).</p>
<p>Sublease Amendment</p>	<p>The provisions of this Term Sheet reflect the basic business deal</p>

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 11, 2009**

Process	between the parties and shall be incorporated into an Amended and Restated Stadium Sublease Agreement, which shall also reflect such other modifications as are reasonably necessary to accommodate the terms hereof and to appropriately clarify the terms of the existing Stadium Sublease Agreement. The Team and the City shall negotiate in good faith to finalize the Amended and Restated Stadium Sublease Agreement.
----------------	--

CITY OF FRESNO

By: _____

Title: _____

Date: _____

FRESNO BASEBALL CLUB, LLLP, for Itself and
as Sole Member of Fresno Baseball Club, LLC

By: Fresno Baseball Club Management, LLC, as
General Partner

By: Cummings Baseball Group, LLC, as
Managing General Partner

By: _____
Christopher P. Cummings, Manager

Date: _____

FRESNO BASEBALL CLUB, LLC

By: _____
Christopher P. Cummings, President

Date: _____



PICAYUNE RANCHERIA
OF THE
CHUKCHANSI INDIANS -

CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY
P.O. BOX 1060 • Coarsegold, CA 93614 • (559) 642-3681 • FAX
(559) 642-3683

December 9, 2009

Fresno Baseball Club, LLC
d/b/a Fresno Grizzlies
Attention: Christopher Cummings
1800 Tulare Street
Fresno, CA 93721

Re: Clarification of Sponsorship, Marketing Rights and Stadium Naming
Rights Agreement

Dear Mr. Cummings:

The purpose of this letter is to clarify Paragraph 11 (Assignment) (see attached) in the Sponsorship, Marketing Rights and Stadium Naming Rights Agreement dated August 19, 2006, as amended by letter dated September 6, 2006 (the "Agreement"), between the Chukchansi Economic Development Authority (CEDA) and the Fresno Baseball Club, LLC, which owns and operates the Fresno Grizzlies Triple A affiliated baseball team.

The assignment provision in Paragraph 11 allows CEDA to terminate the Agreement in the event of any sale or transfer of all or substantially all of the assets of the Fresno Baseball Club, LLC. CEDA represents and agrees that, by its terms, this termination provision does not apply in the event of a conveyance of any or all ownership interest in the Fresno Baseball Club, LLC. That is, the termination provision does not apply so long as Fresno Baseball Club, LLC, is the legal entity owning and doing business as the Fresno Grizzlies Triple A affiliated baseball team, and the Fresno Baseball Club, LLC, retains ownership of all or substantially all the assets of the Fresno Grizzlies Triple A affiliated baseball team.

Chukchansi Economic Development Authority

By: Morris Reid
Morris Reid
As Its: Chair

By: Mark Emerick
MARK EMERICK
As Its: Secretary

Christopher Cummings
President
Fresno Baseball Club LLC

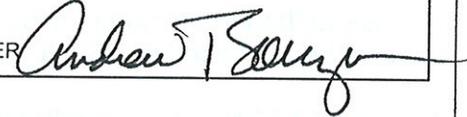
AGENDA ITEM NO. 5:30pm B

COUNCIL MEETING 12/17/2009

APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER



December 17, 2009

FROM: ANDREW T. SOUZA, City Manager
Office of the City Manager

SUBJECT: APPROVE THE SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY AND BARRETT SPORTS GROUP, LLC FOR SERVICES RELATED TO THE STADIUM LEASE AGREEMENT NEGOTIATIONS

Presented to City Council

Date 12/17/09

Disposition Approved

RECOMMENDATION

Staff recommends approval of the attached Second Amendment to the Agreement between the City and Barrett Sports Group, LLC.

EXECUTIVE SUMMARY

On August 17, 2009, the City entered into an Agreement with Barrett Sports Group, LLC (Barrett), to assist the City's negotiating team with analysis and negotiation advisory services for the current discussion taking place between the City and the Fresno Baseball Club (FBC), holders of the Fresno Grizzlies franchise. On November 5, 2009, staff requested that the City Council approve the First Amendment to the Agreement with Barrett Sports Group, LLC, which increased for Barrett's total compensation to \$100,000. As work with Barrett continues, billed fees will exceed \$100,000, and therefore, staff is recommending that the Council increase the compensation to an amount not to exceed \$150,000. Under the Fresno Better Business Act enacted by City Council this year, any fees paid to Barrett by the City will be reimbursed by FBC, unless otherwise waived by the City Council.

BACKGROUND

The City executed a lease agreement with FBC in August, 2005. That lease was subsequently amended in November, 2008. In Spring 2009, FBC indicated a desire to further amend it's existing lease with the City to mitigate financial and operating concerns.

On August 17, 2009, the City entered into an Agreement with Barrett to perform due diligence background analysis related to the stadium lease with FBC. Barrett is a premier professional consulting service that provides technical and expert services related to the sports and entertainment industries. The original Agreement called for Barrett to survey and benchmark similar stadium leases nationwide, and perform analysis related to the City's current lease, including fact finding related to the Grizzlies franchise operating and financial performance. The initial fee covered the benchmarking and fact-finding, with the subsequent increase to the Agreement covering assistance in directly negotiating with FBC on the City's behalf, as requested by the City's lease negotiations team.

The terms and conditions of the suggested lease amendment are now ready to be brought forward to Council for approval under separate action. Upon approval, there is work still to be done to finalize the transaction, including document preparation, continued communications with FBC about payments due, and obtaining and

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the 17th day of August, 2009, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Barrett Sports Group, LLC (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional consulting services for analysis related to Stadium Lease Amendment, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a sports and entertainment industry analyst and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its City Manager (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the reasonable satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

CONSULTANT, by reason of the performance of its services, is not required to furnish additional work or services, or to give testimony, or to be in attendance in court with reference to the assets, properties, or business interests in question. CONSULTANT will have no responsibility to update any report, analysis, or other document relating to its services for any events or circumstances occurring subsequent to the date of such report, analysis, or other document.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through July 30, 2010, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed

determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all final writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein; provided, however, that CONSULTANT shall have the right to use all non-confidential information gathered or prepared by it in connection with CONSULTANT's performance of this Agreement.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

7. Indemnification. CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,

Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a certificate of insurance or complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

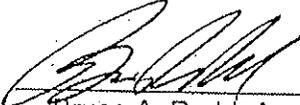
23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: 
Bruce A. Rudd, Assistant City
Manager
City Manager's Office

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Cindy Buer 8/27/09
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: Laurie A. Avedisian 8/25/09
Laurie A. Avedisian Date
Deputy

Barrett Sports Group,
LLC

By:  member 8/19/09

Name: Daniel S. Barrett

Title: Principal
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:

CITY:
City of Fresno
Attention: Bruce Rudd, Assistant City
Manager
2600 Fresno St, Suite 2064
Fresno, CA 93721
Phone: (559) 621-7784
FAX: (559) 621-7776

CONSULTANT:
Barrett Sports Group, LLC
Attention: Dan Barrett, Principal
1219 Morningside Drive, Suite 101
Manhattan Beach, CA 90266
Phone: (310) 802-8775
FAX: (310) 802-8777

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno
and Barrett Sports Group, LLC
[Project Title]
PROJECT TITLE

[Insert Scope]

Below is a summary of potential areas that may be addressed during the course of our engagement based on our current understanding of your needs. It is not anticipated that we will complete entire scope of services below. Rather, we would expect to modify the scope of services as we develop a better understanding of your situation.

I. Preliminary Due Diligence

The focus of this phase is to develop a comprehensive understanding of the situation and establish the foundation for the project to move forward in an efficient manner.

1. Develop Understanding of Background/History
 - i. Prepare Data Request
2. Meet with Key Representatives and Advisors
3. Identify Goals and Objectives
4. Identify Key Stakeholders
5. Determine Preliminary Project Schedule
6. Define Roles and Expectations
7. Establish Communication Guidelines

II. Negotiation Advisory/Support

The goal of this phase is to develop and implement a proposed structure that will result in a long term solution for both the City and the team.

1. Preliminary Assessment
 - i. Lease Review and Comparison to Other Deals
 - ii. Review of Team Operating/Financial Performance
 - iii. Consideration of Alternative Approaches
2. Strategy Development
 - i. Financial Considerations
 - ii. Political Considerations
 - iii. Operating Considerations
 - iv. Capital Repair Considerations
 - v. Timing Considerations
 - vi. Public Relations Strategy
 - vii. Other
3. Support Services

Exhibit B

INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno and Barrett Sports Group

[Project Title]
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CONSULTANT shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Automobile Liability:
 - \$500,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CONSULTANT must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

Verification of Coverage

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

[Project Title]
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

D.S. Barrett, Member
Signature

Daniel S. Barrett
(name)

Barrett Sports Group LLC
(company)

1219 Morningside Dr. Suite 101
(address)

Manhattan Beach CA 90266
(city state zip)

Additional page(s) attached.

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment") made and entered into effective this 5th day of November, 2009, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and Barrett Sports Group, a California Limited Liability Corporation, hereinafter referred to as "PROVIDER".

RECITALS

WHEREAS, CITY and PROVIDER entered into an Agreement, dated August 17, 2009, for technical and expert services related to sports and entertainment services analyses, hereinafter referred to as "Agreement;" and

WHEREAS, the parties now desire to modify the total compensation provided under the Agreement, effective November 5, 2009.

AGREEMENT

NOW, THEREFORE, the parties agree that the aforesaid Agreement be amended as follows:

1. Paragraph 3(a) is amended to read as follows:

"3(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to the Agreement shall be a total fee not to exceed \$100,000, paid on the basis of the rates set forth in the schedule of fees and expenses contained in Exhibit A."

2. Exhibit A, Business Arrangements, second paragraph, third sentence, is amended to read as follows:

"The professional fees and expenses for the initial phase of this engagement shall not exceed \$100,000."

3. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

4. Except as otherwise provided herein, the Agreement entered into by CITY and PROVIDER, dated August 17, 2009, remains in full force and effect.

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") is made and entered into effective this 17th day of December, 2009, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and Barrett Sports Group, a California Limited Liability Corporation, hereinafter referred to as "PROVIDER".

RECITALS

WHEREAS, CITY and PROVIDER entered into an Agreement, dated August 17, 2009, for technical and expert services related to sports and entertainment services analyses, hereinafter referred to as "Agreement;" and

WHEREAS, the parties modified the total compensation provided under the Agreement, effective November 5, 2009; and

WHEREAS, the parties desire to again modify the total compensation provided under the Agreement, effective December 17, 2009.

AGREEMENT

NOW, THEREFORE, the parties agree that the aforesaid Agreement be amended as follows:

1. Paragraph 3(a) is amended to read as follows:

"3(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to the Agreement shall be a total fee not to exceed \$150,000, paid on the basis of the rates set forth in the schedule of fees and expenses contained in Exhibit A."

2. Exhibit A, Business Arrangements, second paragraph, third sentence, is amended to read as follows:

"The professional fees and expenses for the initial phase of this engagement shall not exceed \$150,000."

3. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

4. Except as otherwise provided herein, the Agreement entered into by CITY and PROVIDER, dated August 17, 2009, remains in full force and effect.