

ORIGINAL

**FIRST AMENDMENT TO
AMENDED AND RESTATED AGREEMENT BETWEEN
THE CITY OF SAN JOSE AND
BASEBALL ACQUISITION COMPANY, INC.
FOR THE USE, OPERATION AND MANAGEMENT OF THE
SAN JOSE MUNICIPAL STADIUM**

This FIRST AMENDMENT TO AGREEMENT is entered into this 4th day of September, 2019, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and BASEBALL ACQUISITION COMPANY, INC., a California corporation ("CONTRACTOR").

RECITALS

WHEREAS, on December 13, 2013, CITY and CONTRACTOR entered into an agreement entitled "Amended and Restated Agreement Between the City of San José and Baseball Acquisition Company, Inc. for the Use, Operation and Management of the San José Municipal Stadium" ("Management Agreement"); and

WHEREAS, CITY and CONTRACTOR desire to amend the Management Agreement to extend the term and revise the Memorandum of Understanding for parking operations;

NOW, THEREFORE, the parties agree to amend the Management Agreement as follows:

SECTION 1. SECTION 2, "TERM OF AGREEMENT" is amended to read as follows:

The term of this Management Agreement shall be retroactive from January 1, 2019, and shall continue until December 31, 2021, subject to sooner termination as herein provided.

SECTION 2. SECTION 3, "PAYMENT OF AGREEMENT" is amended to read as follows:

SECTION 3. PAYMENT BY CONTRACTOR TO CITY.

A. CONTRACTOR agrees to pay to the CITY as fees for the permission herein contained to use, operate and manage the Stadium Premises a minimum guaranteed annual fee of Twelve Thousand and No/100 Dollars (\$12,000.00).

B. CONTRACTOR shall make payment to the CITY within 60 days of the close of each lease year (December 31).

C. CONTRACTOR shall pay to the CITY a minimum of Twelve Thousand and No/100 Dollars (\$12,000) per year or 1.1% of the annual gross receipts, whichever is greater. CONTRACTOR further agrees that, no later than 60 days after the end of each lease year (December 31) and each year thereafter of this agreement, to pay to CITY an adjustment representing any amount due to CITY over the minimum Twelve Thousand and No/100 Dollars (\$12,000) per year, as collected during CONTRACTOR's previous fiscal year (January 1 – December 31). CITY and CONTRACTOR agree that all revenues generated from the Manager's gross receipts shall be deposited by CITY into the Stadium Capital Reserve Fund, subject to the further provision that all revenues from naming rights shall be deposited into such fund.

D. For the purposes of this Agreement, the term "CONTRACTOR's gross receipts" shall mean:

1. One hundred percent (100%) of all money and other things of value received by or paid to the CONTRACTOR for use of the Facility including refreshment, BBQ and souvenir sales, smokehouse sales, premises use fees and charges, outside bookings, vendors sales, parking fees, all other revenue as recognized in prior years statements of operations of CONTRACTOR and gate receipts; except (i) gate receipts from San José Giants games, (ii) advertising revenues.

E. The term "CONTRACTOR's gross receipts" shall not include any money or other things of value received by or paid to CONTRACTOR from sales taxes or customer refunds.

F. Failure by CONTRACTOR to make payments in the amounts and at the times hereinabove specified shall constitute a material breach of this Agreement.

G. If CONTRACTOR fails to pay on or before its due date the fees required under this Agreement, CONTRACTOR shall be responsible for and shall pay, in addition to the past due fee, interest thereon until paid at the lesser of the two following rates: Eighteen percent (18%) per annum; or five percent (5%) per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13a of the Federal Reserve Act which was prevailing on the 25th day of the month preceding the month for which payment is past due; provided that nothing contained in this Agreement shall require CONTRACTOR to pay an interest rate which exceeds that permitted by applicable law. This provision shall not be deemed as a forbearance on the payments of such amounts, and CITY retains any and all remedies for nonpayment of such amounts.

H. Stadium Naming Revenue. CITY acknowledges CONTRACTOR's and CITY's interest in the naming of the Stadium Premises as a potential revenue generating opportunity. City Council must approve, in its sole discretion, any agreement granting naming rights to any portion of the Stadium Premises. Furthermore, CITY acknowledges that all net revenues generated from such naming rights to be deposited in the Stadium Capital Reserve Fund as discussed below.

1. Stadium Naming Revenue (net revenue) shall be calculated after the deduction for reasonable and necessary expenses incurred by CONTRACTOR or CITY to solicit and administer such naming revenues, including (a) sales commission and expense reasonably incurred in

connection with the marketing and sale of the name provided that CONTRACTOR has obtained the City Manager's prior written approval of such expenditures, (2) direct costs, reasonably incurred by CONTRACTOR or CITY for the design, construction, and installation of any sign or fixture intended principally to display the name, which costs may be reasonably amortized over the expected life of the sign or fixture, and (c) CITY's inspection costs

2. CITY acknowledges CONTRACTOR's interest in assisting CITY in marketing the naming rights to the Stadium Premises and may develop proposed business terms for naming rights. It is understood that naming the Stadium Premises for any entity will require City Council approval, independent of this Agreement, and will be handled in compliance with the CITY's adopted Revenue Generating Policy.

3. Naming Rights for 2019, 2020 and 2021 seasons. The San Jose Giants and Excite Credit Union have entered into an agreement to re-name Municipal Stadium, Excite Ballpark Home of the San Jose Giants for the 2019, 2020 and 2021 seasons in the amount of \$275,000. The naming rights agreement and schedule of payments to the stadium capital improvement fund are attached as Exhibits G and H, respectively. The Director of the San Jose Arena Authority shall act on behalf of the City Manager's Office to seek proper City approvals, and to insure the satisfactory execution of capital improvements and securing of all necessary documentation from the San Jose Giants.

I. Public Signage. CONTRACTOR acknowledges that the name "San José", the CITY seal and other CITY identification upon the Stadium Premises is important to the CITY. The name "San José" shall be prominently displayed in the name of the stadium and upon the Stadium Premises unless City Council expressly agrees otherwise.

J. Video Revenues. Video Revenues shall mean the aggregate gross revenues generated from advertising, ad panels, or other use of the Enhanced Video Board. In addition to the payments set forth above, for fiscal years 2014 and 2015, CONTRACTOR agrees to pay to CITY 1.1% of the gross revenues from the Enhanced Video Board (Video Revenues) received by CONTRACTOR. Beginning fiscal year 2016 and each year thereafter, CONTRACTOR agrees to pay to CITY an amount equal to the greater of (i) \$2,500 per annum or (ii) 10% of the gross video revenues. Payments of Video Revenues shall be due and payable annually within 60 days after the end of each lease year (December 31) for Video Revenues received during CONTRACTOR'S previous fiscal year or within 60 days of termination of this Agreement, whichever occurs earlier. With the Video Revenue Payment, CONTRACTOR shall provide an accounting of the revenues generated. City and CONTRACTOR agree that all funds generated from Video Revenues which are payable to the City as stated above shall be deposited by the CONTRACTOR into the Stadium Capital Reserve Fund.

SECTION 3. SECTION 19, "PARKING LOT USE AND MANAGEMENT" is amended to read as follows:

SECTION 19. **PARKING LOT USE AND MANAGEMENT**

CONTRACTOR shall perform such services and have such responsibilities as are set forth in the San Jose Municipal Stadium and Sharks' Ice Parking Operations Memorandum of Understanding (Exhibit F). All parties to Exhibit F may amend Exhibit F from time to time. All such amendments shall be approved in writing by City Manager, CONTRACTOR, and any other party to Exhibit F.

Notwithstanding the foregoing, the CITY has the right to terminate Exhibit F and/or modify CONTRACTOR's access and the number of spaces in the parking facility, located at 588 E. Alma Avenue, at any time with 30 days written notice, including without limitation in connection with construction of an expansion of the Ice Centre

(Solar4America Ice). It is currently estimated that during construction and upon completion of the expansion project, CONTRACTOR will have access to an estimated 164 spaces in the parking facility for its events. CONTRACTOR's use of any additional parking on City property will be subject to entering into a separate agreement with City and/or the parking operator, as applicable. Once the expansion of the Ice Centre is completed, the parties will work in good faith to develop a new memorandum of understanding to address the parking operations for the Municipal Stadium and Sharks Ice consistent with the foregoing terms.

SECTION 4. All of the terms and conditions of the original Management Agreement not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.


"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

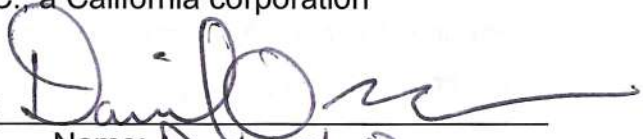


ELIZABETH KLOTZ
Sr. Deputy City Attorney


By _____
Leland Wilcox
Chief of Staff
Office of the City Manager

"CONTRACTOR"

BASEBALL ACQUISITION COMPANY,
INC., a California corporation


By _____
Name: Daniel Orum
Title: President/CEO

RECEIVED
San Jose City Clerk
2019 SEP -5 AM 10:01

Exhibit F

[Agreement begins on following page]

Exhibit G

Naming Rights Schedule of Payments

<u>Season</u>	<u>Payment Amount</u>
2018/19	\$65,000
2019/20	\$105,000
2020/21	\$105,000

CONTRACTOR shall make payment to the CITY within 60 days of the close of each lease year (December 31) by depositing payment into a separate Stadium Capital Reserve Fund established by CONTRACTOR.



SAN JOSE GIANTS
P.O. Box 21727
SAN JOSE, CA 95151
PHONE: (408) 297- 1435
FAX: (408) 297-1453
INFO@SJGIANTS.COM
WWW.SJGIANTS.COM

SALES CONTRACT

DATE: 11/6/18

REPRESENTATIVE: Dan Orum

Client: Brian Dorcy Business Name: Alliance Credit Union

Address: 3315 Almaden Expressway, Suite 55

City: San Jose State: CA Zip: 95118

Business Phone: Fax Number:

Email Address: bdorcy@alliancecu.org Cell Phone:

I hereby agree to purchase the following item(s) from the San Jose Giants to be paid according to the terms below:

Payment Terms: 50% payable by February 1 and 50% payable by April 1 per length of contract (2019-2021)

Client Signature: Giants Signature:

QUANTITY	CATEGORY	ITEM DESCRIPTION	AMOUNT
1	Stadium Entitlement	Exterior Wrap of the Stadium with Alliance Credit Union Logo (Value: \$100,000)	
1	Stadium Entitlement	Alliance Stadium scoreboard structure (Value: \$50,000)	
1	Stadium Entitlement	Rebranding to Alliance Stadium for all communication/collateral (Value: \$25,000)	
1	Official Sponsor	Exclusive Sponsor of San Jose Giants (Value: \$40,000)	
2	Official Sponsor	Two (2) Alliance ATM machines (Value: \$5,000)	
1	Entitlement	Alliance branded San Jose Giants Employment Center (Value: \$5,000)	
1.4 million	Distribution	Alliance branding on website and 1.4 million merchant tickets (Value: \$35,000)	
1	Entitlement	Alliance Credit Union Community Corner (Value: \$15,000); 10 Special Event Ticket Table Dates (Value: \$5,000)	
4	Promotion	10 Alliance Autograph Table Dates (Value: \$10,000) Hometown Heroes Program (Value: \$9,000)	
1	Promotion	Special Event Ticket Series Presenting Sponsor (Value: \$10,000)	
1	Group Outings	Alliance Picnic in the Futures Club (Value: \$4,900) - 100 people	
1	Promotion	Alliance Credit Union "Catch the Savings" Promotion (Value: \$6,500)	
1	Advertising	Pocket Schedule and Full Color Ad (Value: \$6,000)	
1	Advertising	Double Billboard (Value: \$12,500)	
210	Advertising	Video Board Rotating Signage (Value: \$3,000)	
1	Appearance	Gigante Appearance (Value: \$500)	

TOTAL DUE: \$192,000

NOTES:

1. All items outlined in the contract are good for the entirety of the 2018 San Jose Giants Baseball Season.

- Contract valid for the 2019, 2020 and 2021 seasons
- The total value of this partnership is \$356,000
- Exclusive Sponsorship Entitlement includes: Exclusive Credit Union Partnership recognition on all relevant advertising (website, social media, press releases etc.), Landing page on employee login page, Speak at SJG employee onboarding event, player onboarding event, SJG Christmas Party, and TeamWork Online Events, San Jose Giants will not work with any other Credit Unions with the sole exception of tickets sold through Park Packer Program
- Dates for Group Picnic to be selected by Alliance Credit Union (subject to availability)

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
☒ City Manager
City Clerk **OR** Return to
Dept. (circle one)

- ☐ Insurance Certificates / Waivers ☐ Electronically Signed: Select one
☐ Business Tax Certificate ☐ Audit Trail Attached (if applicable)
☐ Contacted Clerk re: Form 700 ☐ Scanned Signature Authorization
☐ Supplemental Memorandums (if applicable): Select One

Tara Reid

Type of Document: Amendment

Type of Contract: Professional Services

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 640195-001

Contractor: Baseball Acquisition Company

Address: 588 E Alma Ave San Jose, CA 95112-6402

Phone: (408) 297-1435

Email: dorum@sjgiants.com

Contract Description: First amendment to lease agreement.

Term Start Date: 1/1/19 Term End Date: 12/31/21 Extension: Select one

Method of Procurement: Select one RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____

Agenda Item No.: _____

Resolution No.: _____

Ordinance No.: _____

Original Contract Amount: 12,000

Amount of Increase/Decrease: ~~12,000~~

Option #: ____ of ____ Option Amount: _____

Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required: No

Revenue Agreement: Select one

Business Tax Certificate No.: _____

Expiration Date: _____ **Received**

Department: OED (60)

Department Contact Name/Phone: Nanci Klein

SEP - 4 2019

Notes:

City Manager Office

Department Director Signature: _____

[Signature]

9/4/19

Date

Office of the City Manager Signature: _____

[Signature]

9/4/19

Date

Received

SEP - 4 2019

City Manager Office