

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 16, 2009**

CITY OF FRESNO
City Clerk's Office (Original)

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

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	<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>

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	<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>
Team Failure to Perform	<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>

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	<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>
Team Obligation to Reimburse City	<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>
New Video Board / Scoreboard	<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>
Arts/Park/Entertainment /Sports (APES) Fee	<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>

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	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

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	<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>

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	<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>
Renegotiation of Lease Triggers Purchase Right	<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>
Team Transfer	<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>
SF Giants	<p>Team shall use best efforts to host an exhibition game with its MLB affiliate (Giants) each year during the Term.</p>
All Star Game	<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>

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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) - Paid ▪ December Clean Up Payment (\$650,000) - Paid ▪ Parking Payment (\$63,786) - Paid ▪ City Consulting/Legal Fees (\$156,663) - Paid ▪ 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>

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	<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 additional security for default under the Stadium Sublease Agreement (Guaranty). This additional security shall be in addition to any and all remedies the City currently has under existing documents. If the partners elect to provide personal guarantees, each partner must provide independent verification that demonstrates sufficient net worth to support the Guaranteed Amount. If the Team has not defaulted on any of its obligations, the Guaranty shall only remain in place until after the City's review of the Team's audit for the year including the 2014 season. Provided, however, that the letters of credit or personal guarantees shall terminate upon sale of the Team in a transaction approved by the City wherein the new owners agree to assume any and all obligations of the Team under the Stadium Sublease Agreement.</p> <p>If the Team defaults on any of its obligations, the City shall have the right to pursue its remedies under this Guaranty. In the event of a bankruptcy or reorganization procedure involving the Team, the City shall have the immediate right to enforce the Guaranty. Provided, however, if the Team defaults and is not the subject of a bankruptcy or reorganization procedure, the City must first proceed against the assets of the Team to satisfy the obligations guaranteed. If the assets of the Team are not sufficient to satisfy the obligations guaranteed or the obligations guaranteed are not satisfied within 180 days after the notice of default, the City shall have the immediate right to enforce the Guaranty.</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</p>
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	<p>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>(d) the Team shall provide a detailed business plan reasonably acceptable to the City no later than January 31, 2010.</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 Process</p>	<p>The provisions of this Term Sheet reflect the basic business deal 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.</p>

CITY OF FRESNO

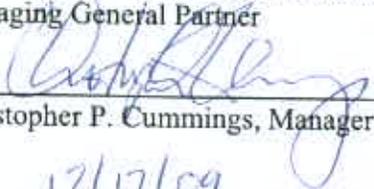
By: Andrew T. Bay
 Title: City Manager
 Date: Jan. 15, 2010

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

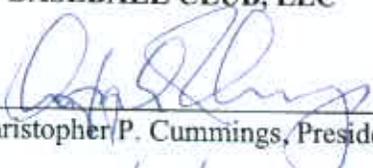
By: Fresno Baseball Club Management, LLC, as
General Partner

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

By: 
Christopher P. Cummings, Manager

Date: 12/17/09

FRESNO BASEBALL CLUB, LLC

By: 
Christopher P. Cummings, President

Date: 12/17/09

December 23, 2009

Council Adoption: 12/17/09

TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC
City Clerk

REK

2009 DEC 23 PM 4:17

Mayor Veto:

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 12/17/09, Council took legislative action entitled **Apprv term sheet amending the Fresno Baseball Club Stadium Lease Agrmnt & auth CM and CA to complete and execute all necessary docs**, Item No.5:30 P.M.A, by the following vote:

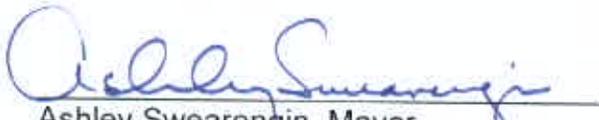
Ayes	:	Borgeas, Brand, Dages, Westerlund, Xiong, Sterling
Noes	:	Perea
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before January 4, 2010. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Ashley Swearengin, Mayor

Date: 12/23/09

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	



REPORT TO THE CITY COUNCIL AND REDEVELOPMENT AGENCY

AGENDA ITEM NO. 5:30pm A
COUNCIL MEETING 12/17/2009

APPROVED BY

EXECUTIVE DIRECTOR *[Signature]*

CITY MANAGER *[Signature: Andrew Souza]*

December 17, 2009

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

MARLENE MURPHEY, Executive Director
Redevelopment Agency

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.

Presented to Fresno Redevelopment Agency
Date 12/17/09
Disposition Be approved

Negotiation Process

The Mayor and City Council established a lease negotiation committee that included:

Mayor Ashley Swearengin
Lee Brand, Council Member
Andy Souza, City Manager
James Sanchez, City Attorney

The City retained Barrett to thoroughly analyze the operations of the Grizzlies team, and to benchmark the existing lease against other similar leases nationwide. Barrett and the lease negotiation committee met frequently to review information, examine FBC's proposed terms, and to develop new lease terms and conditions that realign the City's lease to a more market-competitive lease.

Once the necessary due diligence and fiscal analysis was completed, the team began discussions with FBC, through Barrett, to renegotiate terms.

The negotiation team has reached an agreement with FBC on all lease terms and conditions. Both parties expressed to Barrett that while the lease points don't completely match everything they were hoping to obtain, the points represent a fair and balanced approach to making sure that baseball can continue in Fresno.

Recommended Terms and Conditions

The attached document outlines the specific terms and conditions that are recommended for a new amendment. Of particular note, the rent paid to the City will remain at \$1.5 million annually, however, concessions in other areas have been renegotiated. Several of the major provisions of the lease provide substantial security to the City in the event that the team finds itself in the position of not being a feasible business entity in the city of Fresno. Conversely, if the team does well and returns a profit, the City will reap a portion of that profit at specific, tiered levels.

After intense due diligence and fact-finding on other triple-A franchise leases, as well as due diligence and review of the financial position of FBC, the City's lease negotiation committee is confident that the proposed terms and conditions create a long-term lease structure that provides FBC, or any business entity operating at the stadium, the best chance of success. The new terms are competitive nationwide and bring Fresno's lease conditions into alignment with what the market will bear for a triple-A franchise.

The proposed terms and conditions include the following items:

- Term extended for an additional 5 years.
- Rent remains at \$1,500,000, paid monthly.
- Team remains responsible for costs of operations, but City will reimburse Team for 50% of certain operating expenses up to \$500,000 annually.
- Team's repair and maintenance obligations remain the same, however City will invest \$100,000 in a capital reserve fund.
- If Team fails to perform any obligation, City has right to perform on behalf of Team and seek reimbursement from Team.
- City shall provide up to \$500,000 to replace the video scoreboard, which shall be paid back by Team at \$50,000 per year.

REPORT TO THE CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD

Approve The Term Sheet Amending The Fresno Baseball Club

Stadium Lease Agreement

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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:

Summary of the Request and Findings; Recommendation

a) Fiscal Impact:

After through review of the Grizzlies operating statements, tax returns, etc., the negotiations committee believes that the team has suffered substantial losses. The lease itself has one of the highest rent payments of other triple-A teams, however, that fact is offset by FBC holding one of the most lucrative naming rights contracts in the nation. The due diligence and benchmarking done by Barrett show that Fresno's lease is not as lucrative as some leases in the current marketplace. To realign the lease to a more competitive one, which means a higher public subsidy, is ultimately a policy decision for the Council to make. However, review of economic indicators in other cities shows those cities that have baseball teams of triple-A rank or higher do benefit from the economic impact, when the economy is good.

b) Findings of economic impact

The lease terms and conditions represent concessions of approximately \$700,000 annually. The City, like all other California cities, is operating in a depressed economy and facing economic challenges. However, the loss of a baseball team in Fresno, and thereby having an empty stadium, will have dire impacts on the City as well as the local economy. The City currently receives approximately \$1.9 million annually under the existing lease with FBC. After the concessions of \$700,000, the City will still receive \$1.2 million annually to apply towards the debt service amount of approximately \$3.5 million. If baseball went away in Fresno, the general fund would need to pick up the entire \$3.5 million payment. In addition, the loss of jobs including the parking, safety, custodial, and concessions would be lost. The loss of a stadium tenant, which draws people from around the Valley, would be a major setback in the City's continued progress in downtown development.

c) Risk Assessment Rating

As this transaction is the renegotiation of an existing lease, the risk assessment must take place within the context of not taking this action. The risk assessment of taking no action is between 8 and 9 on a scale of 1 to 10. The risk assessment of the ongoing viability under the amendment proposed is between 3 and 4. The major factors causing the reduction of risk are the direct impact of the concessions to the team, as well as the protections provided to the City in the way the concessions were structured. These include the \$1.5 million (one year rent) personal guarantees to be received and the enhanced ability of FBC to transfer the naming rights in the event of a change of ownership. Additionally, there is also now a profit-sharing cause should the team be sold.

d) Recommended level of ongoing oversight

The City Manager's Office will provide ongoing oversight and contract management for the stadium lease. The Finance Department currently provides a monthly statement showing the payments made by FBC. The City Manager's Office will ensure that all provisions of the lease, such as annual audits and regular facilities walk-throughs are conducted. The Better Business Act requires that the City Manager and City Attorney annually report on projects approved by the City Council under the Act. Therefore, Council will receive an annual update on the compliance of FBC with all lease terms and conditions.

Final Recommendation:

The City Manager recommends approval of this transaction.

REPORT TO THE CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD

Approve The Term Sheet Amending The Fresno Baseball Club

Stadium Lease Agreement

December 17, 2009

Page 5

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**

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 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>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>
Team Failure to Perform	<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 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**

	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 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 "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 1, 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>
Renegotiation of Lease Triggers Purchase Right	<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>
Team Transfer	<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). The Team shall make reasonable efforts to sell to local ownership interests if possible.</p>
SF Giants	<p>Team shall use best efforts to host an exhibition game with its MLB affiliate (Giants) each year during the Term.</p>
All Star Game	<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>
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) ▪ December Rent (\$75,000) ▪ December Clean Up Payment (\$650,000)

**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
<p>Audit Rights</p>	<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>
<p>Better Business Act Compliance</p>	<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**

	<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 Process</p>	<p>The provisions of this Term Sheet reflect the basic business deal 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</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: _____

Exhibit A

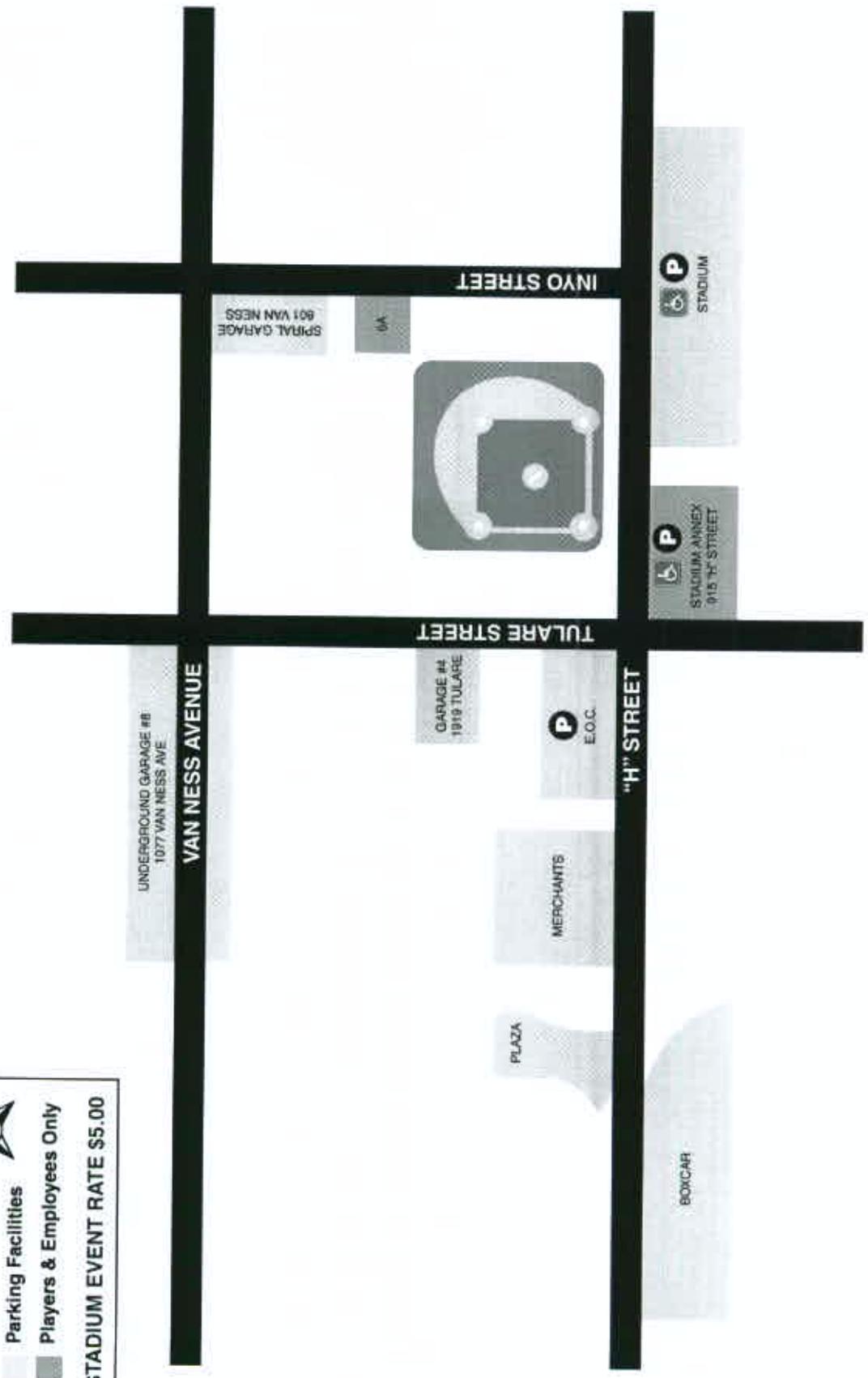
Account	2009 Grizzlies Est.				Average 2006 to 2009
	2006	2007	2008	2009	
Expenses					
6003 Video Board	\$27,448	\$47,959	\$50,636	\$38,726	\$41,192
6004 Security	\$67,679	\$89,227	\$60,624	\$57,029	\$68,640
6012 Maintenance Grounds	\$11,150	\$35,791	\$20,820	\$20,537	\$22,075
6015 Stadium Cleaning	\$170,638	\$202,200	\$225,600	\$168,035	\$191,618
6030 Supplies	\$32,309	\$24,155	\$21,381	\$17,944	\$23,947
6032 Repairs and Maintenance	\$64,031	\$50,648	\$52,766	\$39,348	\$51,698
6034 Field Maintenance	\$29,233	\$20,042	\$23,439	\$14,255	\$21,742
6035 Vehicle Maintenance	\$6,641	\$13,900	\$8,791	\$5,775	\$8,777
6038 Utilities					
60381 Electricity and Gas	\$318,365	\$406,782	\$370,830	\$368,499	\$366,119
60382 Water and Waste Disposal	\$29,677	\$25,660	\$51,177	\$41,711	\$37,056
60383 Cable Television	\$8,809	\$8,657	\$9,416	\$9,760	\$9,160
6043 Pest Control	\$0	\$980	\$1,755	\$495	\$808
6056 Alarm	\$3,817	\$5,877	\$5,559	\$3,357	\$4,653
6059 Video Board Equipment	\$2,320	\$4,354	\$12,720	\$6,308	\$6,426
6064 Overnight Stadium Security	\$0	\$0	\$43,582	\$35,566	\$19,787
600J Operations Housekeeping	\$41,055	\$70,181	\$32,880	\$30,350	\$43,617
Sub-Total	\$813,173	\$1,006,414	\$991,977	\$857,696	\$917,315
Annual Maintenance and Repair Payment					
%		50%			
\$ Max	\$406,587	\$500,000	\$495,988	\$428,848	\$457,856
Annual Maintenance and Repair Payment - Total					

Exhibit B

City of **FRESNO**

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

STADIUM EVENT RATE \$5.00



AGENDA ITEM NO. 5:30 p.m. A

COUNCIL MEETING 12/17/09

APPROVED BY _____

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

Presented to City Council

Date 12-17-09

Disposition AC approved

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

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
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	<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>
Team Failure to Perform	<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>

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	<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
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	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
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	<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 "LLLP") 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
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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>
Renegotiation of Lease Triggers Purchase Right	<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>
Team Transfer	<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>
SF Giants	<p>Team shall use best efforts to host an exhibition game with its MLB affiliate (Giants) each year during the Term.</p>
All Star Game	<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.
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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

AFFIDAVIT AND CERTIFICATION
OF
CHRISTOPHER P. CUMMINGS

STATE OF CALIFORNIA
COUNTY OF _____

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Christopher P. Cummings ("Affiant"), who being first duly sworn on oath, deposes and says that:

1. I am, through Cummings Baseball Group, LLC, the manager of Fresno Baseball Club Management, LLC, a Delaware limited liability company ("FBCM"), the general partner of Fresno Baseball Club, LLLP (the "LLL"), which LLLP, through Fresno Baseball Club, LLC ("FBC"), is the owner and operator of the Fresno Grizzlies, a professional baseball franchise.

2. Simultaneously with the execution and delivery to the City of Fresno of this Affidavit and Certification, I am delivering to the Fresno City Attorney a schedule showing the members and partners, respectively, and their current ownership percentages in FBCM and the LLLP.

3. I understand that this Affidavit and Certification is given in connection with a Term Sheet dated December 16, 2009, outlining a proposed amendment to the Agreement dated January 3, 2001, as amended, between the City of Fresno ("City") and FBC ("Stadium Sublease Agreement"), and that the City will rely hereon in its consideration of the Term Sheet and proposed amendment.

4. As the President of FBC, I am the person primarily responsible for:

(a) negotiating on behalf of FBC and the LLLP, the Term Sheet outlining the proposed amendment to the Stadium Sublease Agreement; and

(b) providing financial and other information to the City on which the City relied in negotiating the Term Sheet.

5. With respect to the financial and other information provided to the City in connection with the Term Sheet, I hereby certify that:

(a) To the best of my knowledge and belief, the financial statements for the LLLP, FBC (including the 2009 year-to-date statements) and certain of their affiliates (the "Financial Statements") accurately reflect the financial performance and condition of the respective entities as of the dates and for the periods indicated. Except for matters disclosed to the City in writing, there has been no material adverse change in the business, financial position, results of operation or prospects of FBC, as reflected on the balance sheet for FBC dated December 31, 2008.

(b) The Financial Statements provided to the City were the basis for and are consistent with the Federal Tax Returns filed for the respective entities for the periods indicated. Such Federal Tax Returns accurately set forth, in accordance with the Internal Revenue Code and the regulations thereunder, the gross income, adjusted gross income and taxable income for each tax year.

(c) The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and accurately reflect the results of operations and operating characteristics of the respective entities.

(d) Except for obligations payable to the City as required by the Term Sheet, all accounts payable of the LLLP and FBC are current.

(e) The \$825,000 loan made to the LLLP in 2009 by Binkley C. Shorts has been converted to equity and no part of the principal thereof or interest thereon is a debt obligation of the LLLP or has any priority over other LLLP capital.

(f) The total outstanding balance (principal and interest) of the loans from Brown Brothers Harriman & Co. to the LLLP has been converted to equity and no part of the principal thereof or interest thereon is a debt obligation of the LLLP or FBC or has any priority over other capital.

(g) To the best of my knowledge and belief, all of the information provided to the City in connection with the negotiation of the Term Sheet is true and accurate in all material respects.

6. I have provided to the limited partners of the LLLP copies of the Term Sheet and all information that they have requested in connection with the negotiation thereof. I have also given such limited partners the opportunity to discuss the Term Sheet with me.

7. To the best of my knowledge and belief, the limited partners of the LLLP understand the Term Sheet and the likelihood that they will be required to make significant additional capital contributions to the LLLP, even if the City approves the Term Sheet and the definitive documents contemplated thereby are finalized, executed and delivered.

8. To the best of my knowledge and belief, the cash flow projections for 2009 and 2010 and subsequent years prepared by me on behalf of the LLLP and FBC are realistic and achievable.

9. There is no action, suit or proceeding pending or, to the best of my knowledge, threatened against the LLLP or FBC or, to the best of my knowledge and belief any of their respective partners and members, which, if adversely determined, would have a material, adverse effect on the business, financial position, results of operation or prospects of the LLLP or FBC.

10. To the best of my knowledge and belief, the LLLP and FBC are in full compliance with the terms of the Fresno Grizzlies Franchise and I have not received any notice from the Pacific Coast League or any baseball authority to the contrary. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would

result in the suspension, revocation, impairment, forfeiture or non-renewal of the Franchise. No baseball authority governing the Fresno Grizzlies or its Franchise has threatened or commenced any action to revoke, rescind or suspend the Franchise and, to the best of my knowledge and belief, no such action is contemplated.

11. All information heretofore furnished by the LLLP or FBC to the City or its agents for purposes of or in connection with the Term Sheet or the transactions contemplated thereby is, and all such information hereafter furnished by the LLLP, FBCM, or FBC to the City or its agents will be, true and accurate in all material respects. The LLLP, FBCM, FBC and I have disclosed to the City and its agents any and all facts known to me which materially adversely affect or may affect (to the extent it can be reasonably foreseen), the business, operations or financial condition of the LLLP and FBC, taken as a whole, or the ability of the LLLP and FBC and their respective members and partners to perform their obligations under the transactions contemplated by the Term Sheet.

FURTHER AFFIANT SAYETH NOT.

CHRISTOPHER P. CUMMINGS

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this _____ day of _____, 2009, by Christopher P. Cummings, who has proved to me on the basis of satisfactory evidence to be the person who appeared before me.

NOTARY PUBLIC, STATE OF CALIFORNIA

(Signature)

(Printed Name)

(Commission Expiration Date)

(AFFIX NOTARIAL SEAL)

**FRESNO GRIZZLIES SUBLEASE AMENDMENT
PROPOSED TERM SHEET
December 16, 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 16, 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>

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	<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>
Team Failure to Perform	<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>

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	<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>

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	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

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	<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 "LLLP") 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>

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	<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>
Renegotiation of Lease Triggers Purchase Right	<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>
Team Transfer	<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>
SF Giants	<p>Team shall use best efforts to host an exhibition game with its MLB affiliate (Giants) each year during the Term.</p>
All Star Game	<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>

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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) - Paid ▪ December Clean Up Payment (\$650,000) - Paid ▪ Parking Payment (\$63,786) - Paid ▪ City Consulting/Legal Fees (\$156,663) - Paid ▪ 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>

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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.

In order to further protect the interests of the City, the amendment shall also provide that:

(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 additional security for default under the Stadium Sublease Agreement (Guaranty). This additional security shall be in addition to any and all remedies the City currently has under existing documents. If the partners elect to provide personal guarantees, each partner must provide independent verification that demonstrates sufficient net worth to support the Guaranteed Amount. If the Team has not defaulted on any of its obligations, the Guaranty shall only remain in place until after the City's review of the Team's audit for the year including the 2014 season. Provided, however, that the letters of credit or personal guarantees shall terminate upon sale of the Team in a transaction approved by the City wherein the new owners agree to assume any and all obligations of the Team under the Stadium Sublease Agreement.

If the Team defaults on any of its obligations, the City shall have the right to pursue its remedies under this Guaranty. In the event of a bankruptcy or reorganization procedure involving the Team, the City shall have the immediate right to enforce the Guaranty. Provided, however, if the Team defaults and is not the subject of a bankruptcy or reorganization procedure, the City must first proceed against the assets of the Team to satisfy the obligations guaranteed. If the assets of the Team are not sufficient to satisfy the obligations guaranteed or the obligations guaranteed are not satisfied within 180 days after the notice of default, the City shall have the immediate right to enforce the Guaranty.

(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

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	<p>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>(d) the Team shall provide a detailed business plan reasonably acceptable to the City no later than January 31, 2010.</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 Process</p>	<p>The provisions of this Term Sheet reflect the basic business deal 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.</p>

CITY OF FRESNO

By: _____

Title: _____

Date: _____

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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: _____

AFFIDAVIT AND CERTIFICATION
OF
CHRISTOPHER P. CUMMINGS

STATE OF CALIFORNIA
COUNTY OF _____

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Christopher P. Cummings ("Affiant"), who being first duly sworn on oath, deposes and says that:

1. I am, through Cummings Baseball Group, LLC, the manager of Fresno Baseball Club Management, LLC, a Delaware limited liability company ("FBCM"), the general partner of Fresno Baseball Club, LLLP (the "LLL"), which LLL, through Fresno Baseball Club, LLC ("FBC"), is the owner and operator of the Fresno Grizzlies, a professional baseball franchise.

2. Simultaneously with the execution and delivery to the City of Fresno of this Affidavit and Certification, I am delivering to the Fresno City Attorney a schedule showing the members and partners, respectively, and their current ownership percentages in FBCM and the LLL.

3. I understand that this Affidavit and Certification is given in connection with a Term Sheet dated December 16, 2009, outlining a proposed amendment to the Agreement dated January 3, 2001, as amended, between the City of Fresno ("City") and FBC ("Stadium Sublease Agreement"), and that the City will rely hereon in its consideration of the Term Sheet and proposed amendment.

4. As the President of FBC, I am the person primarily responsible for:

(a) negotiating on behalf of FBC and the LLL, the Term Sheet outlining the proposed amendment to the Stadium Sublease Agreement; and

(b) providing financial and other information to the City on which the City relied in negotiating the Term Sheet.

5. With respect to the financial and other information provided to the City in connection with the Term Sheet, I hereby certify that:

(a) To the best of my knowledge and belief, the financial statements for the LLL, FBC (including the 2009 year-to-date statements) and certain of their affiliates (the "Financial Statements") accurately reflect the financial performance and condition of the respective entities as of the dates and for the periods indicated. Except for matters disclosed to the City in writing, there has been no material adverse change in the business, financial position, results of operation or prospects of FBC, as reflected on the balance sheet for FBC dated December 31, 2008.

(b) The Financial Statements provided to the City were the basis for and are consistent with the Federal Tax Returns filed for the respective entities for the periods indicated. Such Federal Tax Returns accurately set forth, in accordance with the Internal Revenue Code and the regulations thereunder, the gross income, adjusted gross income and taxable income for each tax year.

(c) The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and accurately reflect the results of operations and operating characteristics of the respective entities.

(d) Except for obligations payable to the City as required by the Term Sheet, all accounts payable of the LLLP and FBC are current.

(e) The \$825,000 loan made to the LLLP in 2009 by Binkley C. Shorts has been converted to equity and no part of the principal thereof or interest thereon is a debt obligation of the LLLP or has any priority over other LLLP capital.

(f) The total outstanding balance (principal and interest) of the loans from Brown Brothers Harriman & Co. to the LLLP has been converted to equity and no part of the principal thereof or interest thereon is a debt obligation of the LLLP or FBC or has any priority over other capital.

(g) To the best of my knowledge and belief, all of the information provided to the City in connection with the negotiation of the Term Sheet is true and accurate in all material respects.

6. I have provided to the limited partners of the LLLP copies of the Term Sheet and all information that they have requested in connection with the negotiation thereof. I have also given such limited partners the opportunity to discuss the Term Sheet with me.

7. To the best of my knowledge and belief, the limited partners of the LLLP understand the Term Sheet and the likelihood that they will be required to make significant additional capital contributions to the LLLP, even if the City approves the Term Sheet and the definitive documents contemplated thereby are finalized, executed and delivered.

8. To the best of my knowledge and belief, the cash flow projections for 2009 and 2010 and subsequent years prepared by me on behalf of the LLLP and FBC are realistic and achievable.

9. There is no action, suit or proceeding pending or, to the best of my knowledge, threatened against the LLLP or FBC or, to the best of my knowledge and belief any of their respective partners and members, which, if adversely determined, would have a material, adverse effect on the business, financial position, results of operation or prospects of the LLLP or FBC.

10. To the best of my knowledge and belief, the LLLP and FBC are in full compliance with the terms of the Fresno Grizzlies Franchise and I have not received any notice from the Pacific Coast League or any baseball authority to the contrary. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would

result in the suspension, revocation, impairment, forfeiture or non-renewal of the Franchise. No baseball authority governing the Fresno Grizzlies or its Franchise has threatened or commenced any action to revoke, rescind or suspend the Franchise and, to the best of my knowledge and belief, no such action is contemplated.

11. All information heretofore furnished by the LLLP or FBC to the City or its agents for purposes of or in connection with the Term Sheet or the transactions contemplated thereby is, and all such information hereafter furnished by the LLLP, FBCM, or FBC to the City or its agents will be, true and accurate in all material respects. The LLLP, FBCM, FBC and I have disclosed to the City and its agents any and all facts known to me which materially adversely affect or may affect (to the extent it can be reasonably foreseen), the business, operations or financial condition of the LLLP and FBC, taken as a whole, or the ability of the LLLP and FBC and their respective members and partners to perform their obligations under the transactions contemplated by the Term Sheet.

FURTHER AFFIANT SAYETH NOT.

CHRISTOPHER P. CUMMINGS

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this _____ day of _____, 2009, by Christopher P. Cummings, who has proved to me on the basis of satisfactory evidence to be the person who appeared before me.

NOTARY PUBLIC, STATE OF CALIFORNIA

(Signature)

(Printed Name)

(AFFIX NOTARIAL SEAL)

(Commission Expiration Date)