

"C"
5/9/95

**SECOND AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
DOWNTOWN SPORTS/ENTERTAINMENT STADIUM**

The Second Amendment (hereinafter, "Amendment") to that certain Disposition and Development Agreement dated April 26, 1994 (hereinafter, the "Agreement") is made as of the 9 day of May, 1995 by and among the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, (hereinafter, the "Agency") the City of Fresno, a municipal corporation (hereinafter, the "City") and Fresno Diamond Group, a California corporation, or its nominee (hereinafter, the "Developer").

RECITALS

- A. Developer, the Agency and the City are parties to the Agreement.
- B. The Agreement provides for the Agency and the City to acquire and sell to the Developer a specified site in downtown Fresno on which the Developer is to construct a Downtown Sports/entertainment Stadium (the "Stadium").
- C. The time allotted for the Developer to arrange necessary financing (Section 2 of Agreement) and purchase the subject property had proven to be inadequate, and the parties had agreed to a time extension by First Amendment to Agreement dated October 31, 1994.
- D. The time allotted for the Developer to arrange necessary financing and purchase the subject property has once again proven to be inadequate. In consideration of Developer's agreement to complete the purchase of a Triple-A Pacific Coast League baseball team, the parties have agreed to a further time extension.

NOW, WHEREFORE, in consideration of the promises and the mutual covenants

and agreements set forth herein, the parties mutually agree that the Agreement be and

PRESENTED TO REDEVELOPMENT

Date May 9, 1995

Disposition approved

hereby is amended as follows:

1. Section 3(g) of the Agreement is amended to read:

"(g) Closing Date. The Closing Date is the date on which the Purchase Price shall be paid to the Agency and the Property will be conveyed to the Developer through the escrow established under this Agreement for that purpose. The Closing Date shall be October 31, 1995, unless extended by City, Agency and Developer. If the escrow is not in a condition to close by the Closing Date, or any extension thereof, this Agreement shall be immediately and automatically terminated; no notice to any party shall be required in order to effect the termination of this Agreement.

City or Agency may extend the Closing Date by notice to Developer, which shall set forth the reason for the extension and the new Closing Date, but the City or Agency may not extend the Closing Date except for reasons beyond the reasonable control of City or Agency.

2. In the event of any conflict or inconsistency between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall control in all respects.

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The Agreement, as hereby amended, remains in full force and effect.

ATTEST:

JACQUELINE L. RYLE,
Ex-Officio Clerk for the
Redevelopment Agency of the City of
Fresno

By: Cindy Hamby
Deputy

APPROVED AS TO FORM:

HILDA CANTÚ MONTOY,
Ex-Officio Acting Attorney for the
Redevelopment Agency of the City of
Fresno

By: Karen L. Kern

FRESNO DIAMOND GROUP, a
California corporation

By: John L. Carbray 5/26/95
John L. Carbray, President

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: Michael A. Bierman
Michael A. Bierman
Ex-Officio Executive
Director of the
Redevelopment
Agency of the City of Fresno

CITY OF FRESNO

By: Michael A. Bierman
Michael A. Bierman
City Manager

KLK:ce/assign.frm
05/18/95

May 5, 1995

AGENDA ITEM NO. "C"

COUNCIL MEETING 5/9/95

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

Michael A. Bierman

FROM: MICHAEL A. BIERMAN
City Manager

SUBJECT: CONSIDERATION OF REQUEST FOR EXTENSION
OF CONTRACT WITH THE FRESNO DIAMOND GROUP

On April 27, 1995, a tray memorandum was sent to the Council concerning the stadium project. The Fresno Diamond Group (FDG) requested, in a letter dated April 21 (attached), the right to extend their exclusive agreement with the City to October 31, 1995, with FDG having the right to extend the date for an additional year to October 31, 1996, if within the first six-month extension period they have completed the purchase of a Triple A Pacific Coast League baseball team. The memorandum also gave the Council background information on the agreement and the number of extensions given to this point. The issue has been scheduled for discussion at the May 9 Council meeting.

One of the major problems throughout the public discussion has been the setting of artificial deadlines. If a market exists for professional baseball in Fresno, it is my opinion that competition among developers/owners could accelerate the arrival of a team. The deadlines will become market driven, not some artificial date set in an agreement.

Therefore, after reviewing the letter and documents of the Fresno Diamond Group, it is my recommendation to not extend their agreement. We, of course, will continue to work with them in their quest for Triple A baseball, but will also discuss and work with any other group that has an interest in bringing professional baseball to Fresno.

In an effort to be able to evaluate any and all proposals on an equal basis, we will continue to work within the policy direction of Council as structured in the current agreements. The City will provide site assembly in the downtown and do various public improvements. The developer/owner will provide a Triple A baseball team and privately finance the stadium. City funds will not be used to build the stadium.

If the Council determines that the City should be involved in financing and constructing a stadium, or that Single A or Double A professional baseball is an option, the Fresno Diamond Group should be given an opportunity to structure a proposal based on the new policy direction.

Presented to Fresno Redevelopment Agency

Date

5/9/95

Disposition

Michael A. Bierman

10/21/95 approved

CONCLUSIONS AND RECOMMENDATIONS

1. Should the Council extend the agreement with the Fresno Diamond Group? The City Manager's recommendation is, "No."
2. Should the City continue to discuss professional baseball with the Fresno Diamond Group? The City Manager's recommendation is, "Yes."
3. Should the City open discussions with other interested parties on an equal basis? The City Manager's recommendation is, "Yes."
4. Does the Council want to change policy direction on Triple A baseball or City participation in the construction of a stadium?
5. If policy changes are made, should the Fresno Diamond Group be allowed to submit a proposal based on that new direction? The City Manager's recommendation is, "Yes."

Attachment

THE FRESNO DIAMOND GROUP

April 21, 1995

Mr. Michael A. Bierman
City Manager
City of Fresno
2600 Fresno St.
Fresno, CA 93721

RE: Request for Extension of
Disposition and Development Agreement

Dear Mr. Bierman:

The Fresno Diamond Group (FDG) requests that the Disposition and Development Agreement (D&DA) be amended to allow FDG a reasonable amount of additional time within which to complete the pre-development activities that are required before the close of escrow for the purchase of the stadium site.

The present date for the close of escrow under the D&DA is April 30, 1995. We request that the date for the close of escrow be extended until October 31, with FDG having the right to extend the date for an additional year--until October 31, 1996--if within the first six-month extension period FDG has completed the purchase of a Triple-A, Pacific Coast League baseball team and has furnished evidence of the purchase to the City and the Agency.

You are aware that I cannot publicly disclose the details of FDG's negotiations for the purchase of a Team. However, I have kept you informed of FDG's progress, and you are aware that we are justifiably confident in our ability to complete the purchase by October 31, 1995.

You are also well aware of the linkage between the purchase of the team and the feasibility of financing the construction of the stadium. We need a reasonable period of time after the team purchase is complete and unconditional before we can complete financing arrangements for the stadium.

The financing of the stadium is a large and complex financing matter by any test. The fact that interest rates have soared from the time when the D&DA was negotiated until now makes the financing all the more difficult. Under the circumstances, the extension that is being requested is very reasonable.

Factors that should concern all parties:

1. If the Agreement is allowed to lapse we would have to begin the process again. To allow 3 years of our time and expense, City staff time, and negotiations with financial investors to come as far as we have only to become void would be wasteful.

Were the City to begin again with some other group the CUP, findings, tests, hearings, stadium renderings, etc. would be nullified and would all need to be redone. I believe this would take a good year's worth of time.

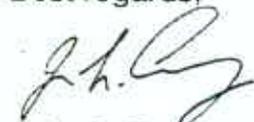
2. Of most importance, our exclusive negotiating position in its present state would be damaged grievously. Not only would the Fresno Diamond Group be subject to the loss of this opportunity but the entire Fresno community would not be allowed the success it deserves.
3. It is possible that the California League will attempt to put a Single-A baseball team in Fresno, which would tie up the territory and Fresno would be relegated to Visalia, Stockton, Modesto, Bakersfield and Adelanto type cities as visiting teams.

This would greatly damage the possibility of Triple-A baseball coming to Fresno as the "territory" would have to be drafted. The last Single-A territory drafted was Salt Lake City and it cost the owner of the Triple-A team in excess of \$3 Million to put Triple-A baseball in a Single-A controlled territory.

4. The fans of baseball, concerts, soccer and high school football, who have supported the Fresno Diamond Group and the Fresno Stadium with their deposits, letters, and encouragement warrant the return support of City leadership.
5. This project has earned the right to succeed and it is a golden opportunity to show that the City of Fresno, working with private enterprise, can be successful in completing a difficult job.
6. The Fresno Diamond Group has not asked the City of Fresno for any financial commitment and, in two years time, is on the verge of a success that will have a major impact on the future of Fresno.

We would appreciate this extension being recommended by the City Manager.
Thank you.

Best regards,



John L. Carbray
President

cc: Carl Motschiedler

JLC/ss