City of FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	9:30am #2B
COUNCIL MEETING	5/20/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

May 20, 2010

FROM: BRUCE A. RUDD, Assistant City Manager

BY: WILLIAM BROOMFIELD, Events Manager WB
Parks, After School, Recreation and Community Services Department

SUBJECT: APPROVE THE LICENSE AGREEMENT BETWEEN THE CITY OF FRESNO AND RGM PRESENTS, LLC, FOR THE OPERATION OF A NIGHTCLUB AT THE 600 CLUB IN CHUKCHANSI PARK

RECOMMENDATION

Staff recommends that the City Council approve the license agreement between the City of Fresno and RGM Presents, LLC, (RGM) for the operation of a nightclub at the 600 Club in Chukchansi Park. Upon City Council approval, the term of this agreement is effective June 1, 2010, and will expire on May 31, 2011 (12 months). Unless written notice is provided by the City, the agreement can be extended for one additional year, terminating in April 2012.

EXECUTIVE SUMMARY

Permitting the use of the 600 Club and Chukchansi Park on a fee-basis is in the best interest of the City and the public. RGM Presents, LLC, (RGM) has operated a nightclub at Chukchansi Park ("The Penthouse") for twelve weekends (Friday and Saturday nights) on a trial basis. The events have brought much-needed revenue to the General Fund and nightlife to downtown Fresno.

The City of Fresno proposes to enter into an agreement with RGM for the operation of "The Penthouse" at Chukchansi Park. The nightclub will operate most Friday and Saturday nights, but will not be allowed to operate during any date of Fresno Grizzlies Baseball, Fresno Fuego Soccer or any other previously scheduled event, unless written authorization is granted by the Baseball or Soccer club. The City of Fresno reserves priority use of the stadium and facilities and must notify RGM in writing, at least 30 days in advance of dates and times RGM will not have access to the facilities. The nightclub will not interfere with or affect any previously scheduled concerts and summer events. All events currently on the Chukchansi Park event calendar will be held as planned.

BACKGROUND

The proposed Agreement between the City of Fresno and RGM allows for the operation of a nightclub at the 600 Club of Chukchansi Park during the hours of 11 PM to 4 AM. Recently, the City of Fresno amended the operational Conditional Use Permit (CUP) of Chukchansi Park to allow for compliance under the recently adopted Bars, Taverns and Nightclub ordinance.

DANCING/CLUBS IN DOWNTOWN

Number of (Dancing) Clubs in North Fresno – 10 (7 are restaurants, but are functioning as a club after hours)
Number of dancing clubs downtown – 1 (Penthouse)

Presented to City Council
Date 5/20/10
Disposition Approved

ATTENDANCE

The Penthouse began operating on February 5, 2010, and has operated for 12 weekends – Friday and Saturday nights. An estimated 7,843 club-goers have attended The Penthouse. The licensee, RGM, LLC, will pay the City of Fresno the sum of $200 per night or $1.00 per ticket sold (whichever is greater).

Attendance

Month	# of Nights	Fridays	Saturdays	Monthly Total
Feb 2010	8	795	1260	2055
March 2010	7	915	1530	2445
April 2010	6	812	1460	2272
May 2010	3	411	660	1071
			Total Attendance	**7843**

REVENUE

The City has received $1,700 of rental fee revenue (April). The rental fee for the months of February and March ($3400) was waived to allow the RGM to successfully promote and run the club. The operator will start paying rent in the month of June and every month thereafter.

The City has received in excess of $12,000 of concessions revenue:

Revenue

Month	Rental Fees	Concessions	Monthly Total
Feb 2010	0.00	0.00	0.00
March 2010	0.00	$7516.56	$7516.56
April 2010	$1318.00	$3740.24	$5058.24
May 2010	$850.00	$1060.00	$1910.00
		Total Revenue Received	**$12,574.80**

The revenue generated from this project will be set aside in a separate account and used to fund the Special Events Division, Capital Improvements to Chukchansi Park and City-wide Special Event Activities (i.e. Downtown area, Fulton Mall, Chukchansi Park, Eaton Plaza, Regional Sports Complex, Woodward and Roeding Park).

PROPOSED "FRESNO LIVE" EXPANSION

With the success of the Penthouse project the City of Fresno and RGM are currently evaluating the possibility of expanding the model to include club and dancing activity in the Tecate Cantina, Pool area and Owners Suite. The Fresno Baseball Club, Ovations and Fresno PD have met several times over the last month to ensure not only a good experience, but a safe atmosphere for all patrons attending any activity in the stadium and the surrounding areas.

FISCAL IMPACT

The facility is paid for on a fee-basis. No City of Fresno funds are used to subsidize or offset any club activities. All fees received pay for Special Events Division staffing and various special event requirements in the City of Fresno.

Annual revenues are projected to generate $73,200 to $162,100, depending on the viability of expanding current operations.

Attachment – License Agreement

CITY OF FRESNO
City Clerk's Office (Original)

FRESNO CHUKCHANSI PARK
600 CLUB
LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("**Agreement**") is entered into effective as of June 1, 2010 (the "**Effective Date**") by the City of Fresno, a municipal corporation (the "**City**"), and RGM Presents, LLC, a California limited liability corporation ("Licensee").

WITNESSETH:

A. Licensee desires to operate a nightclub at the 600 Club in Chukchansi Park ("Club").

B. The City Council finds that it is in the City's and public interest to permit the use of the Club on a fee basis, which will expand use of the Stadium and generate interest in the Fresno downtown area.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants herein contained, the parties hereto, intending to be legally bound, mutually agree as follows:

1. **Definitions**.

As used in this Agreement, each of the terms defined in this Section shall have the following meaning ascribed to it, unless the context otherwise requires:

a. "Club" means the 600 Club, Tecate Cantina, and Pool Area located within the Fresno Chukchansi Park baseball stadium ("Stadium").

b. "Common Areas" means the areas intended for use by Licensee and the general public on Event days only, which shall include solely rights of ingress and egress to and from the Club.

c. "Baseball Club" shall mean the professional Fresno Baseball Club, LLC, which operates the Fresno Grizzlies baseball team.

d. "Event" shall mean a date and time period that Licensee is permitted to use the Club.

e. "Baseball Game" means each Baseball Game played by the Baseball Club as set forth in the annual schedule for each Baseball season, including any unscheduled post season games, "all star" games, and exhibition games.

f. "Premises" shall mean a combination of the Club and Common Areas, as set forth in this Agreement.

2. **Premises; Conditions**.

a. Premises. City hereby grants to Licensee, and Licensee hereby accepts from City, a license to use the Premises by Licensee for the consideration, and upon the terms and conditions and during the times, set forth in this Agreement. City represents and warrants that it has the right and power to grant the rights provided to Licensee under this Agreement and to perform each of their obligations referred to herein. City represents and warrants that City has the right and power to act in the manner provided for in this Agreement.

b. This Agreement is for the sole purpose of granting a limited license to use the Premises as provided herein, and is not intended in any way to grant rights afforded a lessee or tenant; rights granted herein may be immediately terminated as provided herein, and City shall not be required to bring any action for wrongful detainer or ejectment to terminate Licensee's rights or recover possession of the Premises.

c. Licensee Use Areas.

(i) Licensee shall have a license to use and occupy the Premises during each Event. City is not required to provide Licensee with any permanent office or storage space for its use or that of its agents and employees in or around the Stadium.

(ii) All cleaning of the Club area shall be the responsibility of Licensee.

(iii) Licensee shall be responsible to repair any damage beyond normal wear and tear to the Premises caused by Licensee, its agents, patrons, or invitees.

(iv) Licensee shall have reasonable access to the Common Areas for the sole purpose of ingress and egress to and from the Club, and shall not permit any agent, patron, or invitee to access any other area of the Stadium for any other purpose.

3. **Term; Use Fee**.

a. Initial Term. The initial term of this Agreement shall be for a period of one (1) year, commencing on June 1, 2010, and ending on May 31, 2011 (the "Term").

b. Extension. Unless City gives written notice at least sixty (60) days prior to the expiration of the Term of intent not to extend the Term for one additional year, this Agreement shall automatically be extended on the same terms and conditions for one (1) additional year to May 31, 2012. If

City does provide such notice not to extend, then this Agreement shall terminate at the end of the Term.

c. Use Fee. During the Term, Licensee shall pay to City the sum of $200 per night or $1.00 per person or ticket sold (whichever is greater). Payment is due to the City by the 20th of the following month. The City will waive the $1.00 per person charge for the first 250 customers per night. If the Fee is not timely paid in full, then this Agreement shall immediately terminate.

d. Concessions. "Concessions" include all food and beverages sold, provided, or consumed at the Club. Licensee shall not be permitted to provide any Concessions at the Club. Licensee is not entitled to receive any of the Concessions revenue. Concessions and Concessions revenue is addressed in one or more separate agreements between City and the concessions provider. Licensee acknowledges that concessions are to be provided by a third party independent contractor, and not City, and City disclaims any responsibility or liability for the actions or performance of the concessions provider.

e. Parking Revenue. Licensee shall not be entitled to any City parking revenue, if any, associated with the Events.

f. Cover Charges. Licensee shall retain any and all cover charges it collects for the Events, subject to the terms of this Agreement.

g. Event Dates and Times. Except as otherwise provided herein, on an Event date, Licensee shall be permitted access to the Premises from the hour of 11 p.m. on that date, until 4 a.m. the following morning. Event dates shall consist of each Friday and Saturday during the Term, except for dates involving Schedule Conflicts.

4. **Schedule Conflicts and Use**.

a. Baseball/Soccer Games. Licensee shall not be entitled to hold any Events during any date of a Baseball/Soccer Game or on any date which the Baseball Club is entitled to use the Stadium. Licensee will be provided a schedule of Baseball Games and Baseball Club events for the season, when available, but also must relinquish any Event date to the Baseball Club should the Baseball Club schedule any additional event. Licensee does have the ability to make separate arrangements directly with Baseball Club to operate during Baseball/Soccer games, provided all proper insurance is secured and pursuant to the terms of this Agreement.

b. Priority Dates and Use of the Stadium. Upon at least 30 days written notice, City shall have priority use of the Stadium for any event the City may schedule or permit, and on such date and/or times Licensee shall not have access to the Club. Licensee is aware that the stadium is not

available on June 11, 2010, June 25, 2010, July 3, 2010, August 21, 2010 and all summer concert dates. In no event shall Licensee be entitled to any compensation for loss of an Event date pursuant to the terms of this Agreement.

c. Partial Dates. Should a schedule conflict arise as provided herein, the parties may cooperate to allow an Event at times and on conditions that are mutually agreeable, subject to the agreement of all third parties affected (e.g., Baseball Club). There will be no proration or reduction of rent for Events that use a partial day or time period.

d. Interference. In no event shall Licensee take any action or inaction that would interfere with the use of the Stadium for any other purpose.

e. Limited Areas. Licensee acknowledges and agrees that it may not, without the advance written consent of City, use or occupy those areas of the Stadium not otherwise permitted herein.

f. Entrances and Exits. City reserves the right to exercise control over entrances to and exits from the Stadium, including the locking or unlocking thereof, provided, however, this right of City shall not unreasonably interfere with the usage of the Stadium by Licensee for the purposes herein provided. Articles, fittings, materials and equipment shall be brought into or removed from the Stadium only at entrances and exits designated by City and pursuant to rules and regulations, from time to time, promulgated by City which regulate such subjects.

g. Rules and Regulations. Licensee shall abide by and conform to all rules and regulations adopted or prescribed by City. City, at its sole discretion, may waive or revise any rule or regulation upon reasonable notice that a rule or regulation is inapplicable to or impracticable for the operation of the Club.

h. Advertising and Promotional Rights.

(i) All of Licensee's advertising and promotional activities shall be conducted so as to not conflict with the terms of any exclusivity provisions in any sponsorship, promotional or other advertising agreements of City or Baseball Club.

(ii) City will retain all proceeds derived from any sponsorship agreements, as well as any sponsorship, promotional or other advertising agreements entered into by City. Licensee will retain all proceeds derived from any event sponsorship agreements entered into by Licensee, provided, however, sponsorship agreements must not conflict with any sponsorship agreements held by Baseball Club or the City.

(iii) Licensee shall be responsible for all expenses related to its production, maintenance, advertising, and revenue of its events.

(iv) All advertising copy of Licensee for the use in the Stadium shall be subject to the prior approval of the City, which approval shall not be unreasonably withheld.

i. City's Proprietary Intellectual Property. Licensee shall have no right to use or to license others to use any of City's logos, registered trademarks, or other intellectual property of City, except with the prior written consent of City. .

5. **Licensee Covenants**. Licensee covenants and agrees that, during the Term, Licensee shall:

a. Assignment. Except as otherwise specifically provided herein, Licensee shall not assign or otherwise transfer its rights or any portion thereof in this Agreement without prior written consent of City.

b. Maintenance of Stadium. Notwithstanding anything to the contrary herein, Licensee, and not City, shall be responsible for the cost of any repairs to the Stadium necessitated by any negligent or willful act or omission of Licensee, or any agent, employee, contractor, subcontractor, representative, or authorized volunteer, patron, or invitee of Licensee.

c. Improvements. Licensee shall not, without prior written approval of City, allow any construction, repairs, or improvements to be done at the Stadium, and in no event shall Licensee, through action or inaction, allow any lien or stop notice to accrue with respect to the Stadium.

d. Security. Licensee shall provide for all security guards and contract police officers as deemed necessary by Fresno Police Department. Licensee shall coordinate with Fresno Police Department to create and maintain a security plan.

6. **Utilities**. The City shall furnish all utilities needed for the use and operation of the Stadium, including electric power, HVAC, water and sewer services.

7. **Entry and Inspection**. Licensee shall have the right to inspect the Stadium Premises at reasonable times with City's prior consent.

8.

Indemnification. To the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend City, Fresno Baseball Club, LLC., and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to

personal injury, death at any time and property damage) incurred by City, Fresno Baseball Club, LLC., Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of : (i) the occupancy and use of the Stadium; (ii) the performance of this Agreement. Licensee's obligations under the preceding sentence shall apply regardless of whether City, Fresno Baseball Group, LLC., or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City, Fresno Baseball Group, LLC., or any of their officers, officials, employees, agents or volunteers.

If Licensee should subcontract all or any portion of the work to be performed under this Agreement, Licensee shall require each subcontractor to indemnify, hold harmless and defend City, Fresno Baseball Club, LLC., and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

9. **Insurance**. Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

If at any time during the life of the Agreement or any extension, Licensee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Licensee shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Licensee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and Fresno Baseball Club, LLC shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, its principals, officers, employees or agents.

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

If Licensee should subcontract all or any portion of the services to be performed under this Agreement, Licensee shall require each subcontractor to provide insurance protection in favor of City, Fresno Baseball Club, LLC and each of their officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Licensee and City prior to the commencement of any services by the subcontractor.

10. **Waiver.** The waiver by any party of any breach of any term, covenant or condition herein contained shall be effective only if in a writing executed by the party granting such waiver. Any waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by the City or Licensee shall not be deemed to be a waiver of any preceding breach by the other party of any term, covenant or condition of this Agreement, other than the failure to make the particular payment so accepted, regardless of the accepting party's knowledge of such preceding breach at the time of acceptance thereof. Acceptance of a payment after that date due hereunder shall not be deemed a waiver of any right to interest that may be owed. The failure on the part of a party to require full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as changing the terms hereof or to stop such party from enforcing the full provisions hereof.

11. **Default and Remedies.**

a. Default. It shall be a default by any party under this Agreement if such party (i) shall fail to perform or fulfill any covenant or condition contained herein on its part to be performed or fulfilled; or (ii) shall make a general assignment for the benefit of creditors.

b. Termination. Upon a material breach of this Agreement, the City may, in addition to any other rights or remedies it may have hereunder, immediately cancel and terminate this Agreement with no further obligation to Licensee.

c. Injunctive Relief. In addition to any other remedy available hereunder, each party hereto agrees that the other parties hereto shall have the right to seek to enjoin any material breach or threatened breach and/or obtain specific performance of this Agreement by any other party upon meeting its burden of proof of such breach or threatened breach as required by applicable statue or rule of law.

d. Unenforceability. The unenforceability, in whole or in part, of any of the remedies made available in this Agreement shall not affect or limit either

party's right to any of the remaining remedies available to either party to the extent that they are not inconsistent with the provisions of this Agreement.

12. **Notice and Options.** All notices, requests, demands, instructions or other communications (collectively "notice(s)") to be given to any party hereunder shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g., Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by electronic format, but only if such notice is confirmed within twenty-four (24) hours by letter mailed or delivered in accordance with these provisions, addressed to:

If to City, to:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721

With a copy to:

City Attorney
City Attorney's Office
2600 Fresno Street
Fresno, CA 93721

If to Licensee, to:

With a copy to:

13. **Force Majeure.** The rights and obligations of the parties to this Agreement shall be subject to delays or cancellations caused by fire, accident, acts of God, orders of any military, civil, or governmental authority or other cause beyond the reasonable control of the parties (collectively, "**Force Majeure**"), and should such event or events occur from time to time the rights or obligations of the parties affected thereby, if any, shall be continued for a period equal to the period resulting from such delay or suspended or excused pro rata.

14. **No Discrimination.**

a. All Events held at the Stadium shall be on a basis which is non-discriminatory as to race, color, religion, national origin, gender, age, sexual orientation, marital status or military status.

b. Licensee agrees that in their hiring, firing and promotion practices it will not discriminate on the basis of race, color, religion, national origin, gender, age, sexual orientation, marital status or military status.

15. **Payment of Taxes.** Licensee acknowledges that the Stadium is located on real property that is owned by the City and that consequently, Licensee's use thereof for the purposes specified in this Agreement may constitute a possessory interest that is or may be subject to taxation by the State of California and/or the County of Fresno and/or other governmental taxing agencies. Licensee agrees to promptly pay any and all such taxes and assessments regardless of whether the same are assessed in the name of Licensee or City, and to indemnify, defend and hold the City harmless therefrom. Additionally, Licensee, and not City, shall be responsible for any amusement, sales or other taxes relating to the sale of tickets or other admissions to the Events.

16. **Restoration of Casualty Damage.** In the event any Stadium building, structure or improvement is damaged by fire, earthquake, acts of God, this Agreement shall immediately terminate, at the election of City, with no further obligation to Licensee. Licensee shall not under any circumstances be entitled to any insurance proceeds or other funds allocated to restoration of the Stadium.

17. **Condemnation.** If the whole or a portion of the Stadium (or use or occupancy of the Stadium or any interest therein) shall be taken or condemned by any governmental or quasi-governmental authority, other than the City or its redevelopment agency, for any public or quasi-public use or purpose (including sale under threat of such taking), or if City elects to convey title to the condemnor in lieu of such a taking, if (i) the portion of the Stadium remaining after such taking is unsuitable for use by Licensee as permitted herein and Licensee so notifies City in writing within forty-five (45) days thereafter, then this Agreement shall terminate upon notice to Licensee, and Licensee shall not be entitled to any portion of any condemnation award, settlement, or sale.

18. **Bond Compliance**. The parties acknowledge and agree that this Agreement shall be modified to any extent required by City's bond counsel so that the Agreement is, in the opinion of such counsel, a qualified management contract. In the event bond counsel requires a material change to the Existing Agreement, the parties shall meet and confer in an effort to amend the Agreement in a manner satisfactory to the parties and the City's bond counsel. In the event the parties do not agree to so amend the Agreement, any party may terminate the Agreement, with no further obligation to the parties hereunder.

19. **Americans with Disabilities Act Compliance.** The City and City make no representations that the Facility and the Stadium comply with each and every provision contained in the Americans with Disability Act (42 U.S.C. §12101 *et seq.*) (the "ADA") However, the City shall indemnify, defend (at the City's sole cost and expense and with legal counsel reasonably approved by Licensee), protect and hold harmless Licensee, and its respective officers, directors, officials, employees, and agents, and all their representatives, successors, and assigns from and against any and all claims, expenses, fines, demands, and actions that may occur as a result of the Facility or Stadium's noncompliance with the ADA.

20. **Miscellaneous.**

a. Law. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of California.

b. Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular Sections hereof to which they refer.

c. Amendment. No alterations, or modifications hereof shall be valid unless executed by an instrument in writing, by the parties. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by instrument in writing and properly executed, and no subsequent oral agreement shall have any validity whatsoever.

d. Entire Agreement. This Agreement contains all of the agreements and understandings of the parties to this Agreement relating to the subject matter of this Agreement and supersedes any prior agreements, writing, understandings, representations, warranties and other communications regarding the subject matter of this Agreement.

e. No Partnership. Nothing herein contained shall make, or be construed to make, the City or Baseball Club a partner of one another nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

f. Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

g. No third Party Beneficiary. Except as otherwise specifically provided herein, this Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

h. Right to Eject. City shall have the right to eject from the Stadium, without any liability therefore to Licensee or Baseball Club, persons engaging in objectionable behavior, even if they are paying ticket holders or other invitees of Licensee and/or Baseball Club.

i. Compliance with Law. City and Licensee agree that in its development, use and operation of the Stadium it shall comply with all applicable federal, state and local laws.

j. Counterparts. This Agreement may be executed in one or more counterparts which, taken together, shall constitute one and the same original document.

k. Assignment. This Agreement may be assigned only after receiving prior written consent of City, and provided that Licensee as well as the assignee remain fully liable for all obligations set forth herein.

///

The parties have entered into this Agreement as of the day and the year set forth in the opening paragraph of this Agreement.

ATTEST:

REBECCA E. KLISCH

Clerk

By Sherri L. Badertscher

Deputy

Dated: May 28, 2010

APPROVED AS TO FORM:

City Manager

By

Dated 5/27, 2010

APPROVED AS TO FORM:

JAMES C. SANCHEZ

City Attorney

By Lauren A Avedisian

Deputy/~~Assistant~~

Dated: 5/27, 2010

LICENSEE:

RGM Presents, LLC., a California limited liability company

By:

Its: President

Exhibit "A"

Common Areas

The parties hereto acknowledge and agree that this exhibit will be provided within fifteen (15) days of execution of this Agreement.

City	City	Licensee

Exhibit "B"

INSURANCE REQUIREMENTS
License Agreement between City of Fresno
and RGM Presents, LLC
600 Club – Chukchanski Park

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include which shall include insurance for "bodily injury," "property damage". **The responsibility for this coverage may be assigned to the concessionaire.**

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

CONTRACTOR shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate

2. Liquor Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $2,000,000 general aggregate

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event LICENSEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

LICENSEE shall be responsible for payment of any deductibles contained in any insurance polices required hereunder and LICENSEE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, Fresno Baseball Group, LLC and each of their officers, officials, employees, agents and volunteers; or (ii) LICENSEE shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Liquor Liaiblity insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, Fresno Baseball Group, LLC and each of their officers, officials, employees, agents and volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, Fresno Baseball Group, LLC and each of their officers, officials, employees, agents and volunteers.

3. LICENSEE's insurance coverage shall be primary and no contribution shall be required of City, Fresno baseball Group, LLC and each of their officers, officials, employees, agents and volunteers.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: LICENSEE and its insurer shall waive any right of subrogation against City, Fresno Baseball Group, LLC and each of their officers, officials, employees, agents and volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, LICENSEE shall furnish City with a new certificate and applicable endorsements for

such policy(ies). In the event any policy is due to expire during the concert series, LICENSEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

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

Verification of Coverage

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

Umbrella or Excess Insurance

In the event LICENSEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

such policy(ies). In the event any policy is due to expire during the concert series, LICENSEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

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

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