

Regular Council Meeting

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FRESNO CITY COUNCIL

CITY OF FRESNO
CITY CLERK'S OFFICE



Supplement Packet

ITEM(S)

3-B (ID 23-1735) Actions pertaining to the 2018 Amended and Restated Stadium Sublease Agreement between the City of Fresno and Fresno Sports and Events, LLC.:

1. Approve the Second Amendment to the 2018 Amended and Restated Stadium Sublease Agreement

Contents of Supplement: Second Amendment Sublease Agreement – Revised (Changes include the addition of Paragraph 2 and Paragraph 6)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**SECOND AMENDMENT TO
2018 AMENDED AND RESTATED
STADIUM SUBLEASE AGREEMENT**

This SECOND AMENDMENT ("Second Amendment"), effective as of September __, 2023 ("Amendment Effective Date"), to the 2018 Amended and Restated Stadium Sublease Agreement ("Original Agreement") as amended by the First Amendment to 2018 Amended and Restated Stadium Sublease Agreement dated January 22, 2021 ("First Amendment"), is made by and between the City of Fresno, a California municipal corporation ("City") and Fresno Sports and Events, LLC, a Delaware limited liability company ("Tenant"). The Original Agreement and the First Amendment shall together be referred to hereinafter as the "Agreement".

RECITALS

- A. Tenant is the owner of the professional baseball team known as the Fresno Grizzlies ("Club").
- B. City leases Chukchansi Park, the Club's home Stadium, from the Fresno Joint Powers Financing Authority pursuant to that certain Facility Lease dated as of May 15, 2001. The City subleases Chukchansi Park to Tenant pursuant to the Agreement.
- C. Tenant is a party to a transaction for the sale of the Club ("Sale") to DBH Fresno, LLC, a Delaware limited liability company ("DBH").
- D. The Sale will provide financial stability for the Club and benefit the City, its citizens and non-profit organizations of the City and surrounding areas.
- E. The Sale has been approved by MLB Professional Development Leagues, LLC ("MLB PDL").
- F. The Sale requires the City's written approval, but as a condition of the Sale, DBH requires certain additional amendments to the Agreement and the Parties wish to make these additional amendments to the Agreement.
- G. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that as of the Amendment Effective Date the Agreement is hereby amended as follows:

AMENDMENT

- 1. Sale of Assets. Section 10.2 is hereby deleted and replaced entirely with the following:
 - i. "Tenant may not sell or otherwise transfer all or substantially all of its assets (including the club) to another entity without (a) the prior written approval of the City (which approval shall not be unreasonably withheld)

and MLB PDL, and (b) the acceptance of an assignment and assumption of this Agreement by such transferee; provided that the Parties expressly agree that the transfer of Tenant's assets shall in no way entitle the transferee to avoid performance of any term hereof, including but not limited to the obligation of the Club to play its home games in the Stadium as required by Article XIV hereof."

2. Maintenance, Repair and Replacements: a new Section 4.2(d) is added providing as follows:
 - i. "2025 MLB PDL Requirements: Tenant agrees it shall be responsible for all Capital Expenditures necessary to comply with the 2025 MLB PDL mandatory facilities standards if such expenditures exceed amounts in the Capital Reserve Fund and all Sub-Accounts. Such Capital Expenditures shall include, but are not limited to, a batting cage building, batting tunnels and all related electrical, HVAC and permitting items required for such batting cage building or batting tunnels."
3. Annual Contributions to Capital Reserve Fund: Section 4.4(a)(ii)(i) is hereby deleted and replaced in its entirety by the following:
 - i. "\$100,000 annually, on or before October 1, by Tenant commencing in 2024 and \$50,000 annually, Son or before October 1, by City commencing in 2024 (collectively, the "Annual Contribution"). The Annual Contributions required of each party respectively shall escalate at two percent (2%) annually."
4. Capital Transactions. Section 10.3(a) of the Agreement is deleted and replaced in its entirety by the following:
 - i. "Upon the standalone and direct sale or transfer by Tenant of (i) all or substantially all of its assets or (ii) one hundred percent (100%) of its then issued and outstanding equity interests, in each case, to an unaffiliated third-party in a transaction not involving the transfer of the assets or equity of any other entity (any such sale or transfer pursuant to (i) or (ii) to be defined as a "Capital Transaction"), the City shall be entitled to receive a share of the Net Surplus as set forth below in this Section 10.3. Notwithstanding the foregoing, this Section 10.3 shall not apply to any indirect transfers involving any affiliates of Tenant."

Section 10.3(c) is deleted entirely and replaced with the following: "RESERVED"

Section 10.3(d) is deleted entirely and replaced with the following: "RESERVED"

Section 10.3(e) is deleted and replaced entirely with the following:

- i. “Upon the consummation of a Capital Transaction, the City shall receive ten percent (10%) of any Net Surplus (“Capital Transaction Fee”) between the Amendment Effective Date and the expiration of the Term.”
5. Affiliates. Section 14.3 of the Agreement is deleted and replaced in its entirety by the following:
 - i. “Any affiliates of Tenant that will conduct business in the Stadium must be business entities in good standing with the State of California (or the laws of their state of incorporation, formation or organization). In the event that Tenant enters into any transaction with an affiliate of Tenant for such affiliate to conduct business in the Stadium (other than transactions with Diamond Baseball Holdings, LLC for the provision of services to Tenant in the ordinary course of business) involving payment by Tenant to such affiliate in excess of \$50,000.00, Tenant must notify the City in writing (email being sufficient) of such affiliate’s entity name and available contact information for notices at least ten (10) business days prior to the affiliate conducting business in the Stadium.”
6. Profit-Sharing. For the avoidance of doubt, after the Amendment Effective Date, DBH will be responsible for paying the (i) Annual City Share Amount not to exceed the caps set forth pursuant to Section 2.5(a) and (ii) any Capital Transaction Fee pursuant to Section 10.3. Subject to confidentiality obligations and other similar restrictions that may be applicable to information furnished by DBH and except for any information that is subject to attorney-client privilege or other privilege from disclosure, DBH will provide the City with reasonable access on an annual basis to financial and other information as reasonably requested by the City and required in order to confirm the calculation of the Annual City Share Amount and any Capital Transaction Fee; provided, that the City shall use its reasonable best efforts to maintain the confidentiality of such information.
7. Prior Agreement Confirmed. Except as otherwise expressly modified by the terms hereof, all of the remaining terms of the Agreement remain in effect.
8. Counterparts. This Amendment may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or other electronic means (including in “PDF” format) shall be effective as delivery of a manually executed counterpart of this Amendment. The use of electronic signatures and electronic records (including any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National

Commerce Act, and any other applicable law, including any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

9. Conditions Precedent. The closing of the Sale of the Club by Tenant to DBH is a condition precedent to the effectiveness of this Second Amendment.

[Signatures on Following Page]

CITY OF FRESNO,
a California municipal corporation

By: _____
Georgeanne White
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Brandon M. Collet Date
Supervising Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

FRESNO SPORTS AND EVENTS, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____

Name: _____

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