

C O U N T Y   A D M I N I S T R A T O R



SUSAN S. MURANISHI  
COUNTY ADMINISTRATOR

March 18, 2015

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: APPROVE AN EXCLUSIVE NEGOTIATING AGREEMENT WITH THE CITY OF OAKLAND AND NEW CITY DEVELOPMENT LLC FOR DEVELOPMENT OF A PROJECT AT THE OAKLAND-ALAMEDA COUNTY COLISEUM COMPLEX AND ADJACENT CITY AND CITY-COUNTY OWNED PROPERTY AND AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT**

**RECOMMENDATION**

It is recommended that your Board, approve an Exclusive Negotiating Agreement with the City of Oakland and New City Development LLC for Development of a Project at the Oakland-Alameda County Coliseum Complex and Adjacent City and City-County Property, and authorize the County Administrator to execute the Agreement.

**DISCUSSION/SUMMARY**

Staff is recommending that the Board approve, and authorize the County Administrator to execute, a three-party Exclusive Negotiating Agreement ("ENA") for a development project at the Oakland-Alameda County Coliseum Complex with The City of Oakland ("City") and New City Development LLC ("Developer"). The ENA period would be for six months, with a six-month option to extend on the part of the County and City. The ENA will allow the Developer to conduct further market analysis and propose a series of public/private finance structures, as well as continue with ongoing negotiations over possible development of the Coliseum Complex and the City and City-County owned property. The proposed development envisions a new Oakland Raiders stadium and possibly a new Oakland Athletics ballpark, along with related parking facilities, as well as other commercial and residential development. The ENA will require certain deliverables and project tasks from the Developer during the ENA period. Entering this ENA would not create any financial obligation for the County of Alameda.

## **BACKGROUND**

In March 2012, the City entered into an ENA with JRDV Urban International, HKS and Forest City Development. The purpose of the previous ENA was to conduct a Master Plan vision for the entire 800-acre Coliseum Specific Plan Area, including the land immediately surrounding the existing Oakland-Alameda County Coliseum Complex. The most recent City amendments to that ENA designated New City Development LLC as the development team's lead. That City ENA expires on the earlier of April 21, 2015, or upon execution of a new ENA.

The properties included under the new proposed ENA are the approximately 112-acre Oakland-Alameda County Coliseum Complex, as well as the 8.5-acre parcel commonly known as the former Malibu Grand Prix site. The City and the County jointly own both of these sites.

The City and the County are now ready to attempt to negotiate one or more Lease Disposition and Development Agreements ("LDDA") or Disposition and Development Agreements ("DDA"). Such a LDDA/DDA would enable one, two or three of the existing sports franchises to remain at new facilities.

### **New City Development, LLC**

New City Development, LLC is the master developer entity managed by Floyd Kephart. Floyd Kephart is Chairman of the Board for the Renaissance Companies and serves as Chairman of the Board for Metis Financial Network. The Renaissance Companies is a private advisory company to private equity, financial institutions, investors and hedge funds. Mr. Kephart has worked on major corporate financial structuring and marketing projects with over 50 major clients including: Columbia/RCA, Sony, Sega, Chrysler, Volkswagen, NBC, ABC, Radio City Music Hall and the NFL (Super Bowl).

County staff, in coordination with the City, will continue to conduct its due diligence throughout the proposed exclusive negotiation period.

While the ENA generally provides for City/County negotiations exclusively with New City Development, the draft agreement expressly reserves the right for the City and County to continue to entertain proposals from and otherwise negotiate with the sports teams, leagues and their representatives, and each other, irrespective of negotiations with New City Development.

### **Coliseum City**

The City of Oakland's Coliseum City Specific Plan seeks to transform the area including and surrounding the Oakland-Alameda County Coliseum Complex into an excellent sports, entertainment and science and technology district that promotes retail, entertainment, arts, culture and live-work uses. The area has many important development assets, including direct freeway access, immediate Coliseum BART and Amtrak access, Oakland Airport Connector and Oakland International Airport access and waterfront views.

As a regional mixed-use entertainment area, the Coliseum City Specific Plan seeks to be an economic catalyst for the City and the County, beyond the current sports franchises and could generate high-quality/high-paying jobs in growth industries, such as biotechnology, life sciences, research and development, multimedia, green tech and other growth sectors. This mixed-use development has the potential to increase property values and taxes, as well as provide retail and restaurant venues.

Exclusive Negotiating Agreement

The ENA includes a mutually agreed upon list of deliverables and timelines for submittal by Developer and review by County and City. The agreement does allow for possible termination and extensions if needed. Entering this ENA would not create any financial obligation for the County of Alameda. The ENA will provide the parties a period to negotiate community benefits in a number of areas. The preliminary list of community benefits topics includes the following:

- Project labor agreements;
- Local employment and apprenticeship policies;
- Local business and small business contracting policies;
- Environmental mitigation measures;
- Open space elements;
- Sustainable development;
- Improvements to and utilization of the current transportation hub and other transportation facilities;
- Affordable housing development;
- Potential impact fees (housing, transportation, capital improvements); and
- Other community benefits as needed and feasible, to be negotiated.

The outcome of the negotiations over community benefits will be reflected in any Lease and/or Disposition and Development Agreement entered into between the parties.

**FINANCING**

Entering this ENA would not create any financial obligation for the County of Alameda.

Respectfully Submitted,



Susan S. Muranishi  
County Administrator

SSM:DB:nr

cc: Interim City Manager, City of Oakland  
County Counsel  
Auditor-Controller

**COLISEUM COMPLEX  
EXCLUSIVE NEGOTIATING AGREEMENT**

**AMONG**

**THE COUNTY OF ALAMEDA,**

**THE CITY OF OAKLAND**

**AND**

**NEW CITY DEVELOPMENT, LLC**

This Coliseum Complex Exclusive Negotiating Agreement (the "Agreement") is made and entered into as of this 24th day of March, 2015 (the "Effective Date"), by and among the County of Alameda, a political subdivision of the State of California (the "County"), the City of Oakland, a municipal corporation (the "City"), and New City Development LLC, a Delaware limited liability company ("New City"), pursuant to a Board of Supervisors action on March 24, 2015, and a City Council resolution adopted on March 20, 2015.

**RECITALS**

A. The County and the City jointly own the property shown on the site plan attached as **Exhibit A** as "City & County," and commonly known as the Oakland-Alameda County Coliseum (the "Coliseum Complex"), on which are located the O.Co Coliseum, for which the Oakland Athletics and the Oakland Raiders have license agreements, and the Oracle Arena, for which the Golden State Warriors has a license agreement. The City also owns parcels of land adjacent to the Coliseum Complex (the "City Property"), shown on the site plan attached as **Exhibit A** as "City of Oakland."

B. The City and the County desire to maintain the Oakland Athletics, the Oakland Raiders and the Golden State Warriors as local professional sports teams. To achieve this objective, the City and the County need to examine, among other things, the economic viability of utilizing the Coliseum Complex and the City Property for a new Oakland Raiders stadium and a new Oakland Athletics ballpark, along with related parking facilities, as well as other commercial and residential development (together, the "Project"). The City has caused the preparation of a Coliseum Area Specific Plan (the "Specific Plan") which, with its associated Planning Code and General Plan amendments, will govern land uses and new development in an area that includes the Coliseum Complex, the City Property, and other properties on both sides of the 880 Freeway. The Specific Plan was analyzed in an Environmental Impact Report ("EIR") that considers the environmental impacts and mitigation measures associated with the various development scenarios described in the Specific Plan. The City Council is reviewing the Specific Plan and the EIR at public hearings scheduled for March and April, with an anticipated adoption date by April 30, 2015.

C. New City has been negotiating with the City regarding the development of a project consistent with the Specific Plan on portions of Sub-Area A as described in the Specific

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Plan which will achieve the City goals (the "Project"). New City has also been engaged in negotiating a financial structure with the Oakland Raiders to develop a new Raiders stadium, identifying conditions to maintain the Oakland Athletics in the vicinity of the Coliseum Complex, and developing a debt reduction or payment plan for the existing bond debt and other financial obligations of the City and County related to the Coliseum Complex (the "Coliseum Debt"). The County wishes to enter into negotiations with New City and the City to define the potential use of and price and terms for any disposition of the jointly owned City and County land for a new stadium and/or ballpark and related development on the jointly owned City and County property.

**D.** The County, the City and New City (collectively the "Parties") desire to enter into a period of study and negotiations to negotiate one or more Lease Disposition and Development Agreements or Disposition and Development Agreements ("L/DDA") for the purpose of developing the Project; to negotiate with the Oakland Raiders and the Oakland Athletics for development of new facilities for each team; to arrange such private and or public financing as may be required for the approved development including but not limited to the infrastructure and construction of the sports facilities; and to establish a mutually acceptable process or economic program to retire the existing Coliseum Debt. The basic conceptual elements of the Project are described in **Exhibit B** (the "Project Description"), with the understanding that no commitment has been made by the City, the County, or New City to the Project as set forth therein.

**NOW THEREFORE**, the County, the City and New City agree as follows:

**1. NEGOTIATIONS.**

**1.1 Length of Negotiation Period.** The negotiations regarding these transactions have already commenced between the City and New City. The Parties wish to approve including the County in the negotiations, and to establish the conditions to continue these negotiations. Subject to the exclusivity provisions in Section 1.3 below, the Parties agree to enter into exclusive negotiations for a period of six (6) months commencing on the Effective Date (the "Negotiation Period"); provided however, that the negotiations may be terminated earlier pursuant to the termination provision of this Agreement. The City Administrator and the County Administrator (after consultation with the Board of Supervisors) in their mutual sole and absolute discretion may extend the Negotiation Period in writing for an additional six (6) month period (the "Extended Negotiation Period"), provided that the Parties have made acceptable progress and have, among other requirements as more particularly described below, provided evidence during the Negotiation Period that the Project is economically feasible within mutually agreed upon timeframes and terms. In the event the County Administrator and/or the City Administrator elect not to extend the Negotiating Period, this Agreement shall automatically terminate. Unless otherwise stated in this Agreement, the term "Negotiation Period" shall include the Extended Negotiation Period if an extension is granted.

**1.2 Good Faith Negotiations.** The Parties shall negotiate diligently and in good faith during the Negotiation Period toward an L/DDA and/or similar instruments as to the disposition of the Coliseum Complex and the City Property while New City submits certain information to the City and the County and while the Parties continue planning and analysis of

the Project. The County's obligation under this paragraph shall be limited to negotiating in good faith regarding the disposition of the jointly owned City-County property.

(a) The Parties agree that they will use their best efforts to meet no less often than every two (2) weeks, with authorized negotiators or their delegates from each of the Parties participating in these negotiations.

(b) The Parties contemplate that the L/DDA will set forth the terms and conditions for the possible conveyance of portions of the Coliseum Complex and the City Property to New City or its approved assignees, which may occur in phases, the development of the Project, and subsequent uses of the conveyed property for the uses described in the Project Description attached hereto, as the Project Description may be modified by mutual agreement of the Parties.

(c) If the terms of a L/DDA or similar instrument have not been successfully negotiated by the Parties prior to the expiration of the Negotiation Period, as it may have been extended pursuant to this Agreement or otherwise by mutual agreement of the Parties, then this Agreement shall terminate automatically and no Party shall have any further rights or obligations with respect to the other Parties regarding the subject of this Agreement, except for the indemnification obligations of the Parties contained in this Agreement.

**1.3 Exclusive Negotiations.** Subject to the other provisions of this Section 1.3, neither the City nor the County shall negotiate regarding development of the Project, including the Coliseum Complex and the City Property, with any other person or entity during the Negotiation Period, as it may be extended, other than as provided for below, except for those persons or entities with whom the City or the County already have written binding agreements regarding development of the Coliseum Complex and/or the City Property. Notwithstanding the limitations set forth above, the City and/or the County may negotiate directly with the Oakland Athletics organization, the Oakland Raiders organization, and/or the Golden State Warriors organization, as well as their respective representatives, business partners, consultants and affiliated leagues, regarding development of all or any portion of the Coliseum Complex and/or the City Property. Also, the exclusive negotiations shall in no way prohibit the City or the County from communicating directly with the Oakland Athletics, Oakland Raiders, or Golden State Warriors regarding their respective licenses and their respective positions regarding the Project. Nothing in this Agreement precludes the City and County from negotiating with each other.

**2. OBLIGATIONS OF NEW CITY.** New City, at its own cost and expense and with the cooperation of the City and County, shall perform the following activities, including engaging the professional firms necessary to carry out such activities. New City shall make available to the City and County all work product as it is produced. New City shall make two formal submittals as described below for the City's and County's review and approval during the Negotiation Period and within the timeframes set forth below:

**2.1 Initial Submittal.** By June 21, 2015, New City shall prepare and submit, at its own cost and expense:



- (a) An initial financing plan, for consideration of feasibility by the City, County, and New City, for development of a sports facility for the Oakland Raiders, with Ancillary Development (as defined below), and including costs for land and infrastructure to support a potential sports facility for the Oakland Athletics. This submittal shall include projected sources and types of funding as well as an estimated equity commitment from New City, its partners and affiliates.
- (b) Proposed terms and conditions required to obtain a commitment from one or more of the Oakland Raiders, the Oakland Athletics, and/or the Golden State Warriors to the Project with an update on status of negotiations between New City and each team regarding its commitment to participate in the Project;
- (c) Initial site plans for the development of the new Oakland Raiders stadium and/or Oakland Athletics baseball park, which shall include retention of the existing Oracle Arena;
- (d) Proposed product-specific financial and market feasibility analyses for the various elements of the development other than sports facilities as set forth in the Project Description (the "Ancillary Development") to be included in the L/DDA;
- (e) Proposed development schedules for the sports facilities and the Ancillary Development, including the timing of entitlements for all phases of the Project;
- (f) An estimate of the cost of the infrastructure for the Project and a funding plan for that infrastructure, including a list of potential regional, state and federal grant sources;
- (g) Proposals for establishing tax financing districts for financing Project infrastructure;
- (h) A preliminary plan for subdivision of parcels as necessary for the Project;
- (i) Proposals for addressing the existing Coliseum Debt;
- (j) Proposals for the timing and method of the disposition of land for the various elements of the Project;
- (k) An outline contracting plan for the Project; and
- (l) An outline community benefits plan for the Project, that shall address at a minimum the topics listed in **Exhibit C**.

**2.2 Second Submittal.** By August 21, 2015, New City shall prepare and submit a Development Plan, at its own cost and expense, addressing, at a minimum, the following:

- (a) A detailed description of the plan for Project development;
- (b) Final terms and conditions required to obtain a commitment from one or both of the Oakland Raiders and/or the Oakland Athletics to the Project and a projected schedule for obtaining a commitment;
- (c) A refined financing plan for the development of the new Oakland Raiders stadium and/or Oakland Athletics baseball park, including identification of all sources of financing and equity;
- (d) A refined description of the financing structure for the Ancillary Development and the proposed developers for each element of the Ancillary Development;
- (e) A refined development schedule for the sports facilities and the Ancillary Development, including the timing of entitlements for all phases of the Project;
- (f) A refined estimate of the cost of the infrastructure for the Project and a funding plan for that infrastructure;
- (g) A refined proposal for establishing tax financing districts for financing Project infrastructure;
- (h) A refined plan for subdivision of parcels as necessary for the Project;
- (i) A refined proposal for addressing the existing Coliseum Debt;
- (j) Refined proposed terms for the L/DDA land disposition and financing of the various elements of the Project;
- (k) A refined contracting plan; and
- (l) A refined community benefits plan for the Project.

**2.3 Environmental Review.** By June 2, 2015, New City shall retain an environmental consultant to prepare all necessary environmental documentation required to conduct environmental review of the Project under the California Environmental Quality Act ("CEQA"). Except as otherwise specifically provided for below, all environmental documents shall be prepared within the time periods required by CEQA. New City's environmental consultant shall compare the proposed Project with the development program assumed under the Coliseum Area Specific Plan.

By June 21, 2015, New City's environmental consultant shall develop a Project description suitable for environmental review purposes and shall submit such to the City and the County for their respective review and approval. The consultant shall review the Coliseum Specific Plan EIR to determine (1) if it is adequate for CEQA clearance of the proposed Project, (2) if any additional work may be required, and (3) if there is anything unique about the Project and/or its location that would warrant further environmental review. By July 21, 2015, the



consultant shall submit a preliminary written determination on the adequacy of the Specific Plan EIR for the Project, and shall thereafter meet with the planning departments of the City and the County to discuss the proposed CEQA approach.

By July 21, 2015, the environmental consultant shall, based on the specific CEQA approach for the Project, prepare and submit a draft scope of work and schedule, based upon the City's "Guidelines for Environmental Consultant Contracts Concerning Private Development Projects" (dated 1/5/2012, as amended), for City and County review and approval. The City and the County shall make best efforts to coordinate their review and approval of CEQA submissions in order to maintain the schedule proposed herein. The scope of work shall analyze the specific environmental topics and type of CEQA documents that are required to complete CEQA clearance – Initial Study, Exemption, Addendum and/or Supplemental/Subsequent EIR.

If a Supplemental/Subsequent EIR is required, then New City's environmental consultant shall cause the issuance of a Notice of Preparation, subject to City and County review and approval, by August 21, 2015. If an Addendum and/or other non-EIR CEQA document is required, then New City's environmental consultant shall submit to the City and the County an administrative draft of the CEQA document by August 21, 2015. By the end of the Negotiation Period, the Parties shall ensure that the required CEQA assessment has been completed, including the identification of the nature and extent of any required environmental site mitigations.

In order to comply with CEQA and give the public the opportunity to be aware of the environmental consequences of the Project, the City and the County each retain the absolute discretion to (i) approve or not approve the transaction and the Project as may be necessary to comply with CEQA; (ii) determine that other feasible alternatives are possible to avoid significant environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with approval of the Project.

**3. APPROVAL OF SUBMISSIONS.** Within twenty (20) business days after the City and/or the County respectively receives any information or documents required to be submitted by Sections 2.1 and 2.2 of this Agreement, the City and the County shall inform New City in writing of its acceptance or rejection of the submission. The City and the County shall use their best efforts to coordinate their review and responses to all submissions made by New City regarding the Coliseum Complex. The County's review of the submissions shall be limited to those portions of the submission that apply to the Coliseum Complex and its review of submissions related to the remainder of the Project shall be limited to aspects that impact the Coliseum Complex. The City or the County may approve those portions of a submission that are satisfactory and reject those portions that are not, or may approve all or a portion of a submission subject to conditions requiring further submissions for review and approval. If the City and/or the County rejects all or any part of a submission, the rejecting party shall provide to New City written notice of the reasons for such rejection. New City shall then have fifteen (15) business days to correct or supplement its submission to respond to the written rejection. The City and the County shall each consider in good faith approving New City's reasonable request for an extension of the fifteen (15) day response period for a submission based on factors not within New City's control, provided, however, that any extension shall not otherwise extend the

Negotiation Period. Approvals or disapprovals on behalf of the City shall be granted by the City Administrator or a designated staff member and approvals or disapprovals of the County shall be granted by the County Administrator (after consultation with the Board of Supervisors) or a designated staff member.

#### **4. OBLIGATIONS OF CITY AND COUNTY.**

**4.1 City Obligations.** The City, with the cooperation of the other Parties, shall:

- (a) Provide public documents related to the Project as needed and requested by other Parties;
- (b) Designate negotiators and attend regular negotiating meetings with designated negotiators for New City, the County, and others;
- (c) Use good faith efforts to cause the Oakland-Alameda County Coliseum Authority (the "JPA") to cooperate in providing information and carrying out other actions reasonably necessary to fulfill the purposes of this Agreement;
- (d) Cooperate in obtaining information and analysis necessary to accomplish the purposes of this Agreement;
- (e) Cooperate with New City in reviewing and developing the plan for infrastructure and infrastructure financing for the Project;
- (f) Notify New City of any potential material changes in license agreements with the Oakland Athletics and/or the Oakland Raiders;
- (g) Timely prepare and submit applications for state, regional and/or federal funds for the Project where the City is the appropriate sponsor; and
- (h) Timely schedule any public hearings and/or legislative actions required to fulfill the purposes of this Agreement.

**4.2 County Obligations.** The County, with the cooperation of the other Parties, shall:

- (a) Provide public documents related to the Project as needed and requested by other Parties;
- (b) Designate negotiators and attend regular negotiating meetings with designated negotiators for New City, the City, and others;
- (c) Use good faith efforts to cause the JPA to cooperate in providing information and carrying out other actions reasonably necessary to fulfill the purposes of this Agreement;

- (d) Cooperate in obtaining information and analysis necessary to accomplish the purposes of this Agreement;
- (e) Cooperate with New City in reviewing and developing the plan for infrastructure and infrastructure financing for the Project;
- (f) Notify New City of any potential material changes in license agreements with the Oakland Athletics and/or the Oakland Raiders; and
- (g) Timely prepare and submit applications for state, regional and/or federal funds for the Project where the County is the appropriate sponsor and the County, in its sole discretion, determines that it will apply.

**5. RIGHT OF ENTRY.** The City and the County hereby grant New City and its agents, contractors and representatives their permission to enter upon the Coliseum Complex upon at least three (3) business days of advanced notice to JPA staff and AEG prior to entering the Coliseum Complex to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments. New City shall coordinate its entry of the Coliseum Complex with JPA staff and AEG in order to avoid interference with events occurring at the Coliseum Complex. The City grants New City and its agents, contractors and representatives the right to enter upon City Property at any time during the Negotiation Period upon at least three (3) business days of advanced notice to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments. The City and the County agree to use reasonable diligence to cause the JPA and AEG (the operator of the Coliseum Complex) to grant such right of entry. New City shall not alter the Coliseum Complex and City Property except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and New City agrees upon completion of any testing or other activity under this Agreement to remove all debris, litter, equipment, and other materials placed on the Coliseum Complex and City Property by New City and its agents, and to restore the Coliseum Complex and City Property as much as reasonably possible to its original condition. New City shall give, and shall take steps to minimize any disruption to the operations of the existing lessees or lawful occupants.

New City shall indemnify, and hold the City, the County and the JPA (collectively the "Public Agencies") and their respective officers, employees and agents, harmless from any and all claims, demands, damages, losses, actions, liabilities, causes of action or judgments, including reasonable attorney's fees, which they may incur or be required to pay by reason of entry onto the Coliseum Complex and/or City Property and activities thereon by New City or New City's agents, employees, contractors or consultants, including, without limitation, any damages, injury or death to any person or property suffered by any person, firm or corporation, except to the extent the same are attributable to the negligence or willful misconduct of the agency or any person or entity acting on respectively the Public Agencies' behalf or under the Public Agencies' authority. Notwithstanding any other provision of this Agreement, New City shall have no liability to the Public Agency or any other party by reason of, nor shall New City have any duty to indemnify, defend or hold any person harmless from or against, any claim, demand, damage, loss, action, liability, cause of action or judgment,

including without limitation, any claim for diminution in value of the Coliseum Complex and City Property or for environment remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported any adverse physical condition, title condition or other condition or defect with respect to the Coliseum Complex and City Property. For the duration of this Agreement, New City shall cause the Public Agencies to be named as additional insureds on applicable commercial general liability insurance policies with coverage of at least One Million Dollars (\$1,000,000) and shall cause certificates or such insurance to be delivered to the City, the County, and the JPA, prior to any entry of the Coliseum Complex or the City Property.

New City shall not, without the prior written consent of the City and County, or unless otherwise required by applicable law, publish or otherwise disclose the results of any tests resulting from the entry of the Coliseum Complex or the City Property ("Confidential Information") to any person, other than the City and County and New City's partners and lenders. New City shall disclose test results if required by any judicial or governmental request, requirement or order; provided that New City will take all necessary steps to give the City and the County sufficient prior notice of any such request to allow the City and County to contest that request, requirement or order. The provisions of this Agreement pertaining to the Confidential Information are intended to and shall survive the expiration or earlier termination of this Agreement.

Notwithstanding any other provision in this Agreement, this right of entry shall not relieve New City from the necessity of obtaining any applicable governmental approvals or permits that may be necessary to perform such tests or conduct other activities on the Coliseum Complex or City Property.

**6. EFFECT OF NEGOTIATIONS.** New City understands and acknowledges that any L/DDA resulting from the negotiations arising from this Agreement shall become effective only if and after such L/DDA has been considered and approved by the City Council and the Board of Supervisors in their respective sole and absolute discretion at public hearings called for that purpose and only if and after such L/DDA has been executed by the City Administrator and the County Administrator. New City understands that the City Council and the Board of Supervisors retain the sole and absolute discretion to approve or not approve the Project or any alternative project proposed by New City. If the terms of a mutually satisfactory L/DDA have not been negotiated by New City and City and County staff during the Negotiation Period, or if the City Council or the County Board of Supervisors declines to authorize a L/DDA for any reason, then, without further action, this Agreement shall automatically terminate as of the end of the Negotiation Period and no Party shall have further rights or obligations with respect to the others, except for the indemnification obligations of the Parties contained herein, which shall survive the termination of this Agreement.

## **7. TERMINATION AND EXTENSIONS.**

**7.1 Time of the Essence.** Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement.

**7.2 New City Default.** Any of the following shall constitute a breach and default by New City under this Agreement: (a) New City's failure to obtain and maintain the insurance coverage required under this Agreement; (b) New City's failure to make any required submission or otherwise meet any of the performance milestones set forth in this Agreement; (c) any substantial, continuous, or repeated breach by New City of any material obligations of New City imposed by this Agreement; (d) a determination by either the City or County in its respective reasonable judgment that any certificates, documents, or schedules supplied to the City and County by New City were untrue in any material respect when made, or that New City concealed or failed to disclose a material fact from the City; or (e) New City or any of its members (i) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party under bankruptcy or similar laws before the earlier of final relief or sixty (60) days after filing; (ii) making a general assignment for the benefit of creditors; (iii) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (iv) insolvency; or (v) failure, inability or admission in writing of its inability to pay its debts as they become due. To the extent any default by New City is primarily caused by the failure of the City or County to perform its obligation under this Agreement, then New City shall be excused from such default until such failure has been cured and New City has a reasonable time after such cure to remedy the default.

**7.3 Notice to New City of Default.** In the event of a New City breach or default, the City or County shall promptly give New City written notice of such breach or default. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the breach or default, and the action required to cure the default. New City shall have a period of twenty (20) business days from receipt of such written notice from the City or County to New City within which to cure such default.

**7.4 Remedies Upon New City Default.** If New City fails to cure any material default during the cure period described above, this Agreement may be terminated upon written notice of termination from the City or the County, and thereafter no Party shall have any further rights or obligations hereunder, except for the indemnification obligations of the Parties contained herein, which shall survive termination. Notwithstanding the above, the City and County will have the right to receive assignment of the development rights and work product associated with the Project as provided for in this Agreement in the event of such termination.

**7.5 City or County Default.** Any substantial, continuous, or repeated breach by the City or County of any material obligations of the City or County imposed by this Agreement shall constitute a breach and default by the City or County under this Agreement.

**7.6 Notice to City and County of Default.** In the event of a City or County breach or default, New City shall promptly give the City and County written notice of such breach or default. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the breach or default, and the action required to cure the default. The City or County shall have a period of twenty (20) business days from receipt of such written notice from New City to the City within which to cure such default.



**7.7 Remedies Upon City or County Default.** If the City or County fails to cure any material default during the cure period described above, this Agreement may be terminated upon written notice of termination from New City, and thereafter no Party shall have any further rights or obligations hereunder, except for the indemnification obligations of the Parties contained herein, which shall survive termination.

**7.8 City and County Discretion to Extend Time for Performance.** Notwithstanding the above, if the City and County each determine that it is in their best interest they may extend the time for New City's performance of any of the terms and conditions of this Agreement. Any such extension beyond the Negotiation Period must be in writing and shall be granted in the City's and County's sole and absolute discretion, and in no event shall this provision be construed as conveying any right or entitlement to an extension.

**7.9 Early Termination.** Should the initial financial feasibility plan submitted pursuant to Section 2.1 demonstrate that the Project is not financially feasible, the City, the County, or New City may terminate this Agreement with no liability to any Party, and thereafter no Party shall have any further rights or obligations hereunder, except for the indemnification obligations of the Parties contained herein, which shall survive the termination of this Agreement.

**8. INDEMNIFICATION.** Each of the Parties hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, save and hold harmless the other Parties and their respective officers, officials, and employees of the indemnified Party from all claims, demands, liabilities, actions or causes of actions, including without limitation, reasonable attorney's fees and litigation costs, arising out of or resulting from the negligence or willful misconduct of the indemnifying Party with respect to this Agreement.

**9. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No member, official, officer, director, employee, or agent of the City of Oakland or County of Alameda shall be personally liable to New City for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

**10. LIMITATIONS.** This Agreement does not obligate the City or County to transfer properties to New City or any other person, nor does it obligate the City or County to approve the Project or any other project. New City acknowledges and agrees that no City or County commitment to move forward with the Project may be made other than by an ordinance of the City Council or action of the Board of Supervisors, respectively, after a public hearing, after compliance with the California Environmental Quality Act and other applicable laws, and understands that adoption of any such ordinance and action will be at the City's and County's sole and absolute discretion. Any costs incurred by New City, New City's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate the L/DDA shall be the sole responsibility of New City, and in no event shall the City or County have any responsibility to pay for or reimburse New City for any of said costs.

New City understands and acknowledges that the City is subject to the Oakland Sunshine Ordinance and that the City and County are subject to the California Public Records



Act, and therefore recognizes that the City and County shall make information regarding the Property, the Project, New City, and this Agreement available to the public upon request as required by said laws, except to the extent such records are exempt from such disclosure under that Ordinance and Act. The City and County agree that they will provide notice to New City of any such request for public records that could reasonably be argued are exempt from disclosure at least five business days before releasing such information.

**11. CAMPAIGN CONTRIBUTION RESTRICTIONS.** New City and its component members are aware of and shall abide by the prohibition on campaign contributions from contractors doing business with the City between commencement of contract negotiations and either (a) one-hundred eighty (180) days from completion of contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. New City acknowledges that it has executed and submitted to the City a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

**12. POLITICAL ACTIVITY.** None of the funds, materials, property, or services contributed by New City under this Agreement may be used for any political activity or the election or defeat of any candidate for public office.

**13. CONFLICTS OF INTEREST.** New City warrants and represents, to the best of its present knowledge, that no public official of the City or County who has been involved in the making of this Agreement, or who is a member of a City or County board or commission which has been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in the Project in violation of the rules contained in California Government Code Section 1090, et seq., pertaining to conflicts of interest in public contracting. New City shall exercise due diligence to ensure that no such official will receive such an interest. New City further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by such New City to the City, that (a) no public official of the City or County who has participated in decision making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in New City, any of New City's component members, or the Project; and (b) the Project will have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. New City agrees to promptly disclose to the City and County in writing any information it may receive concerning any such potential conflict of interest. New City's attention is directed to the conflict of interest rules applicable to governmental decision making contained in the Political Reform Act (California Government Code Section 87100, et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700, et seq.).

**14. NEW CITY'S REPRESENTATIONS AND WARRANTIES.** New City represents and warrants: (a) that it has access to professional advice and support to the extent necessary to enable New City to fully comply with the terms of this Agreement and pursue the Project; (b) that it is duly organized and validly existing in the state where it is formed and is in good standing under the laws of the State of California; (c) that it has the full power and authority to enter into this Agreement; (d) that there are no pending of threatened actions or proceedings before any court or administrative agency which may substantially affect the financial condition or operation of New City or its members, and (e) that the persons executing and delivering this Agreement are authorized to execute and deliver such documents on behalf of New City and its component members. New City will promptly give notice in writing to the City and County of any litigation pending or threatened against New City or any of its members in which the amount claimed is in excess of Fifty Thousand Dollars (\$50,000).

**15. OTHER AGREEMENTS.** Each Party represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement. Each Party agrees that it will not enter into any agreements that are inconsistent with the terms of this Agreement without an express written waiver by the other Parties.

**16. NON-DISCRIMINATION.** New City agrees that there shall be no discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, age, marital status, religion, disability, creed, national origin, ancestry, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-Related Conditions (ARCS) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project site, nor shall New City establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, buyers, lessees, subtenants, sublessees or vendees of the Project site.

**17. NO ASSIGNMENT.** This Agreement is personal to New City and is not assignable to any other person or entity without the prior written consent of the City and the County, which consent shall be in the sole discretion of the City and the County. Any attempt to assign this Agreement or any part of the Agreement without the prior written consent of the City and the County shall constitute a breach of this Agreement and shall be void and of no force and effect.

**18. RELATIONSHIP OF PARTIES.** The relationships of New City, the City and the County are solely that of negotiating parties, and should not be construed as a joint venture, equity venture, partnership, or any other relationship. Neither the City nor the County undertakes or assumes any responsibility or duty to New City (except as provided for herein) or to any third party with respect to the Project. Except as the City and/or County may specify in writing, New City has no authority to act as an agent of the City or the County or to bind the City or County to any obligation.

**19. WAIVER.** Any waiver by the City or the County of an obligation in this Agreement must be in writing and must be executed respectively by an authorized agent of the City or the County. No waiver should be implied from any delay or failure by the City or the County to take action on any breach or default of New City or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to New City to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City or the County to any act or omission by New City should not be construed to be consent to any other act or omission or to waive the requirement for the City's or the County's written consent to future waivers.

**20. NOTICES.** All notices under this Agreement shall be sufficiently given if delivered, faxed (but only if simultaneously served by another method herein specified), or mailed by registered or certified mail, postage prepaid, addressed to:

**CITY:** City of Oakland  
City Administrator's Office  
One Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612

City of Oakland  
Office of Neighborhood Investment  
250 Frank H. Ogawa Plaza, 5<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Larry Gallegos

Copy to:  
Oakland City Attorney's Office  
One Frank H. Ogawa Plaza, 6<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Daniel Rossi

**COUNTY:** County of Alameda  
County Administrator's Office  
1221 Oak Street, 5<sup>th</sup> Floor  
Oakland, CA 94612

Copy to:  
General Services Agency  
1401 Lakeside Drive  
Oakland, CA 94612

Copy to  
Office of the County Counsel  
1221 Oak Street, Room 450  
Oakland, CA 94612

**NEW CITY:** New City Development, LLC

c/o The Renaissance Companies  
16428 Via de la Valle  
Rancho Santa Fe, CA 92067

Copy to:  
Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94612

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the State of California or upon actual receipt by the addressee if earlier.

**21. GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of California, except for those provisions preempted by federal law.

**22. ATTORNEYS' FEES.** In the event that any Party commences litigation to enforce the terms of this Agreement, the prevailing party in such litigation shall be entitled to recover its costs and fees incurred in such action, including reasonable attorneys' fees.

**23. INTEGRATION.** This Agreement contains the entire agreement of the Parties with respect to the Project, and supersedes any prior negotiations. All prior or contemporaneous agreements, understandings, representations, and statements are merged into this Agreement and are of no further force or effect.

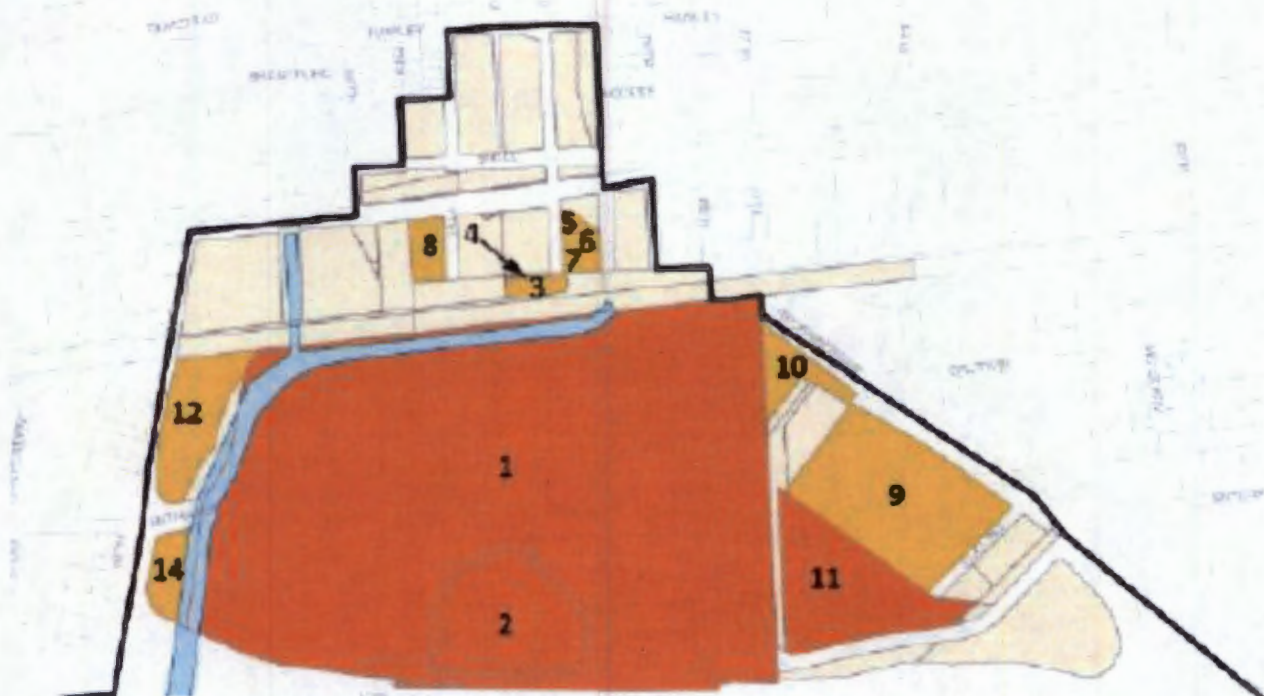
**24. COUNTERPARTS.** This Agreement may be signed in multiple counterparts which, when fully signed by all Parties, shall constitute a binding agreement.

[SIGNATURES ON NEXT PAGE]

## EXHIBIT A

### SITE PLAN

■ City & County    ■ City of Oakland



## **EXHIBIT B**

### **PROJECT DESCRIPTION**

A transit-oriented development on the site described in Exhibit A potentially consisting of the following:

- A sports facility for the Oakland Raiders
- A sports facility for the Oakland Athletics
- One or more full service hotels
- Residential units, the number to be determined during the ENA negotiations
- Commercial uses including
  - Retail spaces of 200,000 to 400,000 square feet
  - Office uses of 400,000 to 1.2 million square feet
- Parking facilities, including surface and structured parking
- Infrastructure to support the proposed uses
- Connections to BART



## **EXHIBIT C**

### **COMMUNITY BENEFITS**

The following is a list of categories that will guide the negotiations regarding community benefits during the ENA period

This is a preliminary list that will be subject to negotiations between the parties with input from organized labor, community organizations, housing organizations, environmental organizations, and other stakeholders during the course of the ENA negotiations. The outcome of those negotiations between the parties to the ENA will be reflected in any Lease and/or Disposition and Development Agreement approved by the County Board of Supervisors and the City Council.

- Project labor agreements and labor peace
- Local employment, workforce training, retention of existing workers, and apprenticeship policies
- Local business and small business contracting policies
- Environmental mitigation measures
- Open space elements
- Sustainable development
- Improvements to and utilization of the current transportation hub and other transportation facilities, including transit affordability and accessibility
- Affordable housing development
- Potential impact fees (housing, transportation, capital improvements)
- Other community benefits as needed and feasible, to be negotiated

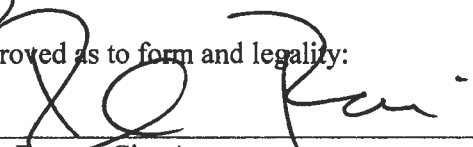
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

**"CITY"**

**CITY OF OAKLAND, a municipal corporation**

By:   
City Administrator

Approved as to form and legality:

By:   
Deputy City Attorney

**"COUNTY"**

**COUNTY OF ALAMEDA, a political subdivision of the State of California**

By: \_\_\_\_\_  
County Administrator

Approved as to form:

By: \_\_\_\_\_  
County Counsel

**"NEW CITY"**

**NEW CITY DEVELOPMENT, LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Floyd Kephart  
Its: Manager

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**"CITY"**

**CITY OF OAKLAND, a municipal corporation**

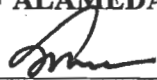
By: \_\_\_\_\_  
City Administrator

Approved as to form and legality:

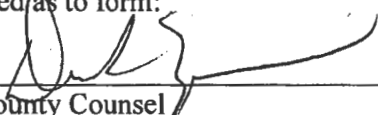
By: \_\_\_\_\_  
Deputy City Attorney

**"COUNTY"**

**COUNTY OF ALAMEDA, a political subdivision of the State of California**

By:  \_\_\_\_\_  
County Administrator

Approved as to form:

By:  \_\_\_\_\_  
County Counsel

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By: \_\_\_\_\_  
Floyd Kephart  
Its: Manager

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City Administrator

Approved as to form and legality:

By: \_\_\_\_\_  
Deputy City Attorney

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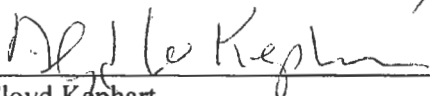
By: \_\_\_\_\_  
County Administrator

Approved as to form:

By: \_\_\_\_\_  
County Counsel

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Its: Manager