

CITY CLERK ORIGINAL

C-8412
03/26/2013

GLENDALE REPRESENTATION AGREEMENT

This Glendale Representation Agreement ("Agreement") is made and entered into as of the 4th day of March, 2013 by and between Beacon Sports Capital Partners, LLC ("Beacon Sports"), 1233 Highland Avenue, Suite B, Needham, MA 02492 and the City of Glendale, AZ ("Glendale") 5850 W. Glendale, 4th Floor, Suite 431, Glendale, AZ 85301

WITNESSETH:

This Agreement is made with reference to the following facts:

A. Beacon Sports is engaged in the business of providing investment banking and financial advisory services to professional sports franchises and companies in the United States;

B. Glendale currently owns the Jobing.com Arena ("Arena") located in Glendale, AZ and has an existing management and lease agreement with the Phoenix Coyotes Hockey Club of the National Hockey League ("NHL"). Glendale is seeking to develop a Request for Proposal ("RFP") process for the future lease and management of the Arena to prospective Venue Managers ("Venue Managers") in order to improve the economic and business outcome of Glendale's ownership of the Arena (hereinafter defined as the "Assignment");

C. Glendale desires to retain Beacon Sports as its financial advisor and exclusive representative for the Assignment, and perform such other advisory services as are mutually agreed upon between the two parties.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. **ENGAGEMENT.** Glendale hereby retains Beacon Sports as its Financial Advisor and exclusive representative for the Assignment.
2. **DUTIES OF BEACON SPORTS.** Beacon Sports shall act as a liaison and intermediary for Glendale. Beacon Sports agrees that it is not an agent of the Glendale and may not bind or obligate Glendale in any way. Both Beacon Sports and Glendale agree to keep each other informed as to the status of all contacts, discussions, and negotiations with any prospective Venue Managers. Beacon Sports will use its best efforts and endeavor to assist Glendale in obtaining and having present to it qualified offers on terms that are acceptable to Glendale, but makes no representation regarding the successful outcome of the RFP. Beacon Sports will perform the following on behalf of Glendale:
 - i. Review all existing business contracts related to the operations and the management of the Jobing.com Arena ("Arena") including, current management agreement with the National Hockey League ("NHL"), concessionaire agreement with Aramark, event booking agreement with AEG, and any others deemed significant;
 - ii. Assist the City in the preparation of a RFP for the management of the Arena to be available for review and response by qualified Venue Managers. The RFP would include objectives outlined by the City of Glendale regarding its vision and objectives with respect to the future utilization and operations of the Arena;
 - iii. On behalf of the Glendale, solicit inquires of interest and submit RFP to qualified Venue Managers including assisting interested parties in their due diligence and review process;
 - iv. Arrange and attend meetings with Venue Managers including tours of the Arena. Keep City Manager informed of all developments throughout the RFP process;
 - v. Review all bids and inquiries submitted by Venue Managers and make recommendations to the City Manager, Mayor, and City Council with regard to the benefits of each offer. Meet with City Council to discuss observations of the RFP process including comparing and contrasting the most advantageous offers submitted in terms of projected arena usage and financial/economic benefits to the City;

- vi. Assist City Council, City Manager and Mayor in the review and decision making process including providing a recommendation in terms of selecting a Venue Manager to negotiate on an exclusive basis,
 - vii. Assist in the development and negotiation of a new Arena Management Agreement;
 - viii. Assist in the closing and execution of an Arena Management Agreement between the City of Glendale and the Venue Manager selected by Glendale; and
 - ix. Any other services mutually agreed upon
3. **TERM.** The initial term of this Agreement ("Initial Term") shall commence on the date set forth above and terminate six (6) months thereafter. The entire time period that this Agreement is in effect, and any portion thereof, shall be referred to herein as the "Term".
4. **TERMINATION.** Glendale may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.
5. **COMPENSATION.** In consideration of the financial and other advisory services to be performed by Beacon Sports hereunder, Glendale agrees to pay Beacon Sports a rate of Four Hundred Dollars (\$400.00) per hour each for the services of Richard W. Billings, Jr, Gerald G. Sheehan, and Christopher C. Billings. Upon execution of this Agreement, Beacon Sports will receive a retainer of Twenty Five Thousand Dollars (\$25,000) to be applied towards its services to be performed under the Agreement at the hourly rate detailed above. Beacon Sports will submit detailed invoices including its services performed to Glendale on a bi-monthly basis.

Glendale also agrees to reimburse Beacon Sports for all its pre-approved out-of-pocket expenses relating to its services hereunder, including travel, living, lodging, etc. within thirty (30) days after receipt by Glendale of appropriate documentation detailing and supporting these expenses.

6. **CONFIDENTIALITY.** Subject to and except where any legal requirements are imposed on Beacon Sports compelling disclosure, except for disclosures to Prospects or their representatives, and except to the extent such information is generally available to the public at large other than as a result of disclosure by Beacon Sports, or received by Beacon Sports from a source not known by Beacon Sports to be bound by a duty of confidentiality with respect to such information, Beacon Sports shall consider all information received from Glendale pursuant to this Agreement as proprietary and confidential. Similarly, subject to and except where any legal requirements are imposed on Beacon Sports compelling disclosure, except for disclosures to Prospects or their representatives, and except to the extent such information is generally available to the public at large other than as a result of disclosure by Glendale or received by Glendale from a source not known by Glendale to be bound by a duty of confidentiality with respect to such information, Glendale shall consider all information received from or at the direction of Beacon Sports pursuant to this Agreement regarding Beacon Sports and/or Prospects as proprietary and confidential
7. **MUTUAL REPRESENTATIONS AND WARRANTIES.**

(i) Beacon Sports warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Beacon Sports will not violate any rights of, agreements with, or obligations to any third parties; (c) Beacon Sports will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Beacon Sports will not circumvent or otherwise frustrate the intent of this Agreement.

(ii) Glendale warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Glendale will not violate any rights of, agreements with or obligations to any third parties; (c)

Glendale will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Glendale will not circumvent or otherwise frustrate the intent of this Agreement.

8. **MUTUAL INDEMNIFICATION.** Beacon Sports and Glendale each agree the party at fault shall hold the other party harmless from and against and shall indemnify fully, if applicable, from any and all losses, claims, damages, liabilities, costs, expenses and fees, including, without limitation, reasonable attorneys' and paralegals' fees incurred in the context of any court, arbitration, administrative or other proceeding, together with the costs incurred in such proceeding (individually and collectively, "Costs") arising from or relating to breach of this Agreement by such indemnifying party.
9. **PUBLIC ANNOUNCEMENTS.** Notwithstanding anything contained in this Agreement to the contrary, subject to regulatory restrictions, Glendale shall have the right to publicly announce and/or advertise any agreement hereunder for which a closing has occurred. Glendale shall mention the role of Beacon Sports favorably in key public announcements it may make regarding any completed Assignment hereunder.
10. **GOVERNING LAW.** This Agreement and all matters related hereto shall be governed by the internal laws of the State of Arizona without reference to conflicts of laws principles or principles of comity.
11. **NOTICES.** Any notice from one party to the other sent and received within the United States, shall be sent (a) via first class certified mail, return receipt requested or (b) via nationally-recognized overnight courier capable of verifying delivery, marked for next business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt, (ii) the date such mail is refused (iii) the date such mail is returned or (iv) three (3) days following deposit with the U.S. Postal Service. Notices sent or received outside the United States shall be sent via internationally-recognized overnight courier capable of verifying delivery, marked for second business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt or (ii) two (2) business days following deposit with such courier. Herein, "business day" means a day on which such courier is open for business within the jurisdiction to which notice is delivered. Notices shall be in writing, addressed to the person to be noticed at the address below or to such other person and/or address as may be designated from time to time in writing by such party to be noticed, and all applicable courier or postage fees shall be prepaid by the noticing party.

If to Beacon Sports CapitalPartners. LLC:

1233 Highland Avenue, Suite B
Needham, MA 02492
Att: Gerald G. Sheehan
Phone: (781) 449-4996

If to Glendale:

5850 W. Glendale, 4th Floor
Glendale, Arizona 85301
Att: City Manager
Phone: (623) 764-4099

Copy to:

5850 W. Glendale, Ste. 450
Glendale, Arizona 85301
Att: City Attorney
Phone: (623) 930-9530

12. **SEVERABILITY.** The invalidity or illegality of any provision or term contained in or made a part of this Agreement shall not affect the validity of the remainder of this Agreement.

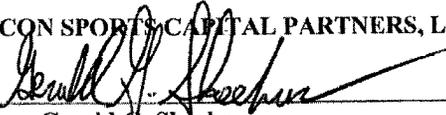
13. **ENTIRE AGREEMENT/CONSTRUCTION.** This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter hereof, and there are no representations or understandings between the parties except as provided herein. This Agreement may not be amended

or modified in any way except by writing duly executed by both parties. This Agreement may not be assigned by either party except upon prior written agreement by the other party. Furthermore, both parties have negotiated the terms of this Agreement and have had the opportunity to engage counsel to review the same. Accordingly, this Agreement shall not be construed more strongly in favor or against either party hereto. The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.

14. **WAIVER.** No waiver of a breach of or default under any provision of this Agreement shall be deemed a waiver of any other breach or default under the same or any other provision of this Agreement.
15. **FAX COUNTERPARTS.** The parties may enter this Agreement by signing any one or more counterparts, all of which shall constitute one and the same instrument. This Agreement shall become effective when one or more counterparts shall have been executed by each party and delivered to each other party. This Agreement may be delivered to such other parties via fax. Any party's faxed signature shall be deemed an original and binding signature as of the date set forth above.
16. **HEADINGS.** The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
17. **AUTHORITY.** The signatories to this Agreement are the duly authorized agents of the parties hereto, and the transactions effected hereby have been duly authorized by all appropriate action of each party.
18. **Foreign Prohibitions.** Beacon Sports certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.
19. **Immigration Law Compliance.** Beacon Sports warrants, to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program.

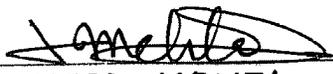
THE PARTIES HERETO have caused this Agreement to be executed as of the date indicated above.

BEACON SPORTS CAPITAL PARTNERS, LLC

BY: 

Gerald G. Sheehan
Managing Director

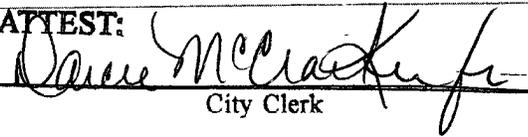
CITY OF GLENDALE, AZ

BY: 

JAMSHEED MEHTA
City Manager

for

ATTEST:


Dawn McCracken
City Clerk

Approved as to form:


Acting
City Attorney