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City of Laredo, Texas

Internal Audit Division



Special Assignment: Uni-Trade Operations /  
Lease Agreement Compliance Audit

April 7, 2017

## EXECUTIVE SUMMARY

On December 1, 2014, the City of Laredo City Council, as a whole, requested audits of the following areas: Engineering and Architecture Contracts (going back five (5) years), Cash Handling, Max Mandel Municipal Golf Course, Uni-Trade Stadium and Travel Expenses. Subsequently, the Internal Audit Division presented an amended audit plan on January 21, 2015, which included the additional priority audits, for approval by the City Council. The following report pertains to contract compliance with the agreement governing the Operations / Lease of Uni-Trade Stadium. Specifically, the objective of the Uni-Trade audit was to test for compliance with the requirements noted in the Operations / Lease Agreement between Laredo Baseball Holdings, Inc. (LBH) and the City of Laredo (City). A brief summary of the audit results and recommendations follows below. A more extensive discussion of the audit results and recommendations can be found in the ensuing report.

### **Non-Compliance with Operations / Lease Agreement Requirements**

1. No formal marketing plans were provided for review; only marketing budgets, which were not formally approved by the City.  
**Recommendation(s)**: That a comprehensive Marketing Plan be developed by LBH which encompasses the following elements: executive summary, goals, marketing strategies, implementation schedule and responsible parties, annual budget, performance measures for the plan and contingencies, and that said Marketing Plan be submitted immediately to the City for review and approval.
2. No Audited Consolidated Financial Statements were available for review; LBH provided Income Tax Returns, which do not meet the requirements noted in the agreement.  
**Recommendation(s)**: That a Certified Public Accountant (CPA) meeting the qualifications criteria outlined under Article XVIII of the Operations / Lease Agreement and deemed acceptable by the City be contracted to conduct a comprehensive financial audit for each fiscal year completed during the current Operations / Lease Agreement term.
3. Annual budgets provided were not formally approved by the City.  
**Recommendation(s)**: That LBH comply with the agreement requirements and immediately submit the upcoming annual budget to the City for review and formal approval.
4. Out of the forty-five (45) sponsorship contracts tested, six (6) contracts, which were valued at over \$25,000.00 each over the course of their respective contract terms, did not receive prior approval from the City prior to contract execution. Additionally, it appears that executed copies of contracts under \$25,000.00 were never provided to the City as per the terms of the Operations / Lease Agreement.  
**Recommendation(s)**: That the six (6) contracts over \$25,000.00 each be submitted immediately to the City for review and approval. Additionally, copies of executed contracts under \$25,000.00 must be submitted to the City immediately.

5. Of the thirty-six (36) promissory notes reviewed, one hundred percent (100%) of the population tested were not approved by the City as per the terms of the Operations / Lease Agreement.

**Recommendation(s)**: That all debt encumbered by LBH be submitted immediately to the City for review and possible formal approval.

6. From discussions with City staff, it appears that quarterly financial statements were not submitted to the City for review.

**Recommendation(s)**: LBH must notify City staff of the availability of quarterly financial statements as soon as they become available, and subsequently provide those financial statements to the City for review. These reports serve to not only inform City staff of the financial state of the baseball stadium, but also assist City stakeholders in making informed decisions regarding the operations and oversight of Uni-Trade Stadium.

7. LBH was non-compliant with many areas of the insurance coverage requirements outlined in Article XII of the Operations / Lease Agreement. Many instances were noted where the coverage limits were less than the requirements noted in the agreement. Additionally, there were instances where the City was not named as an additional insured in some policies, where waivers of subrogation in favor of the City were missing from some policies and where notices of cancellation did not reflect a sixty (60) day notice in favor of the City.

**Recommendation(s)**: All areas of non-compliance with insurance requirements must be addressed and corrected immediately. Compliance with insurance requirements is mandatory. Once corrections have been made, then insurance certificates for all coverage type requirements must be submitted to the City's Risk Management Division for review and verification.

We are recommending that the LBH meet with City staff responsible for contract management oversight of Uni-Trade Stadium on a regular basis to maintain an open dialogue regarding the reporting requirements of the Operations / Lease Agreement.

Additionally, we are recommending that a Contract Management Plan be developed and implemented by designated City staff as a monitoring tool that will assist City staff with continuous documentation and verification of LBH's performance. We would, also, recommend that either LBH Management and/or designated City staff provide regular updates to City Council on the performance of Uni-Trade Stadium.

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## BACKGROUND

The subsequent compliance audit consisted of a review of the Operations / Lease Agreement with the current operator, Laredo Baseball Holdings (LBH). For background purposes, we've provided the following brief timeline of history surrounding the City Council approved assignment of the aforementioned agreement to Laredo Baseball Holdings below.

- City Council took action on September 30, 2014 to “approve a Memorandum of Understanding between the City of Laredo and Laredo Baseball Investors, LLC, for the transition and transfer of ownership of the Laredo Lemurs; the membership in the American Association of Independent Professional Baseball; and, the assignment of the Operations and Lease Agreement and Development Agreement to Laredo Baseball Holdings, Inc., and authorizing the issuance of a Letter of Credit to the American Association of Independent Professional Baseball to facilitate the transfer and preserve the Lemur’s status with the American Association and any matters incident thereto.”
  
- Additionally, on October 6, 2014, City Council took action to ratify a Chapter 380 Agreement with Laredo Baseball Holdings, Inc., which provided economic incentives to LBH in order to promote the retention of jobs and business opportunities in the City of Laredo.

It should be noted that prior to Laredo Baseball Holdings being assigned as Operator of Uni-Trade Stadium, the City of Laredo entered into an Operations / Lease Agreement with Laredo Baseball Investors, LLC (along with Ventura Sports Group – Laredo, Inc., as Manager) on September 7, 2010 for the operations and lease of the proposed baseball stadium, as well as, the establishment of a professional baseball team. Laredo Baseball Investors (LBI) was the Operator for Uni-Trade Stadium until the transfer to Laredo Baseball Holdings in 2014. Subsequently, during our review, it was clarified for us by Laredo Baseball Holdings that Laredo Baseball Investors, LLC (LBI) became a subsidiary of Laredo Baseball Holdings.

What follows below is a timeline of notices to LBH and LBI, as well as, dates when requested documentation was received by Internal Audit for our review.

### Timeline of Notices and Document Submission

November 2, 2016: As per Article 18, Section 12 (Inspection of Books and Records) and Article 23, Subsection (b) (Notices) of the Operations / Lease Agreement, City of Laredo audit notification letters were hand-delivered by Internal Audit staff to LBH and LBI authorized representatives, Ms. Arianna Torres and Mr. Marcus Holliman, respectively. Neither representative was available at time of delivery, so notification letters were received by LBH staff. Receipt of notification letters by LBH staff on file at Internal Audit.

November 14, 2016: Deadline for ten (10) day advance notice to LBH of audit as per the requirements of Article 18, Section 12 (Inspection of Books and Records) in the Operations / Lease Agreement. We repeatedly attempted to make contact with LBH and LBI authorized representatives at Uni-Trade Stadium and alternate contact numbers regarding a

commencement date to begin our review; however, we were unsuccessful; messages were left for all pertinent parties. We notified the City Manager's Office of our attempts and failure to contact authorized personnel at LBH.

November 15, 2016: Received a call back from Mr. Holliman. The discussion included an explanation of the audit process, as well as, the urgency in providing the documentation requested as part of the audit notification letter so that we could commence our review. At the time, we were informed that LBH staff would not be able to meet with us immediately since they were preparing for a court hearing scheduled for November 21, 2016; however, Mr. Holliman assured us that he would have staff begin working on compiling the requested documentation. Subsequently, we advised City Manager's Office and the City Attorney of the status of the audit.

November 23, 2016: First meeting at Uni-Trade Stadium with Ms. Torres, Mr. Holliman and LBH staff. We had hope to receive some of the requested documentation since we had been assured back on November 15, 2016 that LBH staff would begin to compile documentation; however, Mr. Holliman wanted to discuss and obtain clarification on records requested by Internal Audit. At the time, we were assured, again, that LBH staff would begin compiling the requested documentation, and we, again, stressed the urgency in providing the requested documentation. Additionally, we informed LBH that the status of the audit would be reported to the City Manager's Office. Subsequently, we advised City Manager's Office and the City Attorney of the status of the audit at the time.

December 6, 2016: Second meeting at Uni-Trade Stadium with Ms. Torres, Mr. Holliman and LBH staff to receive requested documentation for audit. Most of the requested documentation was provided to us, with the exception of any documentation that fell under the "Contracts" item. Specifically, LBH staff requested additional clarification as to what types of contracts should be included. We informed LBH that we would review the agreement, again, and get back to them with further clarification.

December 13, 2016: Responded with further clarification to LBH staff regarding the "Contracts" item after another review of the Operations / Lease Agreement language. Specifically, language from Article 6, Section 6.7 (b) (City's Approval of Contracts) of the agreement was provided to LBH for reference. The following language encompasses the different forms of contracts encompassed under this section:

*"All contracts LBH shall enter into with regards to its operation, management or marketing of the Facility or the Lemurs, including but not limited to those imposing any obligation on LBH to repay a debt, as well as employment contracts, all contracts with third party vendors, sponsors, advertisers and all other parties, must be reviewed by the City, prior to execution. The City shall either approve or deny such contracts within ten (10) business days of receipt and its approval shall not be unreasonably withhold, delay or conditioned. Notwithstanding the forgoing, contracts with a value of \$25,000.00 or less shall not require prior City approval; provided executed copies of such contracts are provided to the City within 30 days of execution; and further provided that LBH does not make separate, sequential or component contracts or*

*purchases for the purpose of circumventing the requirement that contracts above \$25,000.00 be approved by the City.”*

We interpreted the agreement language to include any and all contracts that LBH has entered into, including revenue producing contracts, contracts for goods and services and any encumbrances of debt, just to name a few.

December 14, 2016: Received responses from LBH staff regarding the “Contracts” item. We were advised by Mr. Holliman that a listing of contracts in excess of \$25,000.00 was being compiled which would include any debt incurred by LBH and any employment contracts. Additionally, Ms. Torres informed us that all debt owed by LBH (notarized promissory notes) were in her custody and ready for submittal; however, the contracts items were not immediately provided to us by either party.

December 27, 2016: Received a notification from Mr. Holliman that a listing of contracts over \$25,000.00 was ready to be submitted; however, no listing was delivered at that time. Additionally, we were advised that any promissory notes encumbered by LBH were in the possession of Ms. Torres and would have to be obtained from her directly.

January 2, 2017: Received notification from Ms. Torres that promissory notes were ready to submit to us; however, they were in her possession and she was out of town at that time. She committed to sending us the documentation through an overnight courier service. At the time, we requested that tracking information be sent to us so that we could know when to expect the package; however, we received no documentation via courier service.

January 3, 2017: Met with Mr. Holliman and LBH staff where a listing of sponsorship contracts was provided. Previously, in setting the scope of our audit, we had established that we would be testing a sample of contracts provided; however, with the delays, we adjusted our scope and asked for all contracts provided which changed our sample size to 100% of the population.

January 5, 2017: We reached out to Ms. Torres for a status update on the promissory notes since we still had not received the package with the promissory notes, nor had a tracking number been provided to us as we requested.

January 6, 2017: Received notification from Ms. Torres that the package originally to be sent via overnight courier could not be guaranteed to get to us until January 11<sup>th</sup>, since it was coming from Mexico; however, a runner would be driving to Laredo to hand deliver the package to us.

January 9, 2017: Received promissory notes encumbered by LBH in 2015 and 2016 from Ms. Torres via runner.

## **AUDIT SCOPE AND METHODOLOGY**

The scope of this audit included a compliance review on a sample of contract requirements noted in the most recent Operations / Lease Agreement between the City of Laredo (City) and Laredo Baseball Holdings, Inc. (LBH). The time period reviewed for this audit covered years 2015 and 2016. Internal Audit obtained, reviewed and based our audit on the most recent Operations / Lease Agreement effective January 16, 2015. The following source documentation was formally requested of LBH (as per the Notification requirements outlined in the Agreement) on November 2, 2016 as part of our review for compliance with the Operations / Lease Agreement.

1. Annual Marketing Plans for Years 2015 and 2016 (as referenced in Article VI, Section 2 (d) and Article XVIII, Section 2.4 of the Operations / Lease Agreement).
2. Full Set of Audited Consolidated Financial Statements of Laredo Baseball Holdings and its Subsidiaries for Fiscal Year Ending 2015 (as referenced in Article XVIII, Section 2.1 of the Operations / Lease Agreement), to include the following:
  - Consolidated Balance Sheet;
  - Consolidated Statements of Income, Loss and Changes in Financial Position;
  - Officers' Certificate (as referenced in Article XVIII, Section 4 of the Operations / Lease Agreement);
  - Members' Capital and Cash Flow.
3. Annual Approved Budgets and any Corresponding Amendments for Years 2015 and 2016 (as referenced in Article VI, Section 7 (a) and Article XVIII, Section 2.2 of the Operations / Lease Agreement).
4. Listing of all contracts executed during the Year 2016 (as referenced in Article VI, Section 7 (b) and Article XVIII, Section 2.3 of the Operations / Lease Agreement; Article VI, Section 7 (b) is more specific in that it states the following: "*All contracts LBH shall enter into with regards to its operation, management or marketing of the Facility or the Lemurs, including but not limited to those imposing any obligation on LBH to repay a debt, as well as all employment contracts, all contracts with third party vendors, sponsors advertisers and all other parties, must be reviewed by the City, prior to execution.....*").
5. Quarterly Financial Statements for Year 2016 (as referenced in Article XVIII, Section 3 of the Operations / Lease Agreement).
6. Current Certificates for the Following Insurance Policies (as referenced in Article 12 of the Operations / Lease Agreement):
  - Liability Insurance (as referenced in Article XII, Section 1);
  - Business Automobile Insurance (as referenced in Article XII, Section 3);
  - Umbrella Liability (as referenced in Article XII, Section 4);
  - Business Interruption, Contingent Business Interruption Insurance and Extra Expense Coverage (as referenced in Article XII, Section 5);

- Builder's Risk or Installation Floater (if applicable, as referenced in Article XII, Section 6);
- Boiler and Machinery (if applicable and not included as part of All-Risk Commercial Property Insurance) (as referenced in Article XII, Section 7);
- Crime Insurance (as referenced in Article XII, Section 8);
- Tenants and Users Liability Insurance Policy (TULIP), as necessary (as referenced in Article XII, Section 9);
- Workers' Compensation Insurance (as referenced in Article XII, Section 10);
- Pollution Liability Insurance (as referenced in Article XII, Section 11);
- Event Cancellation Insurance, as necessary (as referenced in Article XII, Section 12);
- Any Other Applicable Insurance Policies not mentioned specifically above (as referenced in Article XII, Section 13);
- Insurance for City Events (if not obtained by City) (as referenced in Article XII, Section 14).

Additionally, pertinent City staff were interviewed regarding LBH's compliance with the contract and reporting requirements of the Operations / Lease Agreement, as well as any monitoring conducted by the City.

## **AUDIT RESULTS AND RECOMMENDATIONS (LBH)**

As mentioned previously, the review to monitor for contract compliance consisted of testing certain provisions of the current Operations / Lease Agreement with Laredo Baseball Holdings for compliance. Specifically, the following provisions of the agreement were tested for compliance:

Annual Marketing Plans:

- Article VI, Section 6.2 (d) (Marketing),
- Article XVIII, Section 18.2.4 (Marketing Plan);

Audited Consolidated Financial Statements:

- Article XVIII, Section 18.2.1 (Annual Financial Statements);

Annual Approved Budgets and any Corresponding Amendments:

- Article VI, Section 6.7 (a) (Approval of Annual Budget and Audit),
- Article XVIII, Section 18.2.2 (Annual Budget);

Contracts Executed:

- Article VI, Section 6.7 (b) (City's Approval of Contracts),
- Article XVIII, Section 18.2.3 (Contracts);

Quarterly Financial Statements:

- Article XVIII, Section 18.3 (Periodic Statements);

Insurance Requirements:

- Article XII, Sections 12.1 through 12.16 (Insurance).

### **Non-Compliance with Operations / Lease Agreement Requirements**

As part of our review, we interviewed pertinent City staff to determine if any required reporting had been submitted to the City by either LBH and/or LBI, as per the terms of the Operations / Lease Agreement, and it appears that, for the most part, City staff was not previously provided with the documentation we requested for our review. What follows is each area of the Operations / Lease Agreement that was sample tested for this audit, and all areas checked noted non-compliance with the requirements of the agreement.

#### **A. Annual Marketing Plans for Years 2015 and 2016**

Operations / Lease Agreement Language Reference: Article VI, Section 2 (d)

*“On or before \_\_\_\_\_ each year, LBH shall present a proposed marketing plan to the City for the subsequent year. In the event that the City’s contribution towards marketing for the subsequent year is by In-Kind Contribution the City and LBH shall be required to agree to the proposed marketing plan or any modification to the plan..... In the event that the City’s contribution is, in whole or part, a monetary contribution, the City shall have the right to approve or reject the proposed marketing plan and require modifications to the plan.....”*

Operations / Lease Agreement Language Reference: Article XVIII, Section 18.2.4

*“As more specifically described in Article VI, LBH shall annually provide a Marketing Plan.”*

**Finding 1**

We received the Marketing Budgets for Years 2015 and 2016, along with clippings of advertising in local media outlets, Facebook, press conferences, etc. on December 6, 2016; however, no proposed comprehensive marketing plans were provided. Additionally, the Marketing Budgets submitted did not reflect approval by either the City Manager and/or City Council as per Article VI of the Operations / Lease Agreement. As part of our review, we further verified any submittal of proposed marketing plans with City staff; however, it appears that while City staff tried to work with LBH to formulate a marketing plan, ultimately no comprehensive marketing plan was submitted by LBH for approval by the City.

**Recommendation(s)**

Internal Audit recommends that the Operator comply with the terms of the Operations / Lease Agreement; specifically, that the proposed Marketing Plan for year 2017 be submitted to the City for review and formal approval as soon as possible. Additionally, we would strongly recommend that a comprehensive Marketing Plan be prepared by the Operator, and that it be inclusive of but not limited to the following critical elements:

- Executive summary;
- Goals;
- Marketing strategies;
- Implementation schedule and responsible parties;
- Annual budget;
- Measurements to evaluate the performance of the plan, and
- Contingencies to accommodate any potential changes needed.

**B. Full Set of Audited Consolidated Financial Statements of Laredo Baseball Holdings and its Subsidiaries for Fiscal Year Ending 2015 to include the following:**

- **Consolidated Balance Sheet;**
- **Consolidated Statements of Income, Loss and Changes in Financial Position;**
- **Officers’ Certificate (as referenced in Article XVIII, Section 4 of the Operations / Lease Agreement);**
- **Members’ Capital and Cash Flow.**

**Operations / Lease Agreement Language Reference: Article XVIII, Section 18.2.1**

*“As soon as practicable and in any event within \_\_\_\_\_ days after the close of each fiscal year of LBH, a full set of Audited Consolidated Financial Statements of LBH and its Subsidiaries for such period, prepared in accordance with GAAP (except as noted in the accompanying footnotes), which shall include, without limitation, copies of the*

*consolidated balance sheet of LBH and its subsidiaries as of the close of such fiscal year and consolidated statements of income, loss and changes in financial position and the Officer's Certificate referenced in Section 18.1 ( c ) and members' capital and cash flow for such fiscal year, all in detail reasonably acceptable to City. Financial statements shall be considered "Audited" if accompanied by an opinion thereon of an independent public accounting firm of recognized standing acceptable to City (the "Auditor") to the effect that such financial statements were prepared in accordance with GAAP consistently maintained and applied, and that the examination of such accounts in connection with the financial statements has been made in accordance with generally accepted auditing standards, and, accordingly, includes such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances. For the purposes hereof, (i) any of the four largest national independent public accounting firms shall be deemed acceptable to City and (ii) the Auditor may be a regional accounting firm reasonably acceptable to City. The cost of the annual audit will be funded by LBH."*

## **Finding 2**

We received the Income Tax Returns prepared for tax year 2015 for Laredo Baseball Holdings, Inc. and Laredo Baseball Investors, LLC on December 6, 2016; however, this is not the same documentation as Audited Consolidated Financial Statements. The tax preparer, R Rodriguez Managing Edge, specifically states in their engagement letter that the extent of their services was to "prepare the 2015 federal and state income tax returns"; however, they would "not audit or otherwise verify the data submitted." We requested clarification from LBH staff as to whether or not they had Audited Consolidated Financial Statements prepared by a Certified Public Accountant (CPA) and available for Fiscal Year Ending 2015, and they confirmed that only tax returns were prepared, **but no CPA had been contracted to conduct the annual audit, so no Audited Financial Statements were available at the time of our request.** On a side note, Ms. Torres indicated that a CPA from Corpus Christi, Texas had been contracted to conduct a comprehensive financial audit as per their pending litigation; however, this firm was not vetted nor deemed acceptable by the City.

## **Recommendation(s)**

**We would recommend that a CPA meeting the qualifications criteria outlined under Article XVIII of the Operations / Lease Agreement and deemed acceptable by the City be contracted to conduct a comprehensive financial audit for each fiscal year completed during the current operations / lease agreement term.** Additionally, we would recommend that the CPA contracted with for this audit have experience in forensic accounting, as well.

## **C. Annual Approved Budgets and any Corresponding Amendments for Years 2015 and 2016.**

Operations / Lease Agreement Language Reference: Article VI, Section 6.7 (a)

*“Due to the fact that City’s additional rent shall be derived from Net Profits, each year LBH shall be required to submit each annual budget of LBH to the City for approval on or before \_\_\_\_\_ of the preceding year. Within ten (10) business days of receipt, City shall either approve or deny the annual budget for the subsequent year.”*

Operations / Lease Agreement Language Reference: Article XVIII, Section 18.2.2

*“As more specifically described in Article VI, LBH, shall each year this Agreement is in effect, submit its annual budget, and any proposed amendments thereto, to City for review and approval.”*

### **Finding 3**

We received Annual Budgets for Years 2015 and 2016 on December 6, 2016; however, **none of the annual budgets reflect approval by either the City Manager and/or City Council as per the Operations / Lease Agreement requirements.**

### **Recommendation(s)**

Internal Audit recommends that the Operator comply with the terms of the Operations / Lease Agreement; specifically, that the proposed Annual Budget for Year 2017 be submitted to the City for review and formal approval as soon as possible.

### **D. Contracts Executed in Year 2016**

Operations / Lease Agreement Language Reference: Article VI, Section 6.7 (b)

*“All contracts LBH shall enter into with regards to its operation, management or marketing of the Facility or the Lemurs, including but not limited to those imposing any obligation on LBH to repay a debt, as well as all employment contracts, all contracts with third party vendors, sponsors, advertisers and all other parties, must be reviewed by the City prior to execution. The City shall either approve or deny such contracts within ten (10) business days of receipt and its approval shall not be unreasonably, withheld, delay or conditioned. Notwithstanding the forgoing, contracts with a value of \$25,000.00 or less shall not require prior City approval; provided executed copies of such contracts are provided to the City within 30 days of execution.....”*

Operations / Lease Agreement Language Reference: Article XVIII, Section 18.2.3

*“As more specifically described in Article VI, LBH shall each year this Agreement is in effect, submit all contracts to the City for prior approval, and **shall not enter into any contract unless the City first approves the contract.** This requirement shall not apply to contracts with a value of \$25,000.00 or less; provided, executed copies of such contracts are provided to the City within 30 days of execution; and, further provided, that LBH does not make separate, sequential, or component contracts or purchases for the purpose of circumventing the requirement that contracts, above \$25,000.00, be approved by the City.”*

We received listings of sponsorship contracts for Year 2016 on December 6, 2016; however, no expense contracts or outstanding debt were provided on these listings. We provided LBH additional clarification as to the contracts requested as per the current Operations / Lease Agreement on December 13, 2016. Mr. Holliman and LBH staff provided us with copies of sponsorship contracts, concession contracts and marketing proposals on file for year 2016 on January 3, 2017. They also made available to us copies of promissory notes issued between LBH and LBI for the years 2015 and 2016; however, these promissory notes were not notarized. Additionally, on January 9, 2017, Ms. Torres and staff provided us with copies of promissory notes reflecting debt encumbered by Laredo Baseball Holdings. As part of our testing, we chose to use one hundred percent (100%) of the sponsorship contracts provided by LBH, as well as, one hundred percent (100%) of the notarized promissory notes provided for our testing population. What follows below are the results of our testing.

**Sponsorship Contracts**

In total, we tested forty-five (45) sponsorship contracts provided, which consisted of contracts with cash payments by the sponsors, contracts for trade of services and contracts with a combination of both. Below is a breakdown of the different types of sponsorship contracts reviewed.

<b>Sponsorship Type</b>	<b>No. of Contracts Reviewed by Sponsorship Type</b>	<b>Percentage of Each Sponsorship Type</b>
<b>Cash Sponsorship</b>	<b>14</b>	<b>31%</b>
<b>Trade Sponsorship</b>	<b>21</b>	<b>47%</b>
<b>Combination of Both</b>	<b>10</b>	<b>22%</b>
	<b>45</b>	<b>100%</b>

**Finding 4**

Out of the forty-five (45) sponsorship contracts tested, six (6) contracts were not in compliance with the terms of the Operations / Lease Agreement. Specifically, these six (6) contracts, which were valued at over \$25,000.00 over the course of the contract term, did not receive prior approval from the City. Furthermore, it appears that executed copies of the contracts under \$25,000.00 that were reviewed were never provided to the City as per the terms of the Operations / Lease Agreement. Additionally, we noted the following observations as part of our review, which may not constitute a violation of the agreement, but deserve mention.

- Eight (8) sponsorship contracts reviewed were missing a signature from either an LBH / LBI Authorized Representative or the Sponsor Representative or both.

- Thirteen (13) of the sponsorship contracts noting a straight trade of services between the parties did not specifically note what services LBH / LBI would receive from the sponsor as part of the trade agreement.

### **Recommendation(s)**

It is recommended that the six (6) sponsorship contracts (over \$25,000.00) noted above in violation of the terms of the Operations / Lease Agreement be submitted immediately for review and formal approval by the City. Any and all future contracts over \$25,000.00 must be submitted to the City for review and formal approval prior to execution of these contracts. Additionally, executed copies of all contracts under \$25,000.00 must be provided to the City as per Section 18.2.3 of the current Operations / Lease Agreement.

Since the Operations / Lease Agreement requires that executed copies of contracts be submitted to the City, it is a requirement that signatures from all authorized representatives (from LBH / LBI and Sponsor and/or Vendor) be reflected on said contracts. In regards to sponsorship contracts reflecting a straight trade of services between the parties involved, it is absolutely necessary that the services to be provided by both parties be outlined in the terms of the contract.

### **Promissory Notes**

Operations / Lease Agreement Language Reference: Article VI, Section 6.6 (a)

*“Community Asset. As the Lemurs are considered a community asset; and as part of the consideration for the nominal base rent is the preservation of the Lemurs as a professional sports team, the Parties agree as follows:*

*(a) LBH shall not be encumbered with any debt, unless such debt is disclosed to and approved by the City during the term of Lease, such approval not to be unreasonably delayed, condition, withheld or denied.”*

In total, we received thirty-six (36) notarized promissory notes encumbered by LBH during the years 2015 and 2016; all thirty-six (36) promissory notes submitted were reviewed by our office.

It should be noted that all the promissory notes submitted originated and were notarized as “Mexican loan contracts.” An English translation of the Mexican loan contract is attached to each promissory note submitted and it contains the following language:

*“This written promissory note also represents the Mexican loan contract of the same date and same principal amount.”*

In year 2015, LBH encumbered \$1,050,725.49 (or \$17,186,580.34 in pesos) of debt based off of the promissory notes provided to us. In year 2016, LBH encumbered an additional \$630,183.72 (or \$11,876,152.59 in pesos) of debt, again based off of the promissory notes provided to us. All the promissory notes submitted stated the purpose of the loans “*could be used for the operating expenses of borrower’s subsidiary, Laredo Baseball Investors, LLC, when needed.*” As mentioned previously, LBI made available to us copies of promissory notes issued between LBH and LBI for the years 2015 and 2016, since LBI is a

subsidiary of LBH; however, these promissory notes were not notarized and did not reconcile to the amount of debt encumbered by LBH.

**Finding 5**

Of the thirty-six (36) promissory notes reviewed, one hundred percent (100%) were not approved by the City as per the terms of the current Operations / Lease Agreement. No indication was given if the City had been made aware of these loans prior to LBH securing them. Additionally, we noted the following observation as part of our review, which may not constitute a violation of the agreement, but deserves mention.

- Twenty-three (23) (or 64%) of the thirty-six (36) promissory notes reviewed reflected the same person as the lender and borrower, in this case Ms. Arianna Torres.

**Recommendation(s)**

**All debt encumbered by LBH must be submitted to the City for review and formal approval immediately, as this is a requirement as per the terms of the current agreement.** It is important to note that with the amount of debt encumbered (through these promissory notes), it calls into question whether or not there is enough revenue generated to sustain operations of the facility. The requirement that the City review and approve any debt encumbered by the Operator is done in an effort to keep the City stakeholders abreast of the financial status of the Operator so that they can make better informed decisions when it comes to the operations of Uni-Trade Stadium.

**E. Quarterly Financial Statements for Year 2016.**

Operations / Lease Agreement Language Reference: Article XVIII, Section 18.3

*“LBH shall make available to City for review and notify City of such availability all quarterly financial statements. Moreover, upon City’s request, LBH shall make available to City any records that may reasonably be necessary for City to verify LBH’s compliance with the terms of this Agreement.”*

**Finding 6**

A combined Profit & Loss statement reflecting activity for each quarter in Year 2016 was submitted to us on December 6, 2016; however, from discussions with City staff, it appears that quarterly financial statements were not submitted to the City for review.

**Recommendation(s)**

The importance of the submittal of these reports cannot be stressed enough. These reports submitted as required per the Operations / Lease Agreement, serve to not only inform City staff, but also assist City stakeholders in making informed decisions regarding the operations and oversight of Uni-Trade Stadium. We are recommending that designated City staff meet with the Operator to go over the importance of reporting requirements as per the authorized agreement currently in place. Furthermore, frequent meetings between City staff responsible for contract management oversight and the Operator must occur in

order to maintain an open dialogue regarding the operations of Uni-Trade Stadium, as well as the contractual obligations of all parties involved.

**F. Current Certificates for the Following Insurance Policies**

Operations / Lease Agreement Language Reference: Article XII, Sections 12.1, 12.3 – 12.14

- Liability Insurance;
- Business Automobile Insurance;
- Umbrella Liability;
- Business Interruption, Contingent Business Interruption Insurance and Extra Expense Coverage;
- Builder’s Risk or Installation Floater (if applicable);
- Boiler and Machinery (if applicable and not included as part of All-Risk Commercial Property Insurance);
- Crime Insurance;
- Tenants and Users Liability Insurance Policy (TULIP), as necessary;
- Workers’ Compensation Insurance;
- Pollution Liability Insurance;
- Event Cancellation Insurance, as necessary;
- Any Other Applicable Insurance Policies not mentioned specifically above;
- Insurance for City Events (if not obtained by City).

**Finding 7**

Copies of current insurance certificates submitted on December 6, 2016 by LBH. As part of our review of the insurance policies submitted, we obtained assistance from the City’s Risk Management Division, as well as the City’s Independent Risk Management, Insurance and Employee Benefits Consultant (RWL Group) for guidance with interpreting the insurance policies submitted by LBH. Our assessment of the insurance policies submitted noted many instances of non-compliance with the requirements outlined by the agreement. What follows below is a breakdown by section of Article 12 where non-compliance was found.

**Article 12 – General Requirements**

The Operations / Lease Agreement requires that all liability policies / coverage parts provide an additional insured in favor of the City on a primary and non-contributory basis. Additionally, all policies / coverage are required to provide a waiver of subrogation in favor of the City. All policies / coverage parts are to provide a sixty (60) day advanced notice of cancellation to the City. The Business Interruption and Crime Insurance are to name the City as loss payee as their interests may appear.

The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12:

- The only additional insured found was for the General Liability Coverage of the package policy; however, it was not primary nor non-contributory. No other policies or coverage parts noted City as additional insured on a primary and non-contributory basis.
- Only one (1) waiver of subrogation was found in the General Liability section of the package policy; no other policies or coverage parts noted additional waiver of subrogation in favor of the City.
- Only one (1) thirty (30) day notice of cancellation was found in the General Liability section; however, it only applied to the Policyholder and did not specify sixty (60) days notice. No specific notices of cancellation in favor of the City were noted in the policies submitted.
- No loss payee in favor of the City was found in either the Business Interruption or Crime Insurance section of the package policy.

Article 12, Section 1 – Liability Insurance

LBH shall procure and maintain....a policy or policies of commercial general liability insurance on an occurrence basis with a minimum policy limit of not less than \$1,000,000.00 per occurrence / \$2,000,000.00 general aggregate / \$2,000,000.00 products / completed operations aggregate at a combined single limit, naming the City as an additional insured. "Such policy or policies shall also cover (a) liquor liability (or, if excluded, a separate policy for liquor liability with policy limits of not less than \$5,000,000.00 per occurrence), (b) medical malpractice liability arising from professional emergency medical services, ( c ) liability arising from professional security services and (d) special events...."

The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 1:

- The liquor liability limit is on \$1,000,000.00 per occurrence and in the aggregate; the agreement requires \$5,000,000.00 per occurrence.

Article 12, Section 4 – Umbrella Liability

An excess or umbrella liability insurance policy providing coverage in excess of the Liability Insurance, Business Automobile Insurance, and Employers Liability Insurance (except this does not apply to the statutory Workers' Compensation Insurance). "Minimum limits shall be \$20,000,000.00 each occurrence, \$20,000,000.00 annual aggregate."

The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 4:

- The Umbrella Policy limit reflected on the insurance documents submitted is \$2,000,000.00, not \$20,000,000.00.

Article 12, Section 5 - Business Interruption, Contingent Business Interruption Insurance and Extra Expense Coverage

"LBH shall procure and maintain in full force and effect.....at LBH's sole cost and expense, the use and occupancy or business interruption or lost income insurance against all risk perils including flood, earthquake and terrorism, including extra expense coverage,

*in an amount equal to not less than estimated Facility Operating Revenues less non-continuing expenses (assuming for the purposes of such estimate that no business interruption occurred), for the period of time estimated to repair or rebuild the facility after substantial damage to the Facility, plus an extended period of indemnity of not less than one hundred eighty (180) days, including contingent business interruption insurance within the business interruption insurance coverage at a sublimit of not less than \$500,000.00, and an indemnity period equal to that of the business interruption insurance indicated above."*

**The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 5:**

- **The Business Interruption coverage included in the property coverage is only \$100,000.00, which does not appear to meet the requirements noted in the agreement. Additionally, no Contingent Business Interruption coverage was provided.**

Article 12, Section 8 - Crime Insurance

"LBH shall procure and maintain in full force and effect.....at LBH's sole cost and expense, with a deductible of no more than \$5,000.00 (a) Employee Dishonesty Coverage; (b) Forgery or Altercation Coverage..... ( c ) Theft, Disappearance or Destruction Coverage..... (d) Robbery and Safe Burglary ..... (e) Computer and Funds Transfer Fraud Coverage, each such coverage to have policy limits of not less than \$1,000,000.00 per occurrence. The City shall be named as Loss Payee, as their interests may appear."

**The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 8:**

- **The limit insured for each type of coverage reflected only \$100,000.00, not \$1,000,000.00 as required per occurrence. Additionally, no coverage is reflected for Computer and Funds Transfer Fraud.**

Article 12, Section 9 - LBH's Users Liability Insurance Policy

"LBH shall procure as necessary, at LBH's sole cost and expense, a tenants and users liability insurance policy ("TULIP") or its equivalent with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.....Said policies shall name City as Additional Insured on a primary and non-contributory basis, and contain a Waiver of Subrogation in favor of the City. Evidence of this insurance shall be provided to City no less than 30 days prior to the event(s) scheduled."

**The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 9:**

- **No Users Liability Insurance coverage was provided. Additionally, no indication that policies provided by non-affiliated promoters were submitted to the City.**

Article 12, Section 10 - Workers' Compensation Insurance

"LBH shall procure and maintain in full force and effect..... at LBH's sole cost and expense, worker's compensation insurance complying with the statutory requirements of the State of Texas to insure all persons or entities employed by LBH in connection with the Facility. LBH shall also procure and maintain in full force and effect.....at LBH's sole

cost and expense employer's liability coverage of not less than \$1,000,000.00 each accident, \$1,000,000.00 disease each employee and \$1,000,000.00 disease policy aggregate. A Waiver of Subrogation shall be included in favor of the City. City shall waive the requirement for Workers' Compensation if :

(b) LBH is a non-subscriber it shall provide City with a certificate of insurance reflecting an Employer's Indemnity Program, including medical and lost wage and shall include Employer's Liability at a minimum limit of \$5,000,000.00 per occurrence. Coverage for occupational disease shall be included."

**The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 10:**

- **In discussions with the City's Independent Consultant (RWL Group), it was mentioned that back in 2010 when the original Operations / Lease Agreement was drafted with the Operator at the time, it was indicated that they were a non-subscriber in Texas. If that still is currently the case, then subsection (b) of the agreement would apply; however, no such coverage was provided.**

Article 12, Section 11 - Pollution Liability Insurance

"LBH shall procure and maintain in full force and effect.....for a period of two (2) years after expiration of this Agreement, at LBH's sole cost and expense, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by LBH, its agents, representatives, employees or subcontractors. Insurance for first and third-party claims for bodily injury and / or property damage and remediation costs stemming from pollution incidents resulting from LBH's operations shall be included.....LBH should obtain such coverage with no less than a \$2,000,000.00 per incident limit and \$4,000,000.00 aggregate and a deductible no more than \$25,000.00."

**The following items are noted as non-compliant with the requirements specified under the Agreement for Article 12, Section 11:**

- **No evidence of Pollution Liability Coverage was provided.**

**Recommendation(s)**

It is extremely critical that all of the areas of non-compliance with Article 12 (Insurance) be addressed and corrected immediately. It is important that specific coverage and limits noted in the Operations / Lease Agreement be corrected and complied with. Compliance with insurance requirements is mandatory. Once corrections have been made, then insurance certificates for all coverage type requirements must be submitted by LBH to the City's Risk Management Division for review and verification.

## **AUDIT RESULTS AND RECOMMENDATIONS (CITY)**

### **A. Non-Compliance with Reporting Requirements**

While our compliance review of Laredo Baseball Holdings (LBH) reflected that many of the required reports as per the Operations / Lease Agreement were not submitted to City staff, it seems that City staff did not follow-up with LBH, in writing, to obtain the required reports.

#### **Recommendation(s)**

In reviewing the Operations / Lease Agreement, we interpreted the purpose of the report submittal by LBH to City staff to be about the City having oversight regarding the performance of the Uni-Trade Stadium's Operator. We are recommending that a Contract Management Plan be developed and implemented by designated City staff as a monitoring tool that will assist City staff with continuous monitoring, verification and documentation of LBH's performance. As mentioned previously, LBH and designated City staff responsible for contract management oversight of Uni-Trade Stadium must meet on a regular basis in order to maintain an open dialogue regarding the operations of the baseball stadium, through review and discussion of the required reporting. Ultimately, this oversight by City staff serves to keep all City stakeholders informed on the operations and financial status of Uni-Trade Stadium on a regular basis. In turn, we would recommend that either LBH Management and/or designated City staff provide regular updates to City Council on the performance of Uni-Trade Stadium.

## **APPENDIX A – STAFF ACKNOWLEDGEMENT**

Veronica Urbano-Baeza, Internal Auditor

Elia Rodriguez, Auditor II