

15 APR 22 2014 OAKLAND CITY COUNCIL

RESOLUTION NO. 85 115 C.M.S.

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF
THE STADIUM LICENSE AGREEMENT BETWEEN THE OAKLAND
ALAMEDA COUNTY COLISEUM AUTHORITY AND THE ATHLETICS
INVESTMENT GROUP LLC**

WHEREAS, the Board of Commissioners of the Oakland-Alameda County Coliseum Authority (the "Authority") has approved and accepted the Stadium License Agreement (the "License Agreement") between the Authority and the Athletics Investment Group LLC (the "A's") on July 3, 2014; and

WHEREAS, the Amended and Restated Management Agreement by and among the City of Oakland (the "City"), the County of Alameda (the "County") and the Authority entered into in 2000, requires the prior public approval by the City and the County, as joint owners of the Oakland-Alameda County Coliseum Complex ("Coliseum Complex"), of any license agreement pertaining to the Coliseum Complex before such license agreement can be executed; and

WHEREAS, the Authority has requested and recommended that the City approve and authorize the execution of the License Agreement; and

WHEREAS, the accompanying staff report prepared by the Authority's Staff (the "Authority Staff Report") presented to this meeting, sets forth a summary of the proposed terms of the License Agreement; and

WHEREAS, a form of the License Agreement has been presented to this meeting as an attachment to the Authority Staff Report; and

WHEREAS, the City desires to approve and authorize the execution by the City Administrator, for and on behalf of the City, of the License Agreement with certain amendments; and now, therefore, be it

RESOLVED, The City Council hereby finds and determines that all of the recitals above set forth are true and correct and be it

FURTHER RESOLVED, That the City Council hereby approves and authorizes acceptance and execution by the Authority of the License Agreement, in substantially the form presented to this meeting with the amendments set forth below in this Resolution; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator, for and on behalf of the City, to execute and deliver the License Agreement, in substantially the form presented to this meeting with the amendments set forth below in this Resolution; and be it.

FURTHER RESOLVED: That all actions heretofore taken by the officers and agents of the City concerning the negotiations of the License Agreement are hereby approved, confirmed and ratified, and the proper officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all agreements, and other documents which they, or any of them, may deem necessary or advisable in order to effectuate the purposes of this Resolution; and be it

FURTHER RESOLVED: That the City Council adopts this Resolution approving and authorizing acceptance and execution of the License Agreement, with the following amendments:

1. Athletic's Early Termination (Section 7.2.1) - Add the following example to Section 7.2.1 to clarify how the two year termination notice period is calculated: "(By way of example, if Licensee provides Licensors with such termination notice on January 1, 2016, this license will terminate as of December 31, 2018.)"
2. Practices in 2013 (Proposed Section 42.7) - Add the following Section 42.7 to the agreement to define 2013 practices: "Promptly after the execution of this License by all parties, the Executive Director of Licensors and the A's shall generate mutually acceptable specifications to memorialize 2013 practices of the parties."
3. Non-refundable Deposit Required for JPA's Early Termination (Section 44.32) - Correct the typographical error in Section 44.32 to amend the agreement to provide for a ten million dollar non-refundable deposit. Current language reads "twenty-million dollars (\$10,000,000)."
4. Licensors Default (Proposed Section 22.3) - Revise the agreement to add back Section 22.3 that was previously in the agreement.
5. Athletic's Assignment (Section 16.1) - Revise Section 16.1 to limit the A's right to assignment without the consent of the Authority to sale or transfer of the Team to MLB-approved third party or A's Affiliate.
6. Drafting "Clean Ups" as detailed in Exhibit A attached hereto and hereby incorporated by reference as if fully set forth herein.
7. No Authority liability for acts or omissions of Raiders (Section 42.5) - Amend Section 42.5 to remove language that makes the Authority liable for Raiders' acts/omissions that are "approved by Licensors" by deleting "unless such act or omission was approved by Licensors" at the end of Section 42.5; and be it

FURTHER RESOLVED: That this Resolution shall take effect from and after its adoption and approval.

IN COUNCIL, OAKLAND, CALIFORNIA, July 16, 2014.

PASSED BY THE FOLLOWING VOTE:

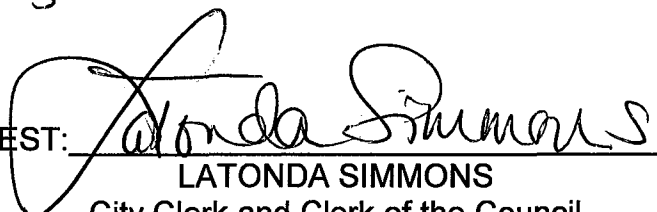
AYES - ~~BROOKS~~, ~~GALLO~~, GIBSON McELHANEY, KALB, KAPLAN, ~~REID~~, SCHAAF
and PRESIDENT KERNIGHAN - 5

NOES - Gallo, Reid - 2

ABSENT - 0

ABSTENTION - Brooks - 1

ATTEST:



LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

TO: Oakland City Councilmembers
FROM: Council President Pat Kernighan
Date: July 16, 2014

MOTION

I move to approve the agreement the JPA Board approved on July 3, 2014, which is in the packet this evening under item 4, with the following language changes:

- **A's Early Termination (Section 7.2.1)** – Add the following example to clarify how two year termination notice period is calculated.
 - “(By way of example, if Licensee provides Licensor with such termination notice on January 1, 2016, this License will terminate as of December 31, 2018.)”
- **Define what practice was in 2013 (Proposed Section 42.7)** – A number of sections provide that the parties will follow what the practice was in 2013. Add the following Section 42.7 to the agreement:
 - “Promptly after the execution of this License by all parties, the Executive Director of Licensor and the A's shall generate mutually acceptable specifications to memorialize 2013 practices of the parties.”
- **Non-refundable Deposit Required for JPA's Early Termination (Section 44.32)** – Correct typographical error to amend agreement to provide for a ten million dollar non-refundable deposit. Current language reads: “Twenty Million Dollars (\$10,000,000)”.
- **Licensor Default (Proposed Section 22.3)** – Add back this section that previously was in the agreement.
- **A's Assignment (Section 16.1)** – Limit A's assignment without JPA's consent to sale or transfer of the Team to MLB-approved third party or A's Affiliate.
- **Drafting “clean ups”**
- **No JPA liability for acts or omissions of Raiders (Section 42.5)** – Amend to remove language that makes JPA liable for Raiders' acts/omissions that are “approved by Licensor”.
 - Delete “unless such act or omission was approved by Licensor” at the end of section 42.5

Exhibit "A"

Oakland A's License Agreement

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7. TERM AND TERMINATION

7.2 Early Termination Rights.

7.2.1 By Licensee. Beginning January 1 of the second full year of the Term (January 1, 2016 – December 31, 2016), Licensee shall have the right to terminate this License prior to expiration of the Term by providing Licensor written notice of intent to terminate on or before December 31st of any year during the remainder of the Term, with the effective date of termination occurring as of December 31st of the second year following notice. (By way of example, if Licensee provides Licensor with such termination notice on January 1, 2016, this License will terminate as of December 31, 2018). If Licensee terminates this License in connection with any move to a stadium outside of the City, Licensee shall pay on the effective date of termination, in lump sum, all annual license fees pursuant to Paragraph 8.1 below for the remainder of the full 10-year Term, as if this License were operative throughout the Term and had not been terminated. Licensee shall not be obligated to pay such annual license fees if Licensee terminates this License in connection with a permanent move to a new or re-built stadium on or adjacent to the Complex site or to a different stadium within the City.

16. ASSIGNMENT

16.1. Only Upon Consent. Except as expressly provided in this Paragraph 16.1, neither Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party and any attempt by either Party to do so shall be void and of no force and effect whatsoever, and shall constitute a breach of this License. No consent of Licensor shall be required in order to assign or transfer any of Licensee's rights or obligations under this License in connection with ~~the an MLB-~~approved sale or transfer of Team to a third party or transfer of Team or assets to a Licensee Affiliate. No consent of Licensee shall be required for Licensor to make any assignment that may be necessary in order to effectuate a Raiders Construction Plan or any other redevelopment, sale or disposition of all or any portion of the Complex by Licensor. Provided, however, that notwithstanding any assignment by Licensor for purposes of implementing a Raiders Construction Plan, the Authority shall remain the operator of the Stadium and Complex and under no circumstances shall any third-party developer or other assignee be granted the ability to exercise operational rights could interfere with Licensee's ability to make full use of the Stadium as permitted under this

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Agreement until termination under Paragraph 7.2.2 actually takes effect. All of the Parties' respective duties and obligations under this License shall be binding upon and inure to the benefit of the heirs, devisees, successors in interest and permitted assignees of each of the Parties hereunder. Any proposed assignment, sale or transfer by either Party that requires the other Party's consent shall be conditioned on the proposing Party paying all reasonable legal and accounting fees and all reasonable transactional costs and expenses incurred by the other Party in granting its approval, and to the proposed assignee assuming all the obligations of the proposing Party hereunder in form acceptable to the other Party.

22. DEFAULT

22.3 Licensor's Default.

22.3.1 Acts Constituting Default. Licensor shall be in default of this License if it fails to perform its material obligations hereunder so profoundly that its dereliction causes major damage within the meaning of Paragraph 17.1.

22.3.2 Licensee Remedies. If Licensee establishes in a Paragraph 38 proceeding that such a default by Licensor has not been cured or is not curable, Licensee, in addition to any other remedy it may have under this License, at law or in equity, may terminate this License under Paragraph 17.2, with no further obligation. Until and unless Licensee proves such a default and obtains a final judgment confirming an arbitral determination of it, Licensee shall continue to pay all fees owing under Paragraph 8.1 and to perform its obligations under this License.

42. MISCELLANEOUS

42.5 No Third Party Beneficiary. This License is made solely for the benefit of the Parties and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this License, except as otherwise expressly provided in this License. Notwithstanding any provision herein to the contrary, nothing in this License shall render Licensor responsible or liable to Licensee or any Licensee Affiliate for any acts or omissions of the Raiders, ~~unless such act or omission was approved by Licensor.~~

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42.7 2013 Practices. Promptly after the execution of this License by all parties, the Executive Director of Licensor and the Licensee shall generate mutually acceptable specifications to memorialize 2013 practices of the parties referenced herein, including those referenced in the following Paragraphs: 4.3 (Parking Area); 5.2 (License to Operate); 5.6.2 (Licensor Provision of Additional Security); 6.3 (Dual Event Parking); 11.1 (Attraction Panel and Freeway Marquee); 11.3.1 (Licensee's Rights); and 11.3.2(d) (Raiders Signage).

44. DEFINITIONS

44.32 "Raiders Construction Plan" means a bona fide plan for construction of a new football stadium for the Oakland Raiders on current Complex property, adjacent to the current Complex property, or otherwise located sufficiently near to the Stadium such that it will materially impact Licensee's operations, which bona fide plan must include, as pertains to such stadium project, a fully executed development agreement with a third-party developer and the Licensor for development of a new Raiders stadium, supported by a non-refundable deposit from the developer and received by the Licensor of at least ~~Twenty~~ Ten Million Dollars (\$10,000,000.00).

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