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January 26, 2021

By email

Santa Clara Stadium Authority
PublicComment@santaclaraca.gov

RE: January 26, 2021 Meeting of Santa Clara Stadium Authority
Agenda Item 2K re Conflict of Interest Codes for Designated Positions

Dear Authority Members:

On behalf of the Forty Niners Stadium Management Company ("Management Company"), I am writing to express concern about two issues in regard to Agenda Item 2.K of today's meeting relating to the adoption by the Santa Clara Stadium Authority ("Authority") of a resolution amending the Authority's Conflict of Interest Code. The issues are: (1) designating several new positions to file Form 700 Statements of Economic Interests ("Form 700") without adequate basis and (2) delegation of discretionary decision-making authority to the Authority's Executive Director. I want to respectfully alert you that it may be prudent for these matters, currently calendared on the Authority's consent calendar, to be continued for further review and discussion.

1. Designation of Additional Management Company Employees and Officers to File Form 700s

The Staff Report for Agenda Item 2K indicates that Management Company employees or officers "who are performing decision-making functions on behalf of the Stadium Authority" must file a Form 700. (See Staff report, item 4, second paragraph.) However, that is not the legal standard established by the Political Reform Act. Rather, Fair Political Practices Commission Regulation 18700.3 identifies when a consultant is, in fact, subject to conflict of interest rules.

§ 18700.3. Consultant, Public Official Who Manages Public Investments: Definitions.

(a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:

(1) Makes a governmental decision whether to:

...

(D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

(E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

(F) Grant agency approval to a plan, design, report, study, or similar item;

... or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code....

The above definition does not rely on mere decision-making as the basis for finding a consultant subject to the Political Reform Act or being designated in a conflict of interest code to file a Form 700.

The Management Company agrees that the positions and related duties of Management Company's Executive Vice President and General Manager and Chief Revenue Officer of the Management Company should be designated positions and the individual in each of those two positions file a Form 700.

Currently, Jim Mercurio is the Executive Vice President & General Manager of the Management Company. His role includes leading the maintenance and operation of Levi's Stadium, including any construction or other capital expenditure projects and procurement of any and all vendor agreements related to the maintenance and operation of the stadium. Mr. Mercurio has filed a Form 700 for several years and will continue to do so.

Brent Schoeb is the current Chief Revenue Officer for the Management Company. His role includes the booking of all Non-NFL Events and the servicing of all Stadium Builder License accounts, as well as the sales and service of the Stadium's naming rights partner. Mr. Schoeb will file a Form 700.

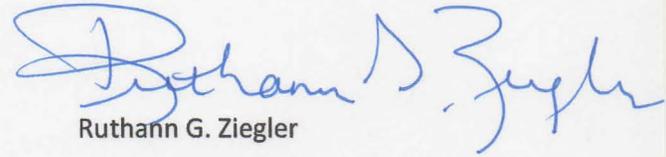
However, the staff report for Item 2.K also designates, without providing any detail, the positions of President, Chief Financial Officer, and General Counsel with the Management Company to file Form 700s. We ask the Authority to continue this matter so there can be meaningful discussions between the Management Company and the Authority as to the role of those three positions and whether they fit within the definition of "consultant" under § 18700.3.

2. Delegation of Authority to Executive Director for Determining Form 700 Filing Requirement

The Political Reform Act requires local agencies, including cities, to review and update as necessary their conflict of interest code. This biennial update includes the review of new or substantially changed positions which may trigger the addition or deletion of a position to file a Form 700. (Government Code §87306.5.) The discretion and obligation to review such positions rests with the governing body. (See Government Code §87306 which specifies that the agency (here, the Authority Board) "shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to subdivision (a) of Section 87302 and relevant changes in the duties assigned to existing positions." Here, Agenda Item 2.K purports to delegate that authority to the Stadium Authority's Executive Director, which is inconsistent with the clear direction of §87306. We ask that this decision-making role remain with the Stadium Authority Board, as is consistent with past practice of the Stadium Authority, the City Council, and local agencies throughout California, as well as consistent with the clear direction of Government Code §87306.

I respectfully ask that Agenda Item 2K be considered for further review and discussion. Thank you for your attention to this matter.

Sincerely,



Ruthann G. Ziegler

Cc: MayorAndCouncil@santaclaraca.gov

Deanna Santana, Executive Director

Brian Doyle, Authority Counsel

Hannah Gordon, General Counsel, Management Company