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January 29, 2021

By email

Brian Doyle, General Counsel
Santa Clara Stadium Authority

RE: Forty Niners Management Company
Response to January 26, 2021 Direction of Stadium Authority
Form 700s and Potential Conflicts of Interest

Dear Mr. Doyle:

On behalf of the Forty Niners Stadium Management Company ("Management Company"), we appreciate the opportunity to provide additional information to the Stadium Authority regarding the issues raised in my January 26, 2021 letter.

The Management Company takes seriously its responsibility to the Stadium Authority and to the Santa Clara community to be ethically and legally compliant in the management of Levi's Stadium. We have worked with our staff and advisors, Authority representatives, and FPPC staff to understand that responsibility and comply with applicable rules and regulations.

1. Prior Communications

Your May 5, 2020 email to me was discussed at the January 26 meeting. It is helpful to put that email into context. As you may recall, on December 18 and 24, 2019, Nora Pimentel as Acting Secretary of the Stadium Authority sent notices to various officers and employees of the Management Company, informing each that he or she had to file a Form 700. Each notice indicated the date of assuming office was March 28, 2012¹, the date when the Stadium Authority and the Management Company executed the Management Agreement. Each notice also directed the recipient to file retroactively a Form 700 for

¹ The FPPC requires a Form 700 for assuming office to be filed within 30 days of assuming that office or otherwise be subject the filer to penalties for late filing. Therefore, direction in 2019 to file a Form 700 with an assuming office date of seven years earlier is designed to put the filer at immediate risk of penalties.

2013, 2014, 2015, 2016, 2017, and 2018.² Interestingly, the Authority did not add the category of “consultant” to its conflict of interest code until February 2018.

As noted above, the Management Agreement between the Stadium Authority and the Management Company was executed in March 2012. No one in the City nor the Stadium Authority, and not even the Fair Political Practices Commission, raised any issues about potential conflicts of interest until 2017 when you became City Attorney and Stadium Authority counsel and made this your focus.^{3, 4}

In response to the notices sent by Ms. Pimentel, I submitted a March 23, 2020 letter pursuant to FPPC Regulation §1832.59(a)(3)(A) raising two questions: (1) the Stadium Authority’s use of a standard to determine who constituted a consultant which differed from the standard established by the FPPC and (2) rationale for the use of a retroactive date of seven years for assuming office, when such date preceded the addition of “consultant” to the Authority’s conflict of interest code. My letter also asked for the responses to be in the context of how the Authority had handled other consultants and their Form 700 filings. (A copy of my letter is attached.)

You responded in a March 30, 2020 letter (copy attached, without referenced exhibits). The second-to-the-last paragraph of your letter asked me to provide the names of Management Company officers and employees who had been exercising certain decision making authority. I did so in my May 5 email to you. Please recognize that the timing of my responses reflects the in-depth discussions with the Management Company on these important matters.

Your response to my May 5 email rejected our position that Mr. Schoeb was a consultant and our position that Mr. Guido was not. Furthermore, you requested “all records by which [I] made those determinations”, which I could not do as providing such materials would violate attorney-client privilege. Unfortunately, both your March 30 and May 5 responses failed to address the two questions I raised in my March 23 letter to Ms. Pimentel.

2. Proposed changes to the Stadium Authority’s Conflict of interest Code

a. *Designation of Management Company officers and employees as consultants*

The January 26, 2021 staff report recommended adding the positions of Executive Director, Chief Revenue Office, President, Chief Financial Officer, and General Counsel to the list of consultants who must file Form 700s pursuant to the Authority’s conflict of interest code. We agree that the first two could be characterized as consultants but fail to understand why the last three would be included. As stated in our January 26 letter, it would be helpful for either you as Authority Counsel or Authority staff

² The same risk applies to the notice’s direction that each individual should file seven years of retroactive Form 700s.

³ During the January 26, 2021, joint meeting of the City Council and the Stadium Authority, you stated: “Pretty much the first thing I did [when I became City Attorney and Authority Counsel] was to read the agreements between the Stadium Authority and the Management Company, as well as the lease. And particularly in regard to the Management Agreement, when I read it, I determined that it was absolutely riddled and fraught with possibilities for violations of state law with respect to conflicts of interest.” This was the first time such issues were raised; they were not raised by the prior City Attorney or Authority Counsel or outside counsel.

⁴ You stated more than once during the January 26 meeting that the Management Company and/or its General Counsel had agreed that the Management Company or its representatives had violated conflict of interest provisions. That is not an accurate characterization.

to identify which decisions each of those last three positions are making which come within the scope of FPPC Regulation § 18700.3. Since the City and the Stadium Authority use many third party consultants and contractors, such as Spectra, it would appear likely that the City/Authority have also determined some of them to be Form 700 filers. Identifying those to us would help us better understand your position.

b. 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." The January 26 staff report recommended the delegation of that authority to the Stadium Authority's Executive Director, which is inconsistent with the clear direction of §87306.

3. Applicable rules and regulations

The question is whether officers and employees of the Management Company are "consultants" as defined by the Political Reform Act and thus required to file a Statement of Economic Interests, commonly referred to as "Form 700." 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 for being designated in a conflict of interest code to file a Form 700.⁵

⁵ During the January 26, 2021 joint meeting of the City Council and the Stadium Authority, Mayor Gillmor indicated several times that the signing of contracts by a Management Company representative triggered the label of

Rather, an individual must engage in a specified type of decision-making to be considered a "consultant" and be required to file a Form 700.

4. Role of Management Company Representatives

The Management Company agrees that the positions and related duties of the Management Company's Executive Vice President and General Manager and of Chief Revenue Officer could be designated as consultants subject to Form 700 filing requirements.

Jim Mercurio is the Executive Vice President and General Manager of the Management Company. His role oversees the maintenance and operation of Levi's Stadium, including any construction or other capital expenditure projects as well as the procurement of 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.

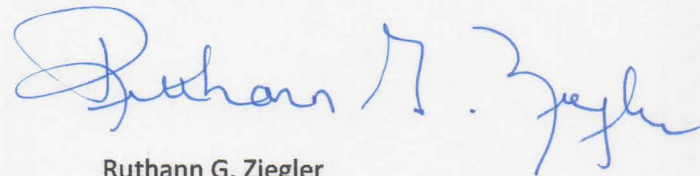
Brent Schoeb is the current Chief Revenue Officer for the Management Company. His role includes the booking of Non-NFL Events and servicing of Stadium Builder License accounts (although the Stadium Authority determines the price and contract terms), as well as the sales and service of the Stadium's naming rights partner. Mr. Schoeb can file a Form 700.

The Management Company has almost 100 full-time employees. Each has various duties and obligations, which may include some degree of decision-making. However, again, please note that the mere act of making a decision does not trigger the Form 700 requirement; rather, it is only a specific type of decision-making, as outlined above, which results in the Form 700 requirement.

5. Conclusion

Again, we appreciate the opportunity to respond to the Stadium Authority pursuant to its January 26 meeting. If you have further questions or wish to discuss, please feel free to contact me so that we can set up a meeting as soon as possible.

Sincerely,



Ruthann G. Ziegler

Cc: MayorAndCouncil@santaclaraca.gov
Deanna Santana, Executive Director
Hannah Gordon, General Counsel, Management Company

"consultant" and triggered the obligation to file a Form 700. However, that is not the standard set forth in §18700.3.