

Item 6.a & 6.b



October 2, 2019

Via Email and U.S. Mail
jbass@coblenzlaw.com

Coblentz Patch Duffy & Bass LLP
Attn: Jonathan Bass, Esq.
One Montgomery Street, Suite 3000
San Francisco, CA 94104-5500

Subject: Stadium Manager's Procurement Authority

Dear Mr. Bass:

I am writing in response to your October 1, 2019 letter to Deanna Santana regarding contract procurement.

First, when the Santa Clara City Council voted on the approval of the ordinance, they were concurrently in session as the Santa Clara Stadium Authority Board. When the Council votes this upcoming Tuesday to adopt the ordinance, it will also be in a concurrent session of the Board. The concurrent action will be an effective revocation of the Executive Director's authority to enter into contracts for the Stadium Authority without prior Board approval.

Second, the rights provided to the Executive Director of the Stadium Authority, and in turn delegated to Stadium Manager under the First Amendment to the Management Agreement, was and is always subject to the City of Santa Clara ordinance and compliance with all applicable laws. The City of Santa Clara maintains the legislative power to amend its ordinances, and thus any party that had contractual powers, duties or obligations based on those ordinances must comply accordingly. This is no different from contracting parties changing their duties and obligations based on a new City, State or Federal law. In addition, Stadium Authority's power to contract is a legislative power that cannot be contracted away to a third party. Future legislative bodies can revoke delegated contracting authority that previous bodies had granted. Neither the Executive Director nor Stadium Manager has a perpetual right to enter into contracts that is based on a revocable delegated authority.

Third, your letter ended with an ambiguous statement that the amended ordinance does not impair the contractual rights of StadCo or Stadium Manager as set forth in the First Amendment to the Management Agreement. As Stadium Authority and the City Council stated before, this amended ordinance does not impact contracts pertaining to NFL events. But after the effective date of the ordinance amendment, Stadium Manager's contractual authority for Non-NFL Events on behalf of its principal, Stadium Authority, must first be approved by the Board. Of course, StadCo never had any authority to enter into a contract on Stadium Authority's behalf.

Jonathan Bass, Esq.

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Accordingly, any contract that Stadium Manager or StadCo purports to enter into without Stadium Authority Board approval related to any Non-NFL Events or charges after the effective date will be void. Any vendor or third party signing such a contract will have to look to Stadium Manager or StadCo for payment, including but not limited to any portion of shared expenses that were improperly procured without proper contractual and legal authority.

For these reasons, we hereby put Stadium Manager and StadCo on notice that once the ordinance amendment is effective: (1) Stadium Manager may not enter into any contracts on Stadium Authority's behalf without prior Board approval, and (2) Stadium Manager and StadCo must expressly inform any vendors or third parties of the ordinance amendment, that Stadium Manager's right to enter into such contracts has been withdrawn and limited, and Stadium Authority reserves all rights, including but not limited to non-payment of a void and improperly procured contract. Any failure to inform vendors or third parties that Board approval is necessary for contracts for Non-NFL event goods or services will constitute intentional misrepresentation and further grounds for termination of the Management Agreement.

Sincerely,



Brian Doyle

Stadium Authority Counsel

cc: Deanna Santana, Executive Director
Mohammad Walizadeh, Esq.
Emily Charley, Esq.
Jeffrey Knowles, Esq.
Hannah Gordon, Esq.
Jihad Beauchman, Esq.
Larry MacNeil, Vice President/CFO, Forty Niners

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