

02-09-21

Item #8
RTC #21-219

Santa Clara Stadium Authority



Amendment of the SCSA Conflict of Interest Code

February 9, 2021



POST MEETING MATERIAL ¹

Conflict of Interest Code

- State Law requires the Stadium Authority to Amend its Code on a Biennial Basis (Govt. Code **87306.5**)
- Therefore, the Board must act; the Board has no discretion to not follow state law



Basic Rule

- A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein.
- Public official includes **consultants** of a local government agency such as the Stadium Authority.

§ 18700.3. Consultant, Public Official Who Manages Public Investments

- (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 ...

§ 18700.3. Consultant, Public Official Who Manages Public Investments

(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 under Section 87302

§ 18704. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

- (a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.
- (b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- (c) Using Official Position to Attempt to Influence a Decision. A public official uses his or her official position to influence a governmental decision if he or she: (1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact

REDBOX BOWL

- Al Guido signed **both** the Facility Use Agreement and the Sponsorship Agreement as President of the Management Company on behalf of the Stadium Authority

LEVI'S® STADIUM VENUE USE AGREEMENT

SUMMARY OF AGREEMENT TERMS

Event	College Football Bowl Game
Event Partners	Pac-12 Conference and The Big Ten Conference, Inc.
Effective Date	January 1, 2016
Event Date	Mutually agreed upon date between December 25 and a date not after the Rose Bowl in each of 2016, 2017, 2018 and 2019
Move-In Date	Mutually agreed upon each year
Move-Out Date	Mutually agreed upon each year

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC

DocuSigned by:
By Al Guido
Al Guido 895D80DD496...
President

SCSA
SANTA CLARA STADIUM AUTHORITY

RedBox Bowl Sponsorship Agreement

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

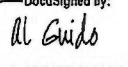


FORTY NINERS STADIUM MANAGEMENT
COMPANY, LLC, a Delaware limited liability
company

DocuSigned by:

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By _____
Brent Schoeb
VP, Corporate Partnerships

DocuSigned by:

1603895D80DD496...

By _____
Al Guido
President

Mr. Guido's Divestiture

February 10, 2020

VIA EMAIL-DSantana@SantaClaraCA.gov

Deanna J. Santana
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana,

Since 2014, Stadium Manager has licensed customer relationship management software from KORE Software Holdings, LLC ("KORE") for use at the Stadium. The annual expense has been allocated between StadCo and SCSA as a Shared Stadium Expense.

In September 2018, Al Guido, the San Francisco Forty Niners President, accepted KORE's invitation to join its Board of Directors. KORE paid Mr. Guido an annual retainer, and gave him the option (which he did not exercise) to purchase shares in KORE. Following our internal review, Mr. Guido has resigned from the Board, and he retains no connection with that company. Mr. Guido has returned the money KORE paid to him as an annual retainer. As noted, Mr. Guido never exercised any stock options, and has not otherwise invested in KORE at any point.

To eliminate any potential concerns, Stadium Manager is also returning to SCSA all payments allocated to it for KORE CRM software as a Shared Stadium Expense, before, during and after Mr. Guido's service on its Board. Stadium Manager will make a wire transfer next week to SCSA in the amount of \$ 115,773.29, which is the total amount charged to SCSA funds in connection with the KORE relationship from 2014 through the present. In addition, any future payments to KORE pursuant to existing contracts will not be charged to SCSA as a Shared Stadium Expense.

Copies of Mr. Guido's termination documents are included with this letter.

Please feel free to contact me if you have any questions.

Sincerely,

DocuSigned by:

OLIVE FORTBAASEN
Hannah Gordon
Chief Administrative Officer & General Counsel

SCSA

SANTA CLARA STADIUM AUTHORITY

Mr. Guido Serves in Staff Capacity

- ManCo directly reports to the Authority's board in managing "Authority" events:

When probed by a Board member about whether he could really maintain that he is equally "ready and willing" to do what the Authority wants than if he were an Authority employee, Guido insisted: "It wouldn't be any different. I work for them. I would argue, as the president of ManCo, I report directly to the Santa Clara Stadium Authority board. And so, for me, it wouldn't be any different." (AAB-3424-25; see also AAB-3394 ["I report directly to the Santa Clara Stadium Authority Board"]; -3425 ["I believe wholeheartedly, given our structure, that I report to them."]; -3425 ["I don't think I would do a different or better job if that was my only job."].)

Directing Payment of Shared Stadium Expenses



- 49ers refuse to show proper purchasing and labor code compliance to support Shared Stadium Expenses. 49ers then prepare a “Shared Expense” budget for joint Stadium Management.
- SCSA questioned the amounts because there was no back up to show proper purchasing and labor code compliance
- 49ers force SCSA to borrow money through a Revolving Loan from them to pay themselves \$\$\$ that SCSA says has not been justified.
- At the end of the year, SCSA directs Trust to use SCSA revenue to pay Subordinated Loan
- 49ers refuse the repayment of the Subordinated Loan and instead pay themselves back on the Revolving Loan
- **RESULT:** 49ers pay themselves \$\$\$ that the SCSA never authorized and earn interest on Subordinated Loan amounts that were not repaid.

Draw-down on Revolving Loan



FORTY NINERS STADIUM MANAGEMENT COMPANY

Letter to Santa Clara Stadium Authority
October 31, 2020
Page 2

CERTIFICATE OF LOAN UNDER REVOLVING CREDIT AGREEMENT

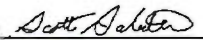
TO: SANTA CLARA STADIUM AUTHORITY, a joint exercise of powers entity created through California Government Code sections 6500 *et seq.* (the "Stadium Authority"), as borrower under that certain Revolving Credit Agreement (the "Revolving Credit Agreement"), dated as of March 28, 2012, as amended and restated as of June 19, 2013, between the Stadium Authority, as borrower, and FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company ("ManagementCo"), as lender.

This certificate of loan is delivered to the Stadium Authority to document a Loan of funds made under the Revolving Credit Agreement in accordance with Sections 5.2 and 5.3 of that certain Stadium Management Agreement (the "Management Agreement"), dated as of March 28, 2012, by and among the Stadium Authority, ManagementCo and Forty Niners SC Stadium Company, LLC ("StadCo"), as amended by that certain First Amendment to Stadium Management Agreement, dated as of November 13, 2012, by and among the Stadium Authority, ManagementCo and StadCo, that certain Second Amendment to Stadium Management Agreement, dated as of May 9, 2013, by and among the Stadium Authority, ManagementCo and StadCo, that certain Third Amendment to Stadium Management Agreement, dated as of June 19, 2013, by and among the Stadium Authority, ManagementCo and StadCo and that certain Fourth Amendment to Stadium Management Agreement, dated as of March 18, 2014, by and among the Stadium Authority, ManagementCo and StadCo (the Management Agreement as so amended, the "Amended Management Agreement"). The proceeds of this Loan shall be applied to Operating Expenses in accordance with Section 5.2.2 of the Amended Management Agreement by being deposited into the Operating Fund established under the Amended Management Agreement. All of such Operating Expenses are Covered Stadium Authority Operating Expenses (as such term is used in the Revolving Credit Agreement). All terms used herein which are not otherwise defined herein shall have the meanings given such terms in the Revolving Credit Agreement.

- (1) Certificate of Loan No.: MLOC-015-20201031
- (2) Amount of Loan: \$2,228,000, all of which is to pay Operating Expenses in accordance with the Amended Management Agreement and the applicable Annual Stadium Authority Budget.
- (3) All conditions precedent to the making of this Loan have been satisfied or waived.

- (4) The Stadium Authority does not and will not, without the making of this Loan, have adequate Available Funds available to pay Covered Stadium Authority Operating Expenses when due, and all moneys loaned to the Stadium Authority under this Loan shall be used solely to pay Covered Stadium Authority Operating Expenses.
- (5) The Stadium Lease and the Amended Management Agreement remain in full force and effect.
- (6) ManagementCo has received such other approvals and/or documents as ManagementCo may reasonably request or require, and all such approvals and documents are in form and substance satisfactory to ManagementCo.

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC, a
Delaware limited liability company

By: 
Scott Sabatino
Chief Financial Officer

Date: October 31, 2020

Recommendation

Adopt the Resolution amending the Stadium Authority Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission.

SCSA

Santa Clara Stadium Authority