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Title: Note and File - Disposition of the Forty Niners Stadium Management Company's Request Regarding the Refinancing of StadCo's Variable Debt

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Attachments: 1. June 8, 2018 Email from Stadium Manager

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REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Note and File - Disposition of the Forty Niners Stadium Management Company's Request Regarding the Refinancing of StadCo's Variable Debt

BACKGROUND

On June 11, 2013, the Stadium Authority Board adopted Resolution No. 13-8 (Stadium Authority) approving an amended and restated Credit Agreement, and all related agreements, in connection with takeout financing for the construction debt. Among the agreements entered into as of June 19, 2013, were

- An amended and restated Credit Agreement (the "Authority Credit Agreement"), by and among the Stadium Authority, as borrower, Stadium Funding Trust ("FinanceCo"), as lender, and Goldman Sachs Bank USA ("GSB"), as administrative agent, and
- An amended and restated StadCo Obligations Agreement, by and among the Stadium Authority, as borrower, Forty Niners SC Stadium Company LLC (StadCo), as lender, and Stadium Funding Trust ("FinanceCo").

The Stadium Authority incurred debt for construction of the Stadium under these agreements. StadCo concurrently entered into a parallel credit agreement with FinanceCo and GSB to finance StadCo's tenant improvements to the Stadium and fund its obligations under the StadCo Obligations Agreement to make a loan to the Stadium Authority for stadium construction. All bank and institutional debt related to the stadium project was made available through FinanceCo, which is the direct borrower, and, in turn, loaned funds to the Stadium Authority and StadCo under their respective credit agreements. The credit facilities were designed to optimize the pricing and terms of the loans for both the Stadium Authority and StadCo.

The Stadium Authority and StadCo each used a combination of long-term fixed rate debt and shorter-term variable rate debt. The debt was structured this way to accommodate the continued construction requirements with the ability to draw additional funds under the short-term financing facility, and to allow for the most productive use of revenues received during construction and the first years of stadium operations, either directly in construction or to prepay construction related debt without a penalty if excess funds became available.

The Stadium Authority repaid all of its short-term variable rate debt (Term B) by March 31, 2016, seven years earlier than anticipated at the time of the 2013 takeout financing. StadCo still has variable rate debt that is outstanding. A portion of StadCo's variable rate debt must be repaid in full or refinanced by June 19, 2018. StadCo also has additional variable rate debt required to be refinanced within the next five years. The need to refinance short term debt was contemplated in the 2013 agreements. Had the Stadium Authority not repaid all of its short-term debt, it would also have needed to refinance at this point in time. Due to the way the Stadium Authority and StadCo debt was structured through FinanceCo, Stadium Authority is a signatory to certain financing documents that also govern the terms of the financing for StadCo.

DISCUSSION

On May 8, 2018, Stadium Authority staff received an e-mail from the Stadium Authority Counsel which included the documents to be amended to effectuate the refinancing for StadCo's variable debt. After an initial review of two documents with several hundreds of pages, Stadium Authority staff informed StadCo that there was insufficient time to review the documents and bring them forward for Board consideration and approval for the May 29 meeting (reports would have required completion by May 16, 2018, thus providing five business days to review and complete a staff report). StadCo maintained a position that the execution of documents did not require the Stadium Authority Board's action; however, Stadium Authority Counsel and Executive Director disagreed with that position and advised StadCo that approval was required and needed to be handled within the legislative timeframes established by the Board. Upon deferring the item to June 12 (during the week of May 21), the Executive Director began to more thoroughly review the documents, and given turnover in Finance and the City Manager's Office, staff sought outside consultant and counsel support, with prior background on the financing, to review the documents.

As part of the internal due diligence, in late May staff had several conference calls with outside consultant and counsel to prepare for discussion with StadCo on any outstanding questions based on our internal review. **As a result, StadCo and Stadium Authority staff agreed on the edits of the refinancing documents by or about June 1 and was set to prepare a memo to the Board for the June 12 Board Agenda.** To our surprise, on June 4, after expending considerable staff time, reprioritizing other work, and incurring expense of consultant and outside legal counsel, StadCo left a message for the Stadium Authority Executive Director stating that the item for June 12 does not need to go the Board and requires no amendment without any explanation as to how this new position was consistent with the applicable executed agreements. In an effort to understand the change in urgency and how StadCo would proceed with restructuring their variable rate debt, Stadium Authority staff inquired and was informed that these actions were no longer necessary because StadCo would refinance with their current lenders in a way that will not require an amendment of documents nor Stadium Authority signatures. Staff has confirmed with Stadium Authority consultants that no action will be required by the Stadium Authority. Unfortunately, the consumption of public resources and time required to fulfill our legislative process to seek Board approval was not taken into account when StadCo raised this urgent request for review and it is not clear whether these costs are recoverable.

Addendum to this Report (June 8, 2018 re Mr. Mercurio's statement)

In an effort to collaborate with ManCo, Stadium Authority staff sent a draft of this report in the early morning on June 8 to and received an email response from Jim Mercurio, Stadium Manager. As requested by Mr. Mercurio, his email and the draft report are attached (Attachment 1).

It is correct that StadCo provided the documents to the Stadium Authority six weeks before the refinancing due date, June 19; however, StadCo did not account for the time required to review the documents internally and within the context of a very busy legislative agenda. It is important to mention that in an already busy time of year (e.g., budget), added by the workload resulting from the resignation of Mr. Caserta, staff appropriately completed its independent due diligence review within two and one half weeks.

In no way, as suggested by StadCo, did Stadium Authority allow for this item to go unattended for weeks. In fact, as mentioned, Stadium Authority Counsel discussed with StadCo the request during the first week and met with StadCo on May 15. Mr. Mercurio does not acknowledge that StadCo's position has been that the financing documents do not require Stadium Authority Board approval, which is a position opposite to Stadium Authority staff and, as such, we communicated to StadCo that time would need to be allowed to integrate the legislative process (as we have done with all other matters). Once Stadium Authority Counsel and Executive Director determined that the financing documents should be approved by the Board, StadCo requested approval at the May 29 Board Meeting to ensure that certain timelines were met. This was not possible, since a report could not be drafted by the May 23/24 timeframe to meet the City's agenda process of publishing all agenda reports for the May 29 meeting by May 25. Equally as disappointing is that on numerous occasions during monthly coordination meetings between ManCo/StadCo and Stadium Authority staff, Stadium Authority staff has advised ManCo that the Stadium Authority has a standard three week Board/City Council packet approval timeline and there is a standing agenda item titled "Financial" for the mutual purpose of adding topics requiring our mutual attention. The most recent meeting of which was April 26 and ManCo/StadCo did not add this item onto the agenda which would have allowed professional disclosure and lead time to establish a timeline toward completion, as we have successfully accomplished other significant items. That was entirely a failure of ManCo/StadCo for which we request correction going forward. Therefore, to insinuate that Stadium Authority staff failed to act in a timely manner is plain false and a mischaracterization of our recorded due diligence.

It is also important to note that ManCo never advised us of the need for the refinancing during the budget process, so that the Board could have set aside funds in the Stadium Authority budget for consultant review (although the deadline for refinancing has been known to them for five years).

ENVIRONMENTAL REVIEW

Not applicable.

FISCAL IMPACT

The Stadium Authority expended thousands of dollars of public funds to respond in good faith to ManCo's urgent request to review documents related to the restructuring of StadCo's variable debt. Consultant costs incurred to provide expert financial and legal review are estimated at \$10,000. It is important to note that these costs were not anticipated when the Board approved the FY 2018/19 Stadium Authority Budget. Staff expenses are expected to be thousands of dollars as well. Unfortunately, these funds do not appear recoverable.

COORDINATION

This report has been coordinated with the Stadium Authority Counsel's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and File - Disposition of Forty Niners Stadium Management Company's Request Regarding the Refinancing of StadCo's Variable Debt

Reviewed by: Angela Kraetsch, Treasurer

Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. June 8, 2018 Email from Stadium Manager