



## Agenda Report

20-869

Agenda Date: 9/29/2020

### REPORT TO STADIUM AUTHORITY BOARD

#### SUBJECT

Informational Report on Stadium Authority Litigation [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

#### BACKGROUND

The Stadium Authority Board has requested a report on the status of litigation involving the Santa Clara Stadium Authority in order to provide the public with accurate information about various disputes with the San Francisco Forty-Niners organization involving Levi's Stadium.

#### DISCUSSION

All of the following cases were initiated by the 49ers' organizations against the Stadium Authority and/or the City of Santa Clara:

##### **A. *Forty Niners SC Stadium Company LLC v. SCSA Arbitration Proceedings***

There have been a total of five (5) arbitration demands, all filed by the 49ers against the Stadium Authority.

The following *three* cases are now in **arbitration proceedings** and have been consolidated:

- 1. Shared Expenses:** 49ers allege that SCSA failed to fulfill its contractual obligations under the Stadium Lease and Management Agreement by refusing to pay its share of operation and maintenance expenses and by requiring 49ers to complete additional management tasks without appropriate payment. SCSA denies the allegations and argues that 49ers failed to follow state and local law requirements in their management of the Stadium's affairs and, as a result, SCSA was forced to take remedial action.
- 2. Public Safety Cap:** 49ers allege that they have overpaid public safety cost reimbursement under the Stadium Lease and demand that the Stadium Authority refund this amount, plus interest and attorney's fees. The Stadium Authority disputes their contentions such that there was no overpayment and seeks to have the public safety cap modified as provided for in the Lease.
- 3. Amendment to Stadium Procurement Ordinance:** 49ers allege that the ordinance amending the SCSA's procurement ordinance to rescind the Executive Director's procurement authority was invalid because it results in a unilateral cancellation/modification of the Management Agreement by SCSA. They allege, further, that a lack of procurement authority negatively impacts their ability to perform the day-to-day management and operational functions of the Stadium. SCSA denies the 49ers' position and asserts that a legislative body's

authority to set procurement processes cannot be delegated, and that the 49ers violated state and local law requirements in their management of the Stadium's affairs and, as a result, SCSA Board was forced to remove the authority that had previously been delegated.

This fourth case has not yet been consolidated with the 3 pending arbitrations:

4. **New Arbitration Case (Buffet Costs):** The 49ers allege that SCSA owes them more than \$4 million for buffet costs from 2014 through 2018.

**Previous Arbitration Case (Rent Re-set):** the 49ers filed an arbitration demand after the Stadium Authority refused to agree to a reduction in the annual Facility Rent from \$24,500,000 to \$20,250,000. The Stadium Authority prevailed and the rent was increased to \$24,762,000. The 49ers paid the SCSA's attorney fees of more than \$2 million.

**B. Forty Niners Stadium Company and Management Company v. SCSA, et al. Judicial Proceedings**

The 49ers filed the following two cases against the Stadium Authority in Santa Clara County Superior Court which have been consolidated under Case Nos. 17CV304903 and 19CV304903:

1. **Stadium Authority's Right to Documents.** 49ers alleged in a Declaratory Relief action which they later dismissed, essentially, that they have been wrongfully accused of failing to perform their contractual obligations and that the SCSA has therefore improperly failed to provide required estoppel certificates. SCSA filed a cross-complaint alleging that the 49ers have improperly withheld records and interfered with SCSA's ability to complete its audit. SCSA's case against the 49ers is now consolidated with the Management Agreement case.
2. **Stadium Authority's Right to Terminate Management Agreement.** 49ers brought another Declaratory Relief action to challenge SCSA's termination of the management agreement. SCSA denies the 49ers' allegations, and argues that Forty Niners breached the management agreement in various respects, and SCSA's termination of the Management Agreement is valid.

**C. Forty Niners SC Stadium Company LLC v. City of Santa Clara**

The 49ers filed a case against the City of Santa Clara (Case No. 18CV326430) in which they allege that they have overpaid the City under the **Golf Course Parking Agreement** in the amount of approximately \$1.05 million. City has filed a cross-complaint alleging that the City was actually underpaid approximately \$718,000.

**D. Other cases relating to the Stadium**

In addition to the **eight** actions filed by the 49ers against the Stadium Authority or City, there are **two** other court cases involving the Stadium Authority or City and the 49ers:

1. **Lawrence E. Stone, Santa Clara County Assessor v Santa Clara County Assessment**

**Appeals Board No. 1** (Case No. 19CV347946)

This case is a petition filed by the Santa Clara County Assessor appealing a decision of a County Assessment Appeals Board which reduced the 49ers' possessory interest tax on their interest in Levi's Stadium by almost half its assessed value, resulting in hundreds of millions of dollars in lost tax revenue to the various public agencies that receive property taxes in Santa Clara County. Neither the City nor the Stadium Authority is a party to this case, but the City is assisting County Counsel with the appeal.

**2. Santa Clara Stadium Authority v All Persons Interested in the Matter of the Santa Clara Stadium Authority's Adoption of its "Fiscal Year 2020/21 Operating, Debt Service, and Capital Budget, including Funding Shared Stadium Manager Expenses at \$3,045,000 and a Legal Contingency at \$9,231,000," etc.** (Case No. 20CV366845)

The Stadium Authority filed this **Validation** Action requesting the Santa Clara County Superior Court to enter a judgment on the following legal issues:

- Only the Stadium Authority is authorized to adopt an annual budget for the public agency;
- Adoption of Stadium Authority's March 24th Budget was and is valid
- Stadium Authority's March 24th Budget is the current fiscal year 2020/21 budget for Stadium Authority;
- All persons should be permanently enjoined from taking any action or proceeding challenging the validity of Stadium Authority adopting Stadium Authority's March 24th Budget as its current fiscal year 2020/21 budget;

### **E. Third Party Cases**

The following cases have been filed by third parties against the Stadium Authority and/or the City and the 49ers.

**Scott v. SCSA, et al.**, Santa Clara County Case Number 20CV368911

Mr. Scott, a Stadium Seat Builder License holder, has filed a class action case against SCSA and Legends Sales and Marketing alleging that he is entitled to a refund of his 2020 season seat license payment because tickets for NFL games will not be sold for the 2020 season due to Covid-19. The case was tendered to the 49ers and the Stadium Authority's insurance carriers for handling, and both denied the tender. Therefore, defense counsel has been assigned.

**Maranon v. SCSA, et al.**, USDC-NDCA Case Number 5:15-cv-04709

Americans with Disabilities Act access-related lawsuit involving various parts of the Stadium. The case also includes significant personal injury allegations. This matter was tendered for defense and indemnity to the Forty Niners. The Forty Niners have accepted our tender and have appointed counsel to defend the SCSA in this matter. Turner Devcon has been added as a defendant. Settlement discussions are underway between insurance carriers and Plaintiff.

**Nevarez v. SCSA, et al.**, USDC-NDCA Case Number 5:16-cv-07013

Plaintiffs, as named representatives of a certified class of Stadium attendees with mobility related disabilities, allege both physical barriers to access as well as operational barriers at Levi's® Stadium, in violation of the Americans with Disabilities Act. Forty Niners accepted the tender of defense and have appointed counsel to represent the SCSA. Turner Devcon has been added as a defendant. A settlement has been reached between the parties and approved by the Court, wherein the 49ers fund a \$24 million class fund, pay \$13 million in attorneys fees, and complete remediation within the Stadium site. The City of Santa Clara will complete remediation upon the public rights of way surrounding the Stadium.

**Guthrie v. SCSA, et al.**, Santa Clara County Case Number 20CV365958

Mr. Guthrie, a Stadium patron, claims that he sustained injuries when a loose sign overhanging an entrance to the Stadium became dislodged and fell on him. This matter has been tendered for defense and indemnity to the SCSA liability carrier, and the tender has been accepted. The carrier has assigned defense counsel, and is in the very early stages of litigation.

**Sharma v. SCSA, et al.**, Sacramento County Superior Court Case Number 34-2013-80001396

The County of Santa Clara, through its Auditor-Controller Vinod Sharma, sued the City's former RDA, SOSA, Housing Authority and SCSA related to the dispute regarding the RDA winding down. The Redevelopment Dissolution Countywide Oversight Board of Santa Clara County approved a Compensation Agreement between the City of Santa Clara and the Santa Clara Successor Agency with the various taxing entities, as well as CC&Rs to be recorded on the Convention Center Parcels. The Compensation Agreement is currently being circulated among the parties for their signatures. Once the Compensation Agreement has been approved and executed by all the parties, the City Parties will record the CC&Rs and shall begin marketing efforts for the sale of the Hotel and Office Parcels.

## **ENVIRONMENTAL REVIEW**

This is an information report only and no action is being taken by the Stadium Authority Board and no environmental review under the California Environmental Quality Act ("CEQA") is required.

## **FISCAL IMPACT**

No impact.

## **PUBLIC CONTACT**

Not applicable.

## **RECOMMENDATION**

Note and File Informational report on Stadium Authority Litigation.

Approved by: Brian Doyle, Stadium Authority Counsel