

AGENDA REPORT

City of Santa Clara, California

Date: March 31, 2011
To: Executive Director for Stadium Authority Action
From: Administrative Analyst to the City Manager
Subject: Adoption of a Resolution Approving a Naming Rights Marketing Agreement between the Stadium Authority and Forty Niners Stadium, LLC

EXECUTIVE SUMMARY:

The Santa Clara Stadium Authority is proposing to enter into a Naming Rights Marketing Agreement with Forty Niners Stadium, LLC (Stadco) to grant the exclusive rights to market the right to designate the name of the Stadium ("Naming Rights").

On June 2, 2009, the Council approved a Term Sheet between the City of Santa Clara, the Redevelopment Agency of the City of Santa Clara and Stadco for the construction and operation of a stadium suitable for NFL football in the Bayshore North Redevelopment Project Area. The Term Sheet anticipated that the Stadium Authority would work in cooperation with Stadco to market and sell the Naming Rights for the Stadium with the purpose of maximizing, to the extent possible, the proceeds from the sale of the Naming Rights. All net proceeds from the sale of the Naming Rights would be the property of the Stadium Authority and would be used by the Stadium Authority to pay costs associated with the development of the Stadium.

The proposed Naming Rights Marketing Agreement would provide Stadco with the exclusive right to market the Naming Rights of the Stadium for a period of twenty-four (24) months. Under the Naming Rights Marketing Agreement, Stadco and the Stadium Authority Executive Director will develop a mutually agreed-upon strategy to market the Naming Rights. Stadco may choose to enlist the assistance of a Naming Rights broker ("Broker") to solicit a Naming Rights sponsor. If the Broker is successful in attracting a Naming Rights sponsor and negotiating a Naming Rights agreement acceptable to the Stadium Authority ("Naming Rights Agreement"), the Broker would be eligible to receive a commission. This commission would most likely be in the range of five to ten percent of the gross sale proceeds from the sale of the Naming Rights. Payment of the Broker's commission would be the responsibility of the Stadium Authority, with the funds coming from the Naming Rights revenue received by the Stadium Authority. The Executive Director will monitor Stadco's selection of a Broker and the terms of the Broker's contract.

If Stadco, in consultation with the Executive Director, is successful in negotiating an acceptable Naming Rights Agreement, the Naming Rights Agreement will be presented to the Stadium Authority for its approval. The Stadium Authority will also be asked to approve the Broker's commission, if any, at the same time a Naming Rights Agreement is considered for approval.

Executive Director for Stadium Authority Action

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ADVANTAGES AND DISADVANTAGES OF ISSUE:

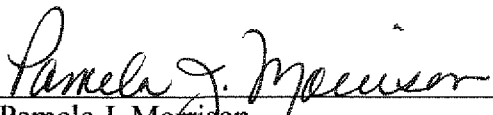
The Naming Rights Marketing Agreement is another step in moving the Stadium Project forward. The 49ers have substantial experience in the marketing of sponsorships for sporting events. Stadco will rely on this experience in marketing the Naming Rights for the Stadium. Under the Naming Rights Marketing Agreement, Stadco will bear all upfront costs for the marketing effort, with the Stadium Authority only required to reimburse Stadco after construction of the Stadium has commenced, as will be detailed in the Disposition and Development Agreement. The Naming Rights Agreement and the proceeds that it is expected to generate will play a key role in solidifying the financing for the development of the Stadium. By beginning the marketing process now, it will make it more likely that the Stadium Authority will be able to meet its goal to commence construction on the Stadium by 2013.

ECONOMIC/FISCAL IMPACT:

Execution of the Naming Rights Marketing Agreement will not result in a financial impact at this time. Any costs to be incurred by the Stadium Authority under the Naming Rights Marketing Agreement will occur only after a Naming Rights Agreement has been approved by the Stadium Authority and construction of the Stadium has commenced. Stadco will bear all upfront costs associated with the Naming Rights Marketing Agreement.

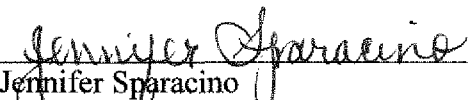
RECOMMENDATION:

That the Authority adopt the Resolution Approving a Naming Rights Marketing Agreement between the Stadium Authority and Forty Niners Stadium, LLC (Stadco), providing Stadco the exclusive right to market the Naming Rights for the Stadium for a twenty-four month period.



Pamela J. Morrison
Administrative Analyst to the City Manager

APPROVED:



Jennifer Sparacino
Executive Director for Stadium Authority

Documents Related to this Report:

- 1) Resolution Approving a Predevelopment Funding Agreement between the Redevelopment Agency, Stadium Authority and Forty Niners Stadium, LLC***

RESOLUTION NO. ____ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY APPROVING A NAMING RIGHTS
MARKETING AGREEMENT RELATED TO THE
CONSTRUCTION OF THE STADIUM PROJECT**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the Redevelopment Agency of the City of Santa Clara ("Agency") is engaged in various activities in its efforts to remove the blighting conditions that still remain in the Project Area;

WHEREAS, in keeping with the goals of the Agency to eliminate blight and reduce physical and economic blight in accordance with the Redevelopment Plan and the Agency's current Implementation Plan ("Implementation Plan"), the Santa Clara Stadium Authority ("Stadium Authority") and the Agency have been working cooperatively regarding the development of a stadium suitable for professional football and other large events ("Stadium Project") in the Project Area;

WHEREAS, the development of the Stadium will depend upon a variety of funding sources including funds from a potential naming rights sponsor;

WHEREAS, the Stadium Authority desires to enter into a Naming Rights Marketing Agreement with Forty Niners Stadium, LLC providing for the Forty Niners Stadium LLC to market the naming rights to the Stadium subject to the terms and conditions set forth in the Agreement; and

WHEREAS, the Staff Report provides additional information upon which the findings and actions set forth in this Resolution are based.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM
AUTHORITY AS FOLLOWS:**

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Stadium Authority hereby approves the Naming Rights Marketing Agreement and

authorizes the Executive Director to enter into and execute the Naming Rights Marketing Agreement on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Authority signatory. The Executive Director is authorized to implement the Naming Rights Marketing Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Naming Rights Marketing Agreement.

3. That the Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the Naming Rights Marketing Agreement.

4. That the Authority Secretary shall certify to the adoption of this Resolution.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE 5TH DAY OF APRIL, 2011, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. Naming Rights Marketing Agreement Related to the Construction of the Stadium Project
2. Staff Report dated March 31, 2011

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**NAMING RIGHTS MARKETING AGREEMENT
BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY
AND FORTY NINERS STADIUM, LLC**

THIS NAMING RIGHTS MARKETING AGREEMENT (this "Agreement") is made as of April 5, 2011, by and between the Santa Clara Stadium Authority, a California joint powers authority ("Stadium Authority") and Forty Niners Stadium, LLC, a Delaware limited liability company ("Stadco"), with reference to the following facts, purposes, and understandings.

RECITALS

A. On June 8, 2010, the voters of the City of Santa Clara approved Measure J, which endorses the construction, operation and maintenance of a stadium in the City suitable for NFL games ("Stadium").

B. The Stadium Authority is a joint powers authority formed by, and comprised of, the City of Santa Clara ("City") and its Redevelopment Agency ("Agency") pursuant to a Joint Powers Agreement Authority dated as of February 22, 2011, as it may be amended from time to time, for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.

C. The construction of the Stadium will further the goal of both the City and Agency of creating an entertainment destination in the Bayshore North Redevelopment Project Area ("Project Area"), and will provide significant economic benefits to the City and its residents and businesses.

D. The Stadium Authority intends to lease from the City certain real property located in the City within the Project Area ("Stadium Site") for development of the Stadium.

E. The Stadium Authority and Stadco intend to negotiate a Disposition and Development Agreement ("DDA") pursuant to which, subject to various conditions precedent, the Stadium Authority would develop and own the Stadium and Stadco would enter into an agreement with the Stadium Authority to lease the Stadium ("Stadium Lease").

F. As the Stadium Authority will develop and own the Stadium, the Stadium Authority possesses and will possess the sole and exclusive right to sell, license, or otherwise transfer certain significant property, entitlement and advertising rights in the Stadium, including, without limitation, the Stadium Naming Rights (as defined below).

G. The Stadium Authority intends that the proceeds from the sale of Naming Rights will be used to pay costs related to the development of the Stadium and, if available, for the operation of the Stadium. Stadco acknowledges that it has no right to sell, license, or otherwise transfer the Stadium Naming Rights for the Stadium and that all proceeds generated by the sale of Naming Rights will be property of the Stadium Authority.

H. Through its affiliate, the San Francisco Forty Niners, Limited ("Team"), Stadco has substantial expertise in the marketing of sponsorships for sporting events and venues, and pursuant to this Agreement, Stadco will assist the Stadium Authority in marketing the Stadium Naming Rights.

I. Pursuant to CEQA, the Stadium Authority has reviewed, and certified that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing ("Final Environmental Impact Report"). The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Stadium Authority and Stadco agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 In addition to the terms defined elsewhere in this Agreement the following capitalized words shall have the following meanings:

- (a) "Agreement" means this Naming Rights Marketing Agreement.
- (b) "Executive Director" means the Executive Director of the Stadium Authority or his/her designee.
- (c) "Party" means the Stadium Authority or Stadco, as applicable.
- (d) "Parties" collectively means the Stadium Authority and Stadco.
- (e) "Person" or "Persons" means any individual, partnership, joint venture, corporation, limited liability corporation, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.
- (f) "Stadium Naming Rights" means the right of a Person to designate the name of the Stadium, and certain attendant rights, including, without limitation, such signage, access and other Stadium-related rights as are more particularly set forth in the Stadium Naming Rights Agreement.
- (g) "Stadium Naming Rights Agreement" means an agreement to be entered into by and between the Stadium Authority and one or more Persons with respect to the sale of the Stadium Naming Rights.
- (h) "Stadium Naming Rights Revenue" means all revenues from the sale of Stadium Naming Rights pursuant to the Stadium Naming Rights Agreement.
- (i) "Stadium Naming Rights Sponsor" means the Person or Persons who enter into the Stadium Naming Rights Agreement with the Stadium Authority.
- (j) "Term" means the term of this Agreement as defined in Section 3.1, below.

ARTICLE 2.
STADIUM NAMING RIGHTS MARKETING

Section 2.1 Stadium Naming Rights Marketing. Pursuant to the terms of this Agreement, Stadco shall have the exclusive right and responsibility to market the Stadium Naming Rights on behalf of the Stadium Authority during the Term of this Agreement. Within thirty (30) days following the date of this Agreement, Stadco shall meet with the Executive Director to discuss and receive input regarding a mutually agreed upon strategy for marketing the Naming Rights. Offers for Stadium Naming Rights shall be solicited from potential Stadium Naming Rights Sponsors through a process reasonably designed to solicit potential Stadium Naming Rights Sponsors meeting the criteria described below. Stadco shall focus marketing efforts on potential Stadium Naming Rights Sponsors that: (i) possess sufficient assets and financial wherewithal to commit proceeds acceptable to the Stadium Authority; (ii) have no history of bankruptcy or insolvency, (iii) are not barred from doing business with the City or the Stadium Authority, and (iv) whose proposed name for the Stadium would not violate any applicable law or disparage the Stadium Authority, the City or the Stadium tenants (including names containing slang, barbarisms, racial epithets, obscenities or profanity, that relate to any illicit drugs or any sexually oriented business or enterprise, that could reasonably be construed to promote violence, expressly encourage illegal activity, or that contain any overt political or religious references). Stadco shall meet periodically with the Executive Director to provide updates regarding the implementation of the marketing plan and its progress in identifying potential Stadium Naming Rights Sponsors.

Section 2.2 Naming Rights Broker. Stadco may engage one or more reputable companies experienced in marketing and selling sports stadium or arena naming rights, which companies shall not be affiliated with Stadco ("Naming Rights Broker"). The Parties acknowledge that Stadco and/or the Team may also separately retain the Naming Rights Broker to perform sponsorship brokerage services for Stadco and/or the Team. The Parties acknowledge that experienced Naming Rights Brokers are expected to require a commission in the range of five to ten percent (5%-10%) of the Naming Rights Revenue to be received under the Stadium Naming Rights Agreement. If any commission is proposed to be payable to any Naming Rights Broker in connection with such Naming Rights Agreement, a separate agreement between the Naming Rights Broker and the Stadium Authority (a "Commission Agreement") providing for the payment of such commission shall be submitted to the Stadium Authority for approval along with the Stadium Naming Rights Agreement. Any commissions payable under a Commission Agreement shall only be payable from the Stadium Naming Rights Revenue received by the Stadium Authority.

Section 2.3 Stadium Naming Rights Agreement. Any Stadium Naming Rights Agreement shall be subject to the reasonable approval of the Stadium Authority. Stadco, in cooperation with the Executive Director, shall have primary responsibility for negotiating a Stadium Naming Rights Agreement, with the goals of: (i) maximizing the proceeds available for the development of the Stadium, either through upfront payments or contractual commitments that can be pledged to support financing; and (ii) assuring payments that are reasonably acceptable to the Stadium Authority. Stadco shall meet periodically with the Executive Director to discuss and receive input regarding the negotiation of the Naming Rights Agreement with potential Stadium Naming Rights Sponsors. The Stadium Naming Rights Agreement and any Commission Agreement proposed in connection therewith shall be considered together, and, subject to the provisions of this Agreement, shall either both be approved or both disapproved.

Section 2.4 Separate Stadco Contracts. Stadco, the Team and/or their affiliates shall have the right to contract with the Stadium Naming Rights Sponsor, through one or more separate contracts, for sponsorship or promotional arrangements. The Stadium Authority recognizes that any Stadium Naming Rights Sponsor will, in light of Stadco's role as anchor tenant in the Stadium, likely enter into a contemporaneous sponsorship and promotional arrangement with Stadco, the Team or their affiliates ("Stadco Sponsorship Agreements"). Neither Party shall be responsible for the obligations of the other Party under their respective agreements with the Stadium Naming Rights Sponsor. If Stadco or an affiliate enters into, or intends to enter into, any Stadco Sponsorship Agreements with the Naming Rights Sponsor prior to or in conjunction with the Stadium Authority's entry into any Stadium Naming Rights Agreement, Stadco shall promptly notify the Executive Director and shall provide to the Executive Director, or make available for her review, such information with respect to such Stadco Sponsorship Agreements as she may reasonably request, subject to reasonable arrangements to protect confidential and proprietary information.

ARTICLE 3. TERM

Section 3.1 Term. This Agreement shall be for an initial term of twenty-four (24) months commencing on the date hereof, and shall continue thereafter on a month-to-month basis until terminated.

ARTICLE 4. NAMING RIGHTS MARKETING COSTS

Section 4.1 Marketing Costs. The Parties acknowledge that Stadco will incur costs in carrying out its responsibilities under this Agreement, which may include, without limitation, advances to the Naming Rights Broker against future commissions, compensation of sales people, preparation of marketing materials, consulting expenses and attorneys' fees. Prior to entering into any agreement with a Naming Rights Broker, Stadco shall submit an estimated budget of such costs to the Executive Director for her approval. Upon commencement of construction of the Stadium such costs will be reimbursed, along with other Stadium development costs, from construction funding sources, as will be set forth more specifically in the DDA. Except as provided in this Section 4.1 or in any Commission Agreement approved by the Stadium Authority, the Stadium Authority shall not be responsible for any costs and expenses incurred by the Stadco in performing its obligations hereunder.

ARTICLE 5. GENERAL PROVISIONS

Section 5.1 Non-Liability of Officials. No member, official, employee, manager or agent of any Party shall be personally liable to any other Party, or any successor in interest, in the event of any default or breach by such Party for any amount which may become due to any other Party or successor or on any obligation under the terms of this Agreement.

Section 5.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the Stadium Authority's approval, consent, or waiver, the written approval, consent, or waiver of the Stadium Authority's Executive Director (or his/her respective designee) shall constitute the approval, consent, or waiver of the Stadium

Authority, respectively, without further authorization required from the governing board of such Party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems it appropriate.

Section 5.3 Third Party Beneficiaries. The Stadium Authority and Stadco do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

Section 5.4 State Law. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 5.5 Additional Acts. The Parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other Parties for purposes of consummating the transactions contemplated in this Agreement.

Section 5.6 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, Party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 5.7 Modification and Amendment. This Agreement cannot be amended or modified except by written agreement of the Parties.

Section 5.8 Defaults and Remedies. If either Party breaches any material provision of this Agreement, the other Party shall first notify the breaching Party in writing of the purported breach or failure, giving the breaching Party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching Party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching Party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching Party shall be entitled to elect either to terminate this Agreement or to seek specific performance, as its sole and exclusive remedy. Notwithstanding the foregoing, the limitation on remedies contained in this Section 5.8 shall not apply to a breach of any indemnity obligations set forth in Section 5.9 below.

Section 5.9 Indemnity. To the extent permitted by law, Stadco undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, the Agency, their respective commissioners, directors, council members, officers, employees, agents, and successors ("Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising out of Stadco's acts or omissions in its performance under this Agreement, except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. The provisions of this Section 5.9 shall survive the termination of this Agreement.

Section 5.10 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties to this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 5.11 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

Section 5.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

SANTA CLARA STADIUM AUTHORITY
a California joint powers authority

APPROVED AS TO FORM:

ELIZABETH H. SILVER
Interim Stadium Authority General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
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ROD DIRIDON, JR.
Stadium Authority Secretary

“Stadium Authority”

FORTY NINERS STADIUM, LLC
a Delaware limited liability company

LAWRENCE MACNEIL
Vice President and Chief Financial Officer

“Stadco”