

Meeting Date: 6/7/11

AGENDA REPORT

Agenda Item # 6B

City of Santa Clara, California



Date: May 31, 2011
To: City Manager for Council Action
From: Administrative Analyst to the City Manager
Subject: "Committee of the Whole" Study Session - Update on the Status of the Stadium Project

EXECUTIVE SUMMARY:

Measure J, passed by the voters in June 2010 authorized the City to move forward with the development of the Stadium subject to certain binding requirements to safeguard the City's general and enterprise funds. Since the adoption of Measure J, several actions have been taken, including work on a draft of the Disposition and Development Agreement (DDA) between the Stadium Authority and 49ers Stadium Company (Stadco), based on the conceptual framework contained in the Term Sheet. The attached report provides an update to the Council and the public on the status of negotiations and the various tasks accomplished related to the Stadium project.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The information in this report provides Council and the public with a greater understanding of the actions that have been taken to date on the Stadium Project, as well as the status of negotiations on the DDA and financing structure for the stadium. There are no identified disadvantages.

ECONOMIC/FISCAL IMPACT:

Due to changes in financing markets in the past few years, the structure contained in the 2007 Stadium financial projections and the 2009 Term Sheet has evolved to enable the stadium project to successfully move forward. While the process has been time-consuming, the completion of a financing structure beneficial to all the involved parties will allow the project to move to a successful completion. The completion of the DDA will serve as the formal commitment of the Stadium Authority and Stadco to proceed with the development of the Stadium and will contain critical elements related to financing of the project. In its ongoing negotiations with the 49ers, staff will continue to ensure that all aspects of the Stadium project meet the binding requirements set forth in Measure J and that the City's general and enterprise funds are fully protected.

RECOMMENDATION:

That the Council note and file the attached report on the status of the Stadium project.

Handwritten signature of Pamela J. Morrison in black ink.

Pamela J. Morrison
Administrative Analyst to the City Manager

APPROVED:

Handwritten signature of Jennifer Sparacino in black ink.
Jennifer Sparacino
City Manager

Documents Related to this Report:

1) *Stadium Project Status Report dated May 31, 2011*

City of Santa Clara
STADIUM PROJECT STATUS REPORT
May 31, 2011

The purpose of this report is to provide an update to the City Council and the public on the status of negotiations and the various tasks accomplished related to the Stadium project. Negotiations are on-going and much progress has been made. Staff and the 49ers are continuing to negotiate key components of the transaction while refining the concepts that were previously presented to the City Council at the time of the Term Sheet. This Status Report will provide an overview of the proposed structure and will provide an opportunity for the City Council and the public to comment.

Measure J, passed by the voters in June 2010, authorized the City to move forward with the development of the Stadium subject to certain binding requirements to safeguard the City's general and enterprise funds. Since the adoption of Measure J, much has been accomplished. Land use approvals for the development of the Stadium, including a general plan amendment and PD zoning ordinance have been adopted by the Council; the Stadium Authority has been formed; the Agency, Stadium Authority 49ers Stadium Company ("Stadco") entered into a Predevelopment Funding Agreement to allow for engineering and design work to begin on utility relocation and site preparation; the Stadium Authority entered into the Naming Rights Marketing Agreement to begin the process of marketing the naming rights for the Stadium; and most recently the Agency issued new tax allocation bonds that provided approximately \$2.7 Million to fund Stadium-related costs.

In July, the Stadium Authority will consider agreements for the selection of the Stadium concessionaire and the selection of the marketing company to begin selling the Stadium Builder Licenses for the Stadium. Design development for the Stadium will also begin in July and Staff expects a Disposition and Development Agreement or DDA to be presented to the Stadium Authority for consideration in early Fall 2011. More details on these activities are discussed below.

I. SCHEDULE OVERVIEW.

A. Following approval of the DDA some of the major milestones include:

- 1) Commencement of utility relocation and "Make-Ready Work" in Spring 2012.
- 2) Stadium Authority consideration of the final Finance Plan for the Stadium development in Summer 2012;
- 3) Execution of City Ground Lease, Stadium Lease and closing of financing in Fall 2012 (the "Closing");
- 4) Construction mobilization and preliminary site work in Fall 2012.
- 5) Commencement of construction of the Stadium in early 2013;

- 6) Opening of the Stadium in 2015.
- B. The Collective Bargaining Agreement (“CBA”) between the NFL and its players has expired. Stadco and its financial advisors have indicated that a new CBA is essential to the financing of the Stadium. In anticipation of the new CBA, Staff and Stadco continue to work with Stadco’s financial advisors to develop financing alternatives for the Stadium. With approximately one year still remaining before the Finance Plan is scheduled to be finalized, Stadco and its financial advisors are confident that the Stadium will obtain the financing needed to begin construction of the Stadium on schedule.
 - C. Parking Structure and Substation Relocation.
 - 1) Status of Parking Structure:
 - a) The construction contract for the Tasman Parking Structure was awarded on May 24, 2011.
 - b) Construction is expected to commence in June 2011.
 - c) Substantial completion is expected in August 2012.
 - d) Final completion is expected October 2012.
 - 2) Status of Substation Relocation Project:

The removal of the Tasman Substation is scheduled to be completed July 2013.

II. PREDEVELOPMENT ACTIVITIES

- A. Predevelopment Agreements with Stadco.
 - 1) In March 2011, the Stadium Authority, the Agency and Stadco entered into a Predevelopment Funding Agreement that provides for the payment of certain predevelopment costs and Stadium Authority costs from Agency funds. The Predevelopment Funding Agreement allows for the commencement of design and engineering work for the relocation of utilities around the Stadium site and various other site preparation activities.
 - 2) In July 2011, Staff intends to seek Stadium Authority approval of additional agreements between the Stadium Authority and Stadco. The anticipated agreements will provide for overall coordination of the Stadium Authority’s and Stadco’s predevelopment activities, including provisions for funding of the Stadium Authority’s predevelopment costs and the selection of a concessionaire for the Stadium. The concessionaire will immediately begin work with the design team to provide input on the character and quality of the concession spaces.

B. Marketing.

- 1) Stadco has completed a Sales Center at the Techmart and has retained Legends Premium Sales, LLC (“Legends”) to market suites. Legends was responsible for the sale of the suites and premium seating for the Cowboys’ new stadium and is also now marketing premium seating for the Rose Bowl.
- 2) The Stadium Authority expects to begin marketing Stadium Builders Licenses (“SBLs”) in late 2011 or early 2012. To take advantage of operational efficiencies, Staff is currently negotiating a draft agreement with Legends and intends to seek Stadium Authority approval of a final agreement for marketing the SBLs in early July 2011.
- 3) The Stadium Authority entered into a Naming Rights Marketing Agreement with Stadco. Stadco, in turn, has retained Creative Artists Agency (CAA) to assist in the marketing of the naming rights (“Naming Rights”) for the Stadium. Stadco and CAA are actively engaged in marketing the Naming Rights opportunity on behalf of the Stadium Authority.

C. Design and Construction Procurement.

- 1) The Schematic Design for the Stadium was approved by the Council in November 2010.
- 2) Design Development for the Stadium will begin in July 2011. As with Schematic Design, the Design Development costs will be paid initially by Stadco. Developing the Design Development documents will require Stadco to expend millions of dollars to help the Stadium Authority make this project a reality. The expectation is that the Stadium Authority will acquire the rights in the Design Development documents and that Stadco will be reimbursed for its design costs from the construction sources discussed below. The Design Development documents will be subject to Stadium Authority approval.
- 3) In early July, Staff intends to present procurement guidelines governing the public bidding of the Stadium design-build subcontracts that conform to the requirements of Senate Bill 43. Senate Bill 43 authorizes the Stadium Authority to award a sole source contract for the construction of the Stadium to a qualified design-builder, and provides further that the Stadium Authority must establish a competitive bid process for the award of the design-build subcontracts. Subcontracts funded with Agency or Community Facilities District (“CFD”) funds will be awarded to the lowest responsible bidder in a manner consistent with the process applicable to the City under its charter.

III. The DDA and Financing Structure

After the adoption of Measure J, Staff and the 49ers began working on a draft of the DDA between the Stadium Authority and Stadco, based on the conceptual framework contained in the Term Sheet. The DDA will more fully spell out the responsibilities of the Stadium Authority and Stadco and will provide additional details and further definition of the transaction structure. While there is still a significant amount of work to do before construction commences, Staff and the 49ers have fleshed out significantly more details of the transaction structure since the Term Sheet was approved in June 2009. The DDA will serve as the formal commitment of the Stadium Authority and Stadco to proceed with the development of the Stadium, subject to conditions that are consistent with Measure J.

One of the critical conditions to development of the Stadium will be the Stadium Authority's approval of a detailed Finance Plan for the project. As described in the Term Sheet, the Finance Plan will be a detailed plan for the financing of the Stadium and will identify and describe all funding sources to fund the costs for the Stadium Authority's development of the Stadium, including Stadco's commitment to pay for cost overruns.

The parties acknowledged in the Term Sheet that it would be necessary for the Stadium Authority and the 49ers to maintain flexibility in the approach to financing the development of the Stadium. As the Stadium Authority and the 49ers continue to work on the elements of the Stadium financing, the Finance Plan will continue to evolve. The Finance Plan must, in all events, be consistent with the requirements of Measure J, including the prohibition on the use of the City's general or enterprise funds for development of the Stadium and the caps on the contributions of Redevelopment Agency and CFD funds.

The current estimate for the total costs for the development of the Stadium is approximately \$950,000,000. Approximately 15% to 25% of the development costs will relate to tenant improvements within the Stadium and will be paid by Stadco. As further detailed below, the Stadium Authority will fund the remaining development costs from a variety of sources, including (i) the RDA contribution during construction and the advances made against the RDA and CFD contribution; (ii) proceeds from Naming Rights; (iii) proceeds from the SBLs and (iv) a subordinated loan/advance from Stadco.

Although the final Finance Plan is more than a year away, the following describes the current framework;

- A. As described in the Term Sheet, the Stadium Authority will raise money for development of the Stadium by selling Naming Rights and SBLs. The Term Sheet also contemplated that the Stadium Authority could borrow funds against a "ticket surcharge" imposed on tickets for NFL games to provide another source of construction financing. The current thinking is that the ticket surcharge will not be used to provide construction financing.
- B. The RDA will also provide funds up to a maximum investment of \$40 million plus one-half of the costs of development fees paid to the City (\$1.6 million), and

the CFD will provide funds up to a maximum investment of \$35 million, to pay costs related to the development of the Stadium.

- 1) The RDA has already advanced approximately \$4 million of the not-to-exceed \$40 million to fund Stadium Authority operating costs and certain costs related to the "Make-Ready Work" necessary to ready the site for Stadium construction. In addition, in its recent sale of tax increment bonds, the RDA was able to generate sufficient proceeds to provide approximately \$2.7 million towards the Stadium project. It is not expected, however, that the RDA will be able to sell additional bonds to cover the balance of its contribution to Stadium development during construction. It appears likely that at the commencement of construction Stadco (or possibly a third party lender) will loan funds to the RDA, which the RDA will repay from the tax increment received by the RDA in the coming years. These loan payments will be subordinate to the Agency's bond payments and other preexisting obligations. This loan is referred to in the Term Sheet as the 49ers Agency Advance. Consistent with the Term Sheet, the 49er Agency Advance will be repayable only from available tax increment, and upon the expiration of the Agency's ability to collect tax increment any outstanding balance on the 49er Agency Advance would be written off.
 - 2) The RDA, as discussed in the Term Sheet, agreed to pay one-half of the development fees required to be paid to the City related to the construction of the Stadium. The RDA has appropriated \$1.6 million for the payment of its share of the fees.
 - 3) It is also not expected that the CFD will provide its contribution during construction. Stadco (or possibly a third party lender) will loan funds to the Stadium Authority at the commencement of construction to be reimbursed from CFD proceeds. The CFD formation documents do not require the hotels to collect the new 2% special tax until Stadium construction is complete. Staff and Stadco have concluded that it would not be economically advantageous to sell bonds against this revenue stream until the special taxes take effect. Once the Stadium is complete and the taxes take effect, it is expected that the CFD will issue bonds to refinance the original loan from Stadco. Any amount that cannot be refinanced through bonds would remain outstanding and would be payable from CFD proceeds over time. The repayment of the Stadco loan would be subordinate to the CFD's obligation to repay the bonds. This loan is referred to in the Term Sheet as the 49ers CFD Advance.
- C. Additional funding required for development of the Stadium will be provided by Stadco. The Term Sheet did not describe the method by which Stadco would participate in the financing of the Stadium. The actual amount of Stadco's financing will not be known until closer to the Stadium Authority's approval of the final Finance Plan, but Staff and the 49ers have been working on the structure

for Stadco's participation. In addition to the 49ers RDA Advance and the 49ers CFD Advance, Stadco's participation in the initial construction financing of the Stadium is expected to come in two forms: (i) paying for tenant improvements and (ii) advancing funds to the Stadium Authority to fund construction costs.

- 1) Tenant Improvements. Stadco will assume direct responsibility for the costs of certain elements of the construction, such as finish improvements in the Team Store, Team Locker Room, and Suites. Since Stadco will be directly responsible for the costs of these elements, the Stadium Authority will not have responsibility for paying the costs of this construction.
- 2) Subordinated Loan/Advance to Stadium Authority. It is expected that, as part of the final Finance Plan, Stadco will make a loan to the Stadium Authority (the "Subordinated Loan/Advance") in order to fund the costs of construction of the Stadium that exceed Naming Rights and SBL proceeds available during construction.
 - a) The Subordinated Loan/Advance is expected to have a 25 year term. The Stadium Authority will make payments to Stadco from Stadium Authority revenues generated by the Stadium. These revenues include income from Non-NFL Events and a substantially increased Facility Rent paid by Stadco, as further discussed below. Payments on the Subordinated Loan/Advance will be subordinated to (that is, they will be payable only after) the payment of Stadium operating expenses, including the ground rent to be paid to the City and any senior Stadium Authority debt (such as Naming Rights financing).
 - b) Neither the City nor the RDA will have any liability or obligation to repay the Subordinated Loan/Advance.
 - c) The interest rate and repayment schedule for the Subordinated Loan/Advance will be presented as part of the Finance Plan. The Closing will only go forward if the Stadium Authority concludes that following completion of construction, the annual revenues paid to the Stadium Authority, i.e. the Facility Rent and other Stadium Authority sources of income, will be sufficient to pay all Stadium Authority obligations, including the Subordinated Loan/Advance.
- 3) Cost Overruns. As provided in the Term Sheet and Measure J, Stadco is required to commit to pay any cost overruns incurred in construction.

IV. Status of Stadium Lease

When the Finance Plan is approved, and all other conditions to Closing have been satisfied, the Closing will occur, at which time the City will lease the Stadium site to the Stadium Authority

and the Stadium Authority will enter into the Stadium Lease with Stadco. Following the Closing, the Stadium Authority will commence construction of the Stadium.

The Stadium Lease will lay out the specific provisions relating to how the Stadium will be operated following completion of construction. The Stadium Lease will be finalized at approximately the same time as the approval of the final Financing Plan. The DDA will include a detailed outline of the key principles of the Stadium Lease. The key principles that the parties have discussed to date are as follows:

A. Structure of Lease

Stadco will lease and be responsible for operating the Stadium during the six months of the year from August 1 to January 31, which includes all 49ers home games (“the NFL Season”). During the remaining six months of the year (the “Off Season”), the Stadium Authority will be responsible for the operations of the Stadium. As discussed below, the Stadium Authority expects to contract with a management company to oversee the day-to-day management of the Stadium.

B. Responsibility for Operating Expenses during NFL Season

- 1) This proposed lease structure will minimize the Stadium Authority’s liability for expenses resulting from NFL Events. During the NFL Season, the Stadium Lease will be operated on a “triple net” basis. In the commercial real estate market, the term “triple net” means that the tenant, and not the landlord, is responsible for the payment of operating expenses. This approach is intended to significantly reduce the Stadium Authority’s responsibility for operating expenses.
- 2) During the Off Season, the Stadium Authority will retain revenues from Non-NFL Events and will be responsible for operating expenses of the Stadium. Subject to approval by Stadco and the payment of certain costs, the Stadium Authority will also have the ability to schedule Non-NFL events in the Stadium during the NFL Season.

C. Annual Stadium Authority Revenue.

- 1) The Stadium Authority will have numerous sources of funds to pay its debt service and operating expenses. These include funds from the sales of SBLs and Naming Rights, income from Non-NFL Events, and the Facility Rent from Stadco. The Facility Rent will be set such that, when added to the other sources of Stadium Authority revenue, the total Stadium Authority revenue will be projected to be sufficient to pay all the estimated debt service and operating expenses of the Stadium Authority, including any required payments on the Subordinated Loan/Advance.
- 2) It is expected that the Facility Rent payable by Stadco to Stadium Authority in the first ten to fifteen years of the Lease will be significantly higher than the minimum Facility Rent of \$5 million contemplated under

the Term Sheet. The Stadium Lease will provide a mechanism to periodically adjust the Facility Rent payable by Stadco.

- 3) Staff and Stadco are discussing other options that could provide opportunities for the parties to seek a fair market rent adjustment in the later years of the Stadium Lease term. Also under discussion, as an additional protection for the Stadium Authority, are provisions that would allow the Stadium Authority one or more opportunities during the term of the Stadium Lease to convert the Stadium Lease to a 12-month triple net lease. If the Stadium Authority were to elect this option, the Stadium Authority would no longer be responsible for the payment of all operating expenses of the Stadium. In addition, if the Stadium Authority were to elect the 12-month triple net option, the Stadium Authority would be relieved of the obligation to pay the balance of the Subordinated Loan/Advance, if any balanced remained.

D. Management by 49ers Stadium Management Company.

- 1) With the conversion of the Stadium Lease to a “triple net” lease for six months of the year, the 49ers have proposed that the 49ers Stadium Management Company will be responsible for management of the Stadium on a year-round basis. The 49ers Stadium Management Company will be an entity related to both the 49ers and Stadco. The year-round management of the Stadium by a single entity will allow for a more efficient, cost effective and consistent control over concessionaires, maintenance operations and booking events at the Stadium. The terms and conditions of the Management Agreement will be negotiated in the coming months.

V. Conclusion

- A. Although there is much work left to be done, the Stadium project is on track for commencement of construction in 2013 with a Stadium opening in 2015 for the NFL season.
- B. Over next few months, Staff will bring several matters forward for consideration by the Stadium Authority, including:
 - 1) An agreement with Stadco for the overall coordination of the Stadium Authority’s predevelopment activities, including architectural and design-build services;
 - 2) Selection of concessionaire;
 - 3) Selection of contractor for SBL sales;
 - 4) Design-Build procurement process;

- 5) Approval of the DDA with exhibits, including outline of key Stadium Lease principles, the form of Non-Relocation Agreement and the form of Project Management Agreement.
- C. Negotiations of key documents are ongoing, resulting in greater understanding of the details of the financing, development and operation of the Stadium.