

Meeting Date: 12/6/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B-1/4B-1
SA



Date: December 2, 2011

To: City Manager/Executive Director for Council/Stadium Authority Information

From: Administrative Analyst to the City Manager

Subject: Joint Council and Stadium Authority "Committee of the Whole" Study Session to Review Proposed Stadium Project Disposition and Development Agreement (DDA), including Lease Summary and Preliminary Finance Plan, with Additional Study Session on December 8, 2011; followed by Public Hearing on December 13, 2011 to Consider Staff Recommendation to Approve the DDA and Preliminary Finance Plan Commitments

PREAMBLE:

This report is in support of two information-only Study Sessions on the 49ers Stadium Project and as such, contains no action item recommendation for Stadium Authority approval. At the December 13, 2011 meeting the Executive Director will return to the Stadium Authority with a series of actions to approve the Disposition and Development Agreement and the preliminary financing plan and other related actions necessary to allow the Stadium Project to proceed towards construction. The Executive Director will be recommending approval of these items.

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 fund and enterprise funds. Since the adoption of Measure J several actions have been taken towards the development of the Stadium. These have included the approval of land use entitlements for the Stadium, the approval of several predevelopment agreements between the Stadium Authority and the 49ers Stadium, LLC ("StadCo") that provided funding for design and engineering work, the approval of a Naming Rights Marketing Agreement to begin the process of marketing Naming Rights, the approval of a marketing agreement with Legends to begin the sale of Stadium Builders Licenses ("SBLs") and the approval of a preopening services agreement with Volume Services, Inc. to provide preopening concessionaire services. Most recently, the Stadium Authority Board authorized the Executive Director to circulate requests for bids for the Stadium Site Preparation Project ("Make-Ready Work") preparing the Stadium Site and to award bids for the Mission Substation. An additional Study Session will be held on December 8, 2011 to continue discussion on the DDA and the financing plan. On December 13, 2011, the Stadium Authority Board will consider approval of the Disposition and Development Agreement between the Stadium Authority and StadCo as well as a preliminary financing plan. The discussion section of this report provides an overall summary of the DDA and related documents.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Completion of the DDA, Stadium Lease Summary and an extensive list of related supporting documents is a major step toward completing a final financing plan and commencing construction of the Stadium. A series of Study Sessions have been held over the past five years through the evolution of the proposed 49ers Stadium Project to inform the Council/Stadium Authority and the community of progress to date. The scheduled Study Sessions on the DDA and preliminary financing plan will demonstrate, as previously outlined in the Stadium update in June 2011, that while the approach to financing and operating the Stadium has been modified in certain

details since the June 2009 Term Sheet, the modifications remain consistent with the requirements of the Term
Sheet and Measure J.

ECONOMIC/FISCAL IMPACT:

The proposed DDA and related documents provide a feasible method of financing the development and
operations of the Stadium that conform to the requirements of Measure J. Total cost of the Stadium is now
estimated at \$1.02 billion. NFL financing, Redevelopment Agency (RDA) contribution, and other revenues
generated during construction from sources described herein are expected to pay a portion of the construction
costs. The balance will come from the Stadium Authority incurring construction finance debt of up to \$850
million. A consortium of lenders consisting of Goldman Sachs, U.S. Bank and Merrill Lynch, Pierce, Fenner &
Smith/Bank of America ("Construction Lenders") is committing to providing the necessary construction
financing. It is estimated that the Stadium Authority will obtain approximately \$450 million from the
Construction Lenders and \$400 million on a subordinated basis from StadCo. Construction loan debt will then
be refinanced into long term debt that is expected to be lower than the construction debt because of Stadium
revenues during construction. Stadium Authority revenues, including SBLs, Naming Rights, ticket surcharges,
Community Facilities District ("CFD"), and the portion of non-NFL event net revenues not paid to the City as
Ground Rent, as well as Facility Rent from StadCo (now estimated at about \$30 million per year, up from \$5
million at the time of the Term Sheet) will be available to pay the Stadium Authority debt service. The exact
amount of the Facility Rent will be set to ensure that when combined with the Stadium Authority revenues, there
are sufficient funds to pay all of the Stadium Authority's obligations, including its priority obligation of ground
rent (base and performance) due to the City and the Stadium Authority operating expenses. Additionally,
protections are built into the transaction to ensure that the Stadium Authority has the resources for debt
repayment.

No City general funds or enterprise funds will be committed to repayment of Stadium Authority debt and the
City's interest in the land will not be subordinated to any debt. The Stadium Authority's obligation to pay the
base rent and performance rent required under the Ground Lease between the City and the Stadium Authority
will be paid prior to payment of debt service to ensure that the City receives the projected fair market rent
required under Measure J.

APPROVED:


Pamela J. Morrison
Administrative Analyst to the City Manager


Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

- 1) *Disposition and Development Agreement between 49ers Stadium LLC and Santa Clara Stadium Authority*

DISCUSSION:

I. DDA

After the adoption of Measure J, staff and the 49ers began negotiating the terms of the DDA between the Stadium Authority and StadCo, based on the conceptual framework contained in the Term Sheet. The DDA is designed to provide the process for the completion of the design work on the Stadium and to set forth the overall financing structure of the Stadium. The DDA governs the parties' obligations until completion of construction of the Stadium, after which time the Stadium Lease will govern the parties' responsibilities and roles during operation of the Stadium.

A. Stadium Lease and Ground Lease

The DDA sets forth the conditions that must be met before the City enters into the Ground Lease with the Stadium Authority, the Stadium Authority enters into the Stadium Lease with StadCo, and the Stadium financing closes. In total there are over 30 conditions that must be met before the Stadium Lease is entered into, the financing is closed and construction of the Stadium commences. These conditions include requirements that the Stadium Authority and StadCo agree on the terms for the following agreements prior to the close of the financing: 1) a non-relocation agreement requiring the Team to play its home games in the Stadium for the term of the Stadium Lease; 2) a public safety agreement providing for reimbursement to the City for costs associated with public safety at the Stadium; and 3) a preliminary parking plan for the Stadium. Each of these agreements, as well as others will be presented to the Stadium Authority for approval prior to closing on the financing and the leases.

Under the terms of the DDA, the closing on the financing will not occur until the City and the Stadium Authority enter into a Ground Lease, leasing the Stadium site to the Stadium Authority. The Ground Lease must conform to the terms of Measure J and will have an initial term of 40 years with five four-year options to renew. Rent under the Ground Lease will be in accordance with the Term Sheet and will include a base rent starting at \$180,000 per year and increasing to \$1 million per year in the 11th year of the Ground Lease. Additionally, the City will receive performance rent equal to 50% of the net Non-NFL Event revenue.

The DDA also includes a summary of the proposed Stadium Lease. The Stadium Lease Summary, which is described in more detail below, provides the general framework for Stadium operations once construction is complete. However, because the Stadium Lease is a 40-year document, there are still significant issues that need to be negotiated. Over the next few months staff and StadCo will continue to negotiate the Stadium Lease consistent with the terms in the Stadium Lease Summary. The final Stadium Lease will require the Stadium Authority Board approval prior to the close of the financing.

B. Stadium Construction

The DDA also provides the overall framework for the Stadium construction. The DDA includes as an exhibit a form of a Design Build Agreement to be entered into with the general contractor. It is expected that the Stadium Authority will consider approval of the Design Build Agreement substantially in the form of the agreement attached to the DDA prior the close of the financing. Additionally, the Stadium Authority is expected to consider

approval of a Construction Agency Agreement appointing StadCo as the Stadium Authority's construction agent to oversee construction of the Stadium. A form of the Construction Agency Agreement is also attached to the DDA. Final approval of the Construction Agency Agreement by the Stadium Authority Board will occur at the same time as the approval of the Design Build Agreement.

C. Finance Plan Overview

The DDA will include as an attachment a preliminary development budget and preliminary financing plan for the Stadium. Prior to entering into the Stadium Lease and closing on the financing, an updated budget based on more detailed drawings and receipt of bids from subcontractors for a significant portion of the construction work will be approved. Additionally, a final Finance Plan consistent with the provisions set forth in the DDA will be presented to the Stadium Authority. The Finance Plan will identify and describe all funding sources to fund Stadium development costs, including StadCo's commitment to pay for cost overruns. The Finance Plan will, 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 limits on the contributions of RDA and CFD funds.

The DDA describes the overall financing proposed for the Stadium development. Financing for the Stadium will come from a variety of sources including 1) the RDA contribution during construction and the advances made by StadCo against the RDA and CFD contributions; 2) proceeds from Naming Rights; 3) proceeds from the SBLs; 4) a loan or loans from the Construction Lenders; and 5) subordinated loans/advances from StadCo as described below.

D. Development Budget and Construction Funding Sources

The preliminary development budget attached to the DDA estimates that the total costs for the development of the Stadium will be approximately \$1.02 billion. NFL financing, RDA contribution, and other revenues generated during construction from sources described herein are estimated to cover some portion of the construction costs, currently estimated to be in the range of \$170 million or 17% of that cost. The remaining up to \$850 million in construction costs will be paid for either with the proceeds of loans from the Construction Lenders and from StadCo or with revenues generated during construction.

Expected funding from SBLs, Naming Rights, and other sources will not be fully available when construction on the Stadium starts; therefore, the Stadium Authority needs the option to borrow funds up to the full amount necessary to construct the Stadium. The actual amount drawn on the construction loans may be less than the full amount available depending upon receipts from SBLs, Naming Rights and other sources of revenues.

The loan from the Construction Lenders ("Stadium Authority Construction Loan") to the Stadium Authority is expected to be in the range of \$450 million and will be secured by the Stadium Authority's leasehold interest in the Stadium Site and the Stadium Authority's receipt of SBLs, Naming Rights and other revenue. The Stadium Authority Construction Loan principal and interest will mature not later than September 1, 2015.

StadCo is also expected to make a subordinated loan to the Stadium Authority of approximately \$400 million to cover the construction costs not covered by the loan from Construction Lenders ("StadCo Subordinated

Loan/Advance"). The StadCo Subordinated Loan/Advance is expected to have terms similar to the Stadium Authority Construction Loan but may be payable over about 25 years from Stadium completion. If the StadCo Subordinated Loan/Advance has a shorter term it is expected that StadCo will replace the StadCo Subordinated Loan/Advance with a longer term loan having a term of about 25 years at the time that the Stadium Authority obtains long term financing replacing the Stadium Authority Construction Loan. Ground rent to the City, debt to Construction Lenders, and Stadium operating expenses would all have priority over re-payment of the StadCo Subordinated Loan/Advance. StadCo expects to obtain the funds needed to make the StadCo Subordinated Loan/Advance to the Stadium Authority primarily by borrowing from the same Construction Lenders providing the Stadium Authority Construction Loan.

It should also be noted that approximately \$150 million of the \$1.02 billion development costs will relate to tenant improvements within the Stadium and will be paid directly by StadCo.

E. Cost Overruns

As provided in the Term Sheet and Measure J, as a condition of close on the Stadium Lease and the financing, StadCo and the Stadium Authority will enter into an agreement requiring StadCo to pay any increases in the development costs related to construction of the Stadium that exceed the development costs in the approved final development budget.

F. Agency and CFD Funds

The above estimates assume that the RDA up-front investment will be approximately \$10 million of the \$40 million maximum commitment. The remaining RDA contribution will be advanced by StadCo to the Stadium Authority, to be repaid by the Stadium Authority as the Stadium Authority receives tax increment from the RDA, if available. Similarly, the proceeds from the CFD will not be available during construction so StadCo will advance the \$35 million maximum CFD contribution during construction to be repaid from CFD bond proceeds and CFD revenues.

G. Reimbursement for City and Agency Costs

Predevelopment costs incurred by the City after execution of the Term Sheet will be reimbursed as part of the construction funding. Costs incurred by the RDA since the feasibility study are considered part of the \$40 million of RDA funds committed to the project and will reduce the total amount of StadCo advance of RDA funds.

H. Long Term Financing

The Stadium Authority expects to obtain long term financing to pay off the remaining balance on the Stadium Authority Construction Loan (as that balance is reduced by revenues received during the construction period from Naming Rights, Stadium Builders Licenses, and other sources). Long term financing is expected to be in the form of a bond issue, loans from private lenders, or a combination of the two. Long term financing may also be used to pay down a portion of the StadCo Subordinated Loan/Advance, although it is anticipated that a significant portion will remain in place after completion of the Stadium and be repaid over about 25 years.

To assure the Construction Lenders that the Stadium Authority Construction Loan will be fully repaid, StadCo has agreed to purchase the portion of the Stadium Authority Construction Loan outstanding at maturity if the loan has not been fully repaid from SBL, Naming Rights or other revenues, or with long term loan proceeds.

Both the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance financing will be repaid from Stadium Authority revenues received during operations of the Stadium. These revenues will include revenues received from Stadium events, Naming Rights, SBLs, NFL Ticket Surcharge and Facility Rent received from StadCo pursuant to the Stadium Lease. The Facility Rent, which was projected to be \$5 million in the Term Sheet, is now expected to be in the range of \$30 million annually in order to cover the costs of operation of the Stadium as well as debt service payments on the long term debt. The exact amount of the Facility Rent is anticipated to be determined prior to start of operations and 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 City's Ground Rent, the estimated debt service and operating expenses of the Stadium Authority, including any required payments on the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

For both the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance, repayments will be made only after the payment of the Stadium's operating and management costs, including payment to the City of both the base rent and the participation rent required under the Ground Lease between the City and the Stadium Authority.

II. Stadium Lease Summary

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 have an initial term of 40 years with options for StadCo to renew the lease for a potential of 20 additional years. The Stadium Lease will be finalized at approximately the same time as the approval of the final Financing Plan. The DDA includes a Lease Summary that outlines the key principles of the Stadium Lease 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 and Debt Service

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.

During the Off Season, the Stadium Authority will retain revenues from 50 % of the Non-NFL Events (under the Ground Lease 50% of the net Non-NFL Event revenue is paid to the City as ground rent) 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

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, NFL Ticket Surcharge, income from Non-NFL Events, and the Facility Rent from StadCo.

D. Facility Rent and Potential Adjustment

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 Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

It is expected that the Facility Rent payable by StadCo to the 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 and will be in the range of \$30 million per year.

The Stadium Lease will provide the Stadium Authority and StadCo with the option of adjusting the rent to a fair market rent based on appraisals effective in the 32nd year of the Lease. If the fair market rent reset results in a rent increase to StadCo of more than 20%, then StadCo would have the option to terminate the Stadium Lease. In the event StadCo elected to terminate the Stadium Lease, the Stadium Authority could 1) allow the lease to terminate; 2) exercise its rights to convert the lease to a 12-month triple net lease, as described below; or 3) withdraw the rent increase, in which case the lease will not terminate.

E. Management Agreement and Line of Credit

49ers Stadium Management Company (ManagementCo) will be responsible for management of the Stadium on a year-round basis. ManagementCo 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 and subject to the approval of the Stadium Authority Board. As part of the Management Agreement, ManagementCo will provide the Stadium Authority with a Line of Credit that will be available in the event Stadium operating expenses, including debt

service, exceeds Stadium revenues. The Line of Credit will have a maximum amount of \$25 million. The Stadium Authority can draw on the line of credit at any time Stadium revenues are insufficient to pay all expenses including debt service on the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

F. Stadium Authority Debt Obligations and Protections

As a protection to the Stadium Authority, the Stadium Lease will 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 (referred to as "Put Rights"). 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 StadCo Subordinated Loan/Advance and any amounts outstanding on the line of credit from ManagementCo, and the long term Stadium Authority debt would either be assigned to StadCo or StadCo would continue to pay a Facility Rent so that the Stadium Authority would have sufficient funds to pay the required debt service. The Stadium Authority can exercise its Put Rights to convert the Stadium Lease to a 12-month triple net lease 1) anytime during year 13 of the lease with the lease converting to a 12-month triple net in year 15; 2) at any time that the outstanding balance on the Line of Credit exceeds \$20 million; 3) at any time after year 13 that the outstanding balance on the line of credit exceeds \$10 million for 24 consecutive months; 4) if the market rent reset process results in a reduced rent; or 5) if as a result of the market rent reset, StadCo gives a notice of termination.

G. Other Stadium Lease Provisions

The Stadium Lease will also cover maintenance and capital repair obligations of the parties, operations of the Stadium, allocation of operating costs, capital expenditure reserves and use of excess revenues. The Stadium Authority Board will be asked to approve the final Stadium Lease prior to execution.

III. **Conclusion and Next Steps**

A. Schedule of City Council and Stadium Authority Meetings in December 2011

- December 6, 2011 – Study Session on DDA and Financing, no action taken
- December 8, 2011 – Study Session on DDA and Financing, no action taken
- December 13, 2011 – Stadium Authority public hearing on DDA and financing plan, Executive Director recommendation on DDA and financing plan approval and proposed actions.

B. Subsequent Approvals

The approval of the DDA and the related financing documents is a significant step toward commencement of construction of the Stadium and represents the parties' commitment to proceed diligently and with best efforts to complete the steps required for the Closing, including reaching final agreement on the Stadium Lease, approval of a final Finance Plan and closing on the financing commitments.

If the Stadium Authority Board approves the DDA on December 13, 2011, there are a variety of subsequent actions that the Stadium Authority Board is expected to consider in the coming months, including:

1. Approval of the Final Finance Plan and Final Development Budget
2. Approval of the Final Stadium Lease
3. Approval by the City Council and the Stadium Authority of the Ground Lease for the Stadium site
4. Approval of a non-relocation agreement(s) between the Stadium Authority, the City and the Team requiring the Team to play home games at the Stadium for the term of the Lease
5. Approval of the Design Build Agreement for construction of the Stadium
6. Approval of a Construction Agency Agreement with StadCo providing for StadCo to oversee the construction of the Stadium
7. Approval of a Public Safety Agreement