

Meeting Date: 08-28-12

AGENDA REPORT

Agenda Item # 3B

City of Santa Clara, California



Date: August 23, 2012

To: Interim Executive Director for Stadium Authority Action

From: Assistant City Manager

Subject: Adoption of a Resolution Authorizing Forty Niners Stadium Management Company, LLC to enter into a Concessions Operating Agreement with Volume Services, Inc.

EXECUTIVE SUMMARY:

The Stadium Authority Board continued the August 21, 2012 Agenda Item 4B.1 recommending authorization for the Forty Niners Stadium Management Company, LLC to enter into a Concessions Operating Agreement with Volume Services, Inc., a subsidiary of Centerplate, Inc. The Board continued the item for one week, to August 28, 2012 seeking assistance from the 49ers in reinitiating dialogue between Centerplate and Unite Here. The 49ers will provide a verbal update and report back on the progress of discussions at the August 28th Stadium Authority Board Meeting.

The Stadium Authority entered into a Pre-Opening Services Agreement with Volume Services, Inc., a subsidiary of Centerplate, Inc. ("Concessionaire") and Forty Niners Stadium LLC ("StadCo") in June 2011. The primary purpose of the Pre-Opening Services Agreement was to have Concessionaire input early in the Stadium design and construction process, including providing recommendations on the location and design of concession and merchandise services areas and the development of unique food, beverage and merchandise concepts for the Stadium. The Pre-Opening Services Agreement was premised on the expectation that Concessionaire would be the entity responsible for concessions operations in the Stadium upon completion of the Stadium and included as an exhibit a Concessions Operation Agreement that the parties expected Concessionaire to enter into with the Stadium Manager prior to opening of the Stadium.

The Stadium Authority entered into a Stadium Management Agreement with Forty Niners Stadium Management Company, LLC ("ManagementCo") in March 2012 ("Management Agreement"). The Management Agreement gives ManagementCo the responsibility to oversee the concessions agreements but does not give ManagementCo the authority to enter into the concessions agreement without the Stadium Authority's and StadCo's prior consent.

Concessionaire and ManagementCo are now ready to enter into the Concessions Agreement (a copy has been placed in Authority offices). The attached agreement is substantially similar to the agreement that was attached to the Pre-Opening Services Agreement, as discussed below. ManagementCo is requesting authorization from the Stadium Authority to enter into the Concessions Operating Agreement.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into the Concessions Operating Agreement will continue the process that was started with the Pre-Opening Services Agreement regarding the design and development of the concessions facilities in the

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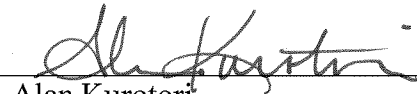
Stadium. The Concessions Operating Agreement will also establish the level of revenues to be paid to the Stadium Authority and StadCo from concessions operations.

ECONOMIC/FISCAL IMPACT:

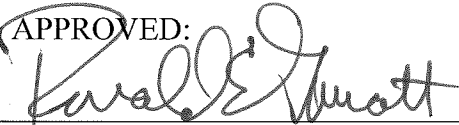
Authorizing ManagementCo to enter into the Concessions Agreement will establish the commissions schedule for concessions sales. The Agreement sets out the percentage of concessions sales revenue that will be paid for various types of events. For non-NFL events the concessions revenue will be part of the calculation of net Non-NFL event revenue and will contribute toward the City's performance rent under the Ground Lease between the City and the Stadium Authority.

RECOMMENDATION:

That the Authority adopt a resolution authorizing Forty Niners Stadium Management Company, LLC to enter into a Concessions Operating Agreement with Volume Services, Inc.



Alan Kurotori
Assistant City Manager

APPROVED: 

Ronald E. Garratt
Interim Executive Director for
Stadium Authority

Documents Related to this Report:

- 1) Resolution***
- 2) Concessions Operating Agreement***

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DISCUSSION

The Stadium Authority entered into the Pre-Opening Services Agreement with Volume Services, Inc. after a request for qualifications/request for proposals process conducted in 2011. Nine firms responded to the original RFQ and eight were interviewed (one dropped out prior to the interviews). Seven firms were sent RFPs requiring detailed proposals from the concessionaires. Upon receipt of the responses to the RFP's, four firms were interviewed by a panel of Stadco and Stadium Authority representatives. The panel recommended selection of Volume Services, Inc. based on the interview, presentations and proposal information. The Stadium Authority and StadCo entered into the Pre-Opening Services Agreement with Concessionaire in June 2011 and Concessionaire has been actively participating in the Stadium design and construction process in accordance with the Pre-Opening Services Agreement.

The Concessions Operating Agreement, upon execution by ManagementCo will replace the Pre-Opening Services Agreement with the terms of the Pre-Opening Services Agreement incorporated into the Concessions Operating Agreement.

The Concessions Operating Agreement covers the terms and conditions under which concessions and merchandise services will be provided at the Stadium including:

- Granting Concessionaire an exclusive right to provide food and beverage services and merchandise services at all events at the Stadium for a term of five years from the date of the first event held at the Stadium.
- Allows for renewal of the Agreement for five additional two-year terms at ManagementCo's sole discretion.
- Requires the Concessionaire to invest \$1,000,000 toward the Stadium Project.
- Requires the Concessionaire to pay commissions to ManagementCo on concession and merchandise gross receipts in amounts set forth in Exhibit G to the Agreement. The Commission structure fluctuates depending upon the type of event (NFL versus Non-NFL event) and the size of events (events with 25,000 or more attendees and events with fewer than 25,000 attendees). In the event a second team occupies the Stadium the commission for NFL events will increase. The Operating Agreement also requires that the Concessionaire pay an annual minimum commission of \$6,800,000.
- Requires that ManagementCo approve menus and pricing.
- Requires the Concessionaire hire, train and supervise all employees including conducting regular employee training programs. An outline of the employee training program is attached to the Operating Agreement as Exhibit H.
- Requires regular customer surveys to be conducted, including at least four per year with two during the NFL Season and two during the Non-NFL season.
- Requires the Concessionaire to comply with a Waste Reduction and Recycling Plan that targets 100% diversion of solid waste from all events.
- Requires the Concessionaire to fund a Renewal and Replacement Account in an amount equal to 2.5% of gross receipts, to be used to replace and improve the food, beverage and merchandise facilities in the Stadium.

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- Allows ManagementCo to contract with local restaurants for food and beverage items for up to eight points of sale in the Stadium.
- Requires the Concessionaire to indemnify the Stadium Authority, the City and the Agency from claims and losses resulting from the Concessionaire's use and occupancy of the Stadium.
- Requires the Concessionaire to carry insurance naming the Stadium Authority, the City and the Agency as additional insureds.
- Requires Centerplate, Inc., the parent of Volume Services, Inc. to guaranty all of Volume Services, Inc. obligations under the Operating Agreement.

RESOLUTION NO. ____ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY AUTHORIZING FORTY NINERS STADIUM
MANAGEMENT COMPANY, LLC, TO ENTER INTO A
CONCESSIONS OPERATING AGREEMENT WITH VOLUME
SERVICES, INC. TO PROVIDE CONCESSIONS AND
MERCHANDISE SERVICES TO THE SANTA CLARA
STADIUM**

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

WHEREAS, the Stadium Authority was formed to facilitate the development and operation of a stadium in the City of Santa Clara suitable for NFL games ("Stadium Project") and to fulfill the mandates of Measure J, "The Santa Clara Stadium Taxpayer Protection and Economic Progress Act;

WHEREAS, the Forty Niners Stadium, LLC and the Stadium Authority participated in a competitive selection process to select the concessionaire to provide concession and merchandise services for the Stadium upon the completion of construction and opening of the Stadium and determined that Volume Services, Inc., doing business as Centerplate is the best qualified entity to provide concession and merchandise services for the Stadium;

WHEREAS, the Stadium Authority and the Forty Niners Stadium, LLC entered into a Pre-Opening Services Agreement – Concessions with Volume Services, Inc., doing business as Centerplate to provide certain pre-opening services related to the design of the Stadium;

WHEREAS, the Stadium Authority and the Forty Niners SC Stadium Company, LLC ("StadCo") entered into a Stadium Management Agreement ("Management Agreement") with Forty Niners Stadium Management Company LLC authorizing Forty Niners Stadium Management Company LLC ("ManagementCo") to manage the Stadium including concessions and merchandise services;

WHEREAS, ManagementCo and Volume Services, Inc. have negotiated the terms of a Concessions Operating Agreement covering concessions and merchandise services upon the opening of the Stadium

and incorporating the responsibilities set forth in the Pre-Opening Services Agreement;

WHEREAS, ManagementCo is requesting Stadium Authority authorization to enter into the Concessions Operating 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. The Stadium Authority hereby authorizes ManagementCo to enter into the Concessions Operating Agreement, substantially in the form on file with the Authority Secretary, provided, any revisions to the Concessions Operating Agreement are approved by the Stadium Authority Executive Director.
3. 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 Concessions Operating Agreement.
4. The Authority Secretary shall certify to the adoption of this Resolution.
5. 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.

6. 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 ____ DAY OF _____, 2012, 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:
None

I:\Stadium Authority\Concessionaire\Reso granting authority to adopt Op Agreement.doc