

5/25/21

Item 6.V



FORTY NINERS STADIUM MANAGEMENT COMPANY

May 25, 2021

VIA EMAIL - MayorAndCouncil@santaclaraca.gov

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Field Seats

Dear Members of the Board:

We have reviewed the report prepared by City Staff regarding the 49ers most recent proposal to sell SBLs for 64 Field Seats at Levi's Stadium. That report recommends that the Board take "no action" so that the Stadium Manager can spend three more months presenting "revenue options" to City Staff. An additional three months will achieve nothing. The Stadium Manager has submitted three separate SBL proposals to City Staff for these seats over the past two years. The Board needs to make a decision on these 64 seats.

The misstatements in the latest report by City Staff would lead Board members to conclude that the decision before them is difficult, entailing significant economic risks for the SCSA. That is incorrect, and we will debunk the City Staff's misstatements later in this document. The two options before the Board are simple:

- Option 1: Approve the 49ers' proposal to sell SBLs on the Field Seats at \$10,000 per seat, which will generate additional net revenue for the SCSA. The precise amount of additional revenue is impossible to pinpoint because the seats are temporary, but there is no plausible scenario in which the SCSA would lose money on these SBLs. The SCSA would also receive the 10% NFL ticket surcharge on these seats, and the City would receive the \$.35 per ticket Senior and Youth Program Fee.
- Option 2: Reject the proposal to sell SBLs. There would be no additional SBL revenue to the SCSA, but the SCSA would receive the 10% NFL ticket surcharge, and the City would receive the \$.35 per ticket Senior and Youth Program Fee.

From an economic perspective, Option 1 is more profitable for the SCSA and we expected it would have been approved quickly two years ago.

4900 Marie P. DeBartolo Way | Santa Clara, CA 95054

The Stadium Lease grants the 49ers the right to install these 64 Seats without the approval of the SCSA.

Hosting NFL games and selling tickets is a dynamic business. Stadiums and teams have to keep up with changing consumer expectation, which requires regular changes to the stadium itself. The SCSA and the 49ers understood this when they negotiated the Lease. Under Section 11 of the Stadium Lease, the 49ers have the right to request that the SCSA make modifications to the Stadium that “... *Tenant reasonably believes will foster interest and increase use among prospective guests, invitees, Concessionaires, sponsors and advertisers...*” (Lease section 11.1)

If the SCSA decides it doesn’t wish to pay for those modifications, then the 49ers have the right to make them at their own cost. Under Section 11.1(b): “*Tenant shall have the right to... make Tenant Requested Alterations if, after request by Tenant, Landlord fails to do so...*”

These 64 temporary seats are Tenant Requested Alterations / Tenant Improvements, and the 49ers have the unequivocal right under the Stadium Lease to make them, as long as the 49ers pay for the cost.

Temporary Seats should not have SBLs:

The 49ers have been clear and consistent on this point since December 2018: temporary seats should not have SBLs. Generally, SBLs for Levi’s Stadium give the customers the right to their seat for the “Life of the Stadium”¹ and require the SCSA to refund the customer if their seats are removed.

City Staff requested that the 49ers create a new “SBL product” that would eliminate that refund obligation. The 49ers have consistently told City Staff that is unacceptable – it would eliminate an important consumer protection feature of the SBL product.

City Staff’s Quest to Shirk the SCSA Refund Obligation:

The 49ers have submitted a number of different SBL pricing proposals to the SCSA over the past two years, but those proposals have all been very clear on this point: The SCSA must be prepared to issue refunds to customers if the seats are removed. In their latest report to the Board, City Staff continues to push for a product that will not require refunds. City Staff calls this new product a “similar instrument” to an SBL and speculates that there is an “industry expert” out there who could create this product: “*Given that the term “similar instrument” was included in the Stadium Lease, it makes sense that there would be options under this category known to industry experts.*”

This is a dead-end. The 49ers have explained to City Staff on multiple occasions for the past two years that removing this important consumer protection from the SBL contract

¹ There have been approximately 60,000 SBLs sold for Levi’s Stadium. Attached as Exhibit A are the excerpts from the standard form SBL agreement which details the “Life of the Stadium” and the SCSA refund obligation.

is unacceptable. We would not sell this product to the public, and the Board should direct City Staff to stop wasting time trying to concoct a way to keep a customer's money if their seats are removed. If the SCSA doesn't want to commit to the consumer refunds required under the SBL Agreement, then it should simply not sell SBLs for temporary seats.

Misstatements in the City Staff Report:

Misstatement #1: The report by City Staff warns the Board (incorrectly) that the SBL costs will be more than the SBL revenue: *"...there are administrative costs for both the Stadium Manager and Stadium Authority to administer these SBLs, which are likely to reduce or come close to the \$39,099 per year. As such, the costs to Stadium Authority will likely outweigh the projected revenue and, definitely, if StadCo does not agree to absorb future costs of premium ticket amenities for these temporary field seats."*

- City Staff indicates that the "administrative costs" for these 64 SBL's are likely to "come close" to \$39K per year and those expenses would therefore "likely outweigh the projected revenue". That is absurd. If the administrative costs for 64 seats were \$39K per year, that would equate to an administrative cost of \$609 per seat, per year. Extrapolating that per seat cost to the entire Stadium, you would expect total SBL administrative costs to be in the range of \$36.5M per year (\$609*60,000).
- The actual SBL administrative costs for servicing all 60,000 SBLs, excluding the cost of buffets², is in the range of \$800,000 per year, which works out to roughly \$13.30 per seat annually. The incremental administrative costs for 64 additional seats should be less than \$13.30 per seat, because the existing SBL staff is already handling 60,000 seats – adding 64 more seats to their workload is immaterial.
- In other words, the City Staff report has overstated the "administrative costs" for these 64 seats by a factor of 45X. The estimate by City Staff demonstrates either very bad math, or an attempt to mislead the Board and the public.

Misstatement #2: City Staff says the calculation of the SCSA 10% NFL Ticket Surcharge is calculated by the 49ers in an arbitrary manner: *"The tables demonstrate that StadCo/Stadium Manager are able to change the Reserve Ticket Price (for which the SCSA's 10% Ticket Surcharge is derived) to an arbitrary amount, which can increase or decrease revenue for the Stadium Authority."*

² The SCSA sold approximately 900 \$80K SBLs which include a complimentary buffet for the customers. This resulted in SCSA revenue of more than \$70M. The SCSA pays for the annual cost of those buffets, which costs approximately \$1M annually. However, the cost of the buffets is not relevant for the 64 field seats because the 49ers (not the SCSA) have committed to paying for the cost of the F&B.

- This is false. There is nothing arbitrary about the calculation, which is performed each year in accordance with the express terms of the relevant contracts and NFL rules. The problem is that the current City Staff - hired since Manager Santana's arrival – don't understand the calculation. The 49ers explained the methodology to the prior City Staff, but they all resigned after Santana's arrival.

The Alternatives in the City Staff Report:

The report by City Staff presents the Board with four alternatives. Alternative 1 (Take no action) and Alternative 4 (Any other direction from the Board) require no further commentary from the 49ers.

As to Alternative 2 (request revenue options in three months), there is no point in presenting additional revenue options. That work has already been completed – there have been three different pricing scenarios presented over the past two years. As explained above, we are not going to (nor are the 49ers required to under the Lease or Management Agreement) create a new product that allows the SCSA to avoid customer refunds if the temporary seats are removed. Any such product would be harmful to consumers and would not be similar to an SBL.

Alternative 3 (Approve the SBL proposal) is cluttered with additional terms (a,b,c, and d) requested by City Staff. One of these items (item d) is already covered in the Management Agreement, and part of item c is already addressed in the 49ers proposal (StadCo will cover the F&B for these seats). But the 49ers will not agree to the other additional terms requested by City Staff.

Accordingly, if the Board is inclined to accept the SBL proposal put forward by the 49ers, it is necessary to revise Alternative 3 to approve the proposal, without the "additional terms" proposed by City Staff that are not already covered in the existing proposal/contract.

Conclusion:

For the past two years City Staff has dithered around trying to find a way to prevent the 49ers from exercising their Lease right to install these 64 Field Seats. They delayed routine building permits, they concocted misleading arguments about SBLs, and wasted our time and yours.

We encourage the Board to accept the SBL proposal so that we can immediately begin selling SBLs for these seats, which will generate additional SBL net revenue for the SCSA.

Alternatively, the Board can decide to reject the proposal, or take no action, in which case the 49ers will install the temporary seats for the 2021 season, and the SCSA will

receive the 10% NFL ticket surcharge and the City will receive the \$.35 per ticket Senior and Youth Program Fee.

Sincerely,

V.L. on behalf of

Larry MacNeil

CC: Deanna Santana, Executive Director
Brian Doyle, Stadium Authority Counsel
Christine Jung, Assistant to the Executive Director

Exhibit A

Excerpts from the Standard SBL Agreement

*“Each SBL shall, subject to earlier termination as provided herein, **remain in effect for the Life of the Stadium.**”*

*“In the event the Stadium Authority notifies Licensee that there is no Comparable Seat(s), then Licensee shall have the right to terminate this License Agreement upon notice to the Stadium Authority, **in which event the Stadium Authority shall, within sixty (60) days following such notice of termination, return to Licensee the Unamortized Portion of the License Fee.** For purposes of this License Agreement, an SBL will be assumed to have a life of thirty (30) years and the applicable amortization will be straight-line (e.g., if an SBL with an initial cost of \$20,000 (paid in full) is terminated after three (3) years, the Licensee would receive a refund in the amount of \$18,000; such amount, the “Unamortized Portion of the License Fee”).”*