

**AGENDA REPORT**

**Date:** February 27, 2018

**To:** Executive Director for Stadium Authority Action

**From:** Chief Operating Officer

**Subject:** Concessions Contract at Levi's Stadium

**BACKGROUND**

The 49ers Stadium Management Company (ManCo) provides food and beverage concessions through a third party contract for NFL and non-NFL event attendees at Levi's Stadium. The contract term for the current food and beverage provider, Centerplate, expires in April 2019. The existing contract has been in place since July 25, 2012. Annually, Levi's Stadium averages 10 NFL games a year, approximately ten other large events (soccer, concerts, etc.), and about 100 special/catered events. As a result of these scheduled events, the food and beverage provider is charged with servicing hundreds of thousands of guests a year.

This contract is brought forward for Stadium Authority Board (Board) approval per the Stadium Management Agreement. Specifically, per paragraph 6.1 titled Selection of Concessionaire, ManCo (Tenant) shall:

Deliver the Concessionaire's Agreement to the Stadium Authority for approval, which approval shall not reasonably be withheld; provided, however, that (i) the Stadium Authority shall have no right to review or approve any Concessionaire or Concession Agreement that pertains solely to Tenant's Exclusive Concession Rights; and (ii) the Stadium Authority shall not disapprove any Concessionaire as long as the Concessionaire agrees to include in the Concession Agreement, and be bound by, the "Ethical Requirements" ... and executes the "Affidavit of Compliance ... and such Concessionaire demonstrates to the Stadium Manager's satisfaction that the Concessionaire (1) has an excellent reputation in the industry with experience in merchandising and selling food, beverages, souvenirs, novelties and programs, and providing premium quality and concession and catering services at comparable arenas, stadiums, and other sports entertainment facilities in the United States, (2) and has the financial ability and creditworthiness necessary to perform each and all of the obligations to be performed by the Concessionaire in the Concession Agreement, and (3) shall engage on-site and off-site full-time executive leadership having the experience and reputation necessary to perform the Concessionaire's obligations at a level comparable to other NFL stadiums.

The Request for Proposal process and selection process for the new Concessionaire Agreement is guided by Section 7.3.1 of the Amended and Restated Stadium Lease Agreement. Specifically, Section 7.3.1(b) states that:

Tenant shall have the primary right and responsibility from time to time to (i) solicit and select one or more concessionaires who shall operate and be responsible for all Concession Operations within the Stadium Complex at all times during the lease term; (ii)

Manager's satisfaction that the Concessionaire (1) has an excellent reputation in the industry with experience in merchandising and selling food, beverages, souvenirs, novelties and programs, and providing premium quality and concession and catering services at comparable arenas, stadiums, and other sports entertainment facilities in the United States, (2) and has the financial ability and creditworthiness necessary to perform each and all of the obligations to be performed by the Concessionaire in the Concession Agreement, and (3) shall engage on-site and off-site full-time executive leadership having the experience and reputation necessary to perform the Concessionaire's obligations at a level comparable to other NFL stadiums.

As demonstrated with Levy's proposal, presentation, attached contract, and letter from the Stadium Manager, Levy's meets these requirements. Therefore, staff recommends that the Stadium Board authorizes the Executive Director to execute the concessions agreement (Attachment 2) with Levy.

As mentioned in the Background section, the current concessionaire's (Centerplate) contract is scheduled to expire in April 2019. Centerplate and the future concessionaire (Levy) agreed on an exit agreement (Attachment 3). The exit agreement outlines the terms and conditions for Levy taking over the food and beverage one year before the Centerplate contract is scheduled to expire including the assumption of Centerplate's collective bargaining agreement subject to the union's approval. With the innovations and investments Levy is bringing to the Stadium while maintaining the commission structure for non-NFL events, staff recommends approval of the Exit Agreement.

Upon the Stadium Authority Board's approval, ManCo will continue coordinating the transition of the concessionaire contract with Stadium Authority staff including and not limited to the implementation of the Worker Retention Ordinance, incorporation of the Levy's capital contributions in future Capital Expenditure plans, and partnerships with local restaurants consistent with the agreements between Santa Clara Stadium Authority (SCSA) and ManCo.

As stated in the attached letter from the Stadium Manager, as part of the annual budget process, ManCo will determine Key Performance Indicators (KPIs) with Levy. As detailed in the letter from the Stadium Manager, ManCo has agreed that these KPIs will be reviewed with Stadium Authority staff before finalizing them with Levy. As part of this annual process, ManCo will report to Stadium Authority staff the results of the prior year KPIs.

## **FISCAL IMPACT**

The table below depicts the commission structure by event category of the current contract with Centerplate, the commission structure Centerplate proposed as part of this RFP process, and Levy's commission proposal. As shown, Levy's proposal keeps SCSA commissions at its current structure. Given the same amount of events by category, with Levy's plan of increased points-of-sale and a more data driven and higher quality food and beverage offerings, it is anticipated that SCSA revenues from concessions will increase.

SCSA revenues are accounted for in a profit and loss statement for each non-NFL event. Concession revenues are one of several revenue sources (e.g., Ticketmaster fees, parking revenues, sponsorship revenue) offset by various expense categories. As shown in the table below, depending on the event, SCSA receives different percentages of commissions with large events generating the most revenue for the Authority. In the attached letter from the Stadium

negotiate agreements with concessionaires with regard to the Concession Rights (each a Concession Agreement); and (iii) subject to the applicable Capital Expenditure Plan and ... and make changes to the location of concession facilities within the Stadium Complex from time to time.

Section 7.3.1 (c) more specifically defines the selection process as follows:

Without limiting Tenant's rights set forth in Paragraph 7.3.1(a) and (b), (i) Tenant shall meet regularly with the Stadium Authority to provide updates regarding the process in identifying Concessionaire(s), and to receive input from the Stadium Authority regarding the process for selection, the terms and conditions of such Concession Agreements and the location of Concession Facilities; and (ii) the Stadium Authority shall be entitled to (1) participate with Tenant in the determination of criteria for, and selection of, all Concessionaires which shall be generally consistent with the selection criteria used for approval of previous Concessionaires, and (2) attend, and participate in, all meetings and negotiations with Tenant and prospective Concessionaire.

## **DISCUSSION**

Consistent with Section 7.3.1 (c), ManCo submitted the a letter to the Interim Stadium Authority Executive Director informing the Stadium Authority of the RFP for Food and Beverage Concessionaire and the selection process on August 30, 2018 (see Attachment 1 from the Stadium Manager's letter dated February 21, 2018). Upon ManCo's notice to the Stadium Authority and during transition of Stadium Authority Executive Directors, our records show that Stadium Authority staff was not assigned to provide input regarding the process for selection and the determination of selection criteria.

As discussed in the attached letter from the Stadium Manager, ManCo initiated a procurement process for new concessionaire services on September 5, 2017 by notifying and distributing the Request for Proposals to six major food service companies (Sodexo, Aramark, Delaware North, Levy, Centerplate and Legends). Early November 2017, ManCo approached the newly appointed Stadium Authority Executive Director for staff participation for concessionaire presentations. At that time, ManCo had decided to advance only the three proposals to the in-person presentation stage.

After review of the RFP for concession services, the proposals from the three finalists, participation in the finalists' presentations and the draft contract, staff has determined that the RFP selection process was, in general, consistent with the applicable paragraphs of the Amended and Restated Stadium Lease Agreement. Further, Levy's proposal represents the most advantageous proposal for the Stadium Authority as outlined in the Stadium Manager's letter. Further, Levy's agreed to comply with the City's worker retention ordinance and has signed the affidavit of ethical compliance as required in the management agreement as part of the attached contract.

As provided in the Background Section of this memorandum, the Stadium Authority's approval for the concessionaire agreement with Levy's shall be granted as long as the Concessionaire agrees to include in the Concession Agreement, and be bound by, the "Ethical Requirements" ... and executes the "Affidavit of Compliance ... and such Concessionaire demonstrates to the Stadium

Manager based on historical event experience, it is estimated that the Stadium Authority will generate approximately \$4.2 million in concession revenue. With the changes Levy intends to make with its service delivery and infrastructure improvements, other things being equal, revenue is expected to increase.

**Table 1: Centerplate and Levy's Commission Structure**

	Centerplate's Current Structure	Centerplate's Proposed Structure	Levy's Proposed Structure
Large Events   Small Events (% of Gross Receipts)			
General	48%   40%	20%   15%	48%   40%
Catered Events	25%   25%	22%   22%	25%   25%
Club	35%   35%	20%   20%	35%   35%
Suites	20%   20%	20%   20%	20%   20%
In-Seat Sales	48%   40%	15%   15%	48%   40%
3rd Party Subs	50%   50%	50%   50%	50%   50%

SCSA receives the net revenue for each event as shown in the Stadium Authority budget. For the FY 2018/19 Recommended Stadium Authority Budget and subsequent Quarterly Financial Status Reports, staff will show major revenue and expenditure categories for Non-NFL events. At the end of the fiscal year, the net revenue to the Stadium Authority for the fiscal year of all events is added up and per the Amended and Restated Stadium Lease Agreement, Paragraph 6.4.2, performance based rent credits are applied as defined in the Ground Lease, and the remaining funds are paid to the City's General Fund. Applying these contractual clauses to concession revenues only including the performance rent credit of 50% of the Ground Rent (\$160,000 for FY 2018/19), the estimated revenue to the General Fund for FY 2018/19 would be \$1.94 million. However, this calculation does not include other revenues or expenditures for Non-NFL events and the actual revenue to the General Fund may be different.

In addition to the commission revenue structure detailed in the letter from the Stadium Manager for Non-NFL and NFL events, Levy's also committed in the attached contract to one-time investments benefitting both types of events. These investments include \$5,000,000 in initial capital investment, \$5,000,000 in "refresh investments" paid prior to the 6<sup>th</sup> year of this agreement, and an annual innovation fund of \$1,000,000. The use of these capital dollars will be reviewed with Stadium Authority staff before finalizing them with Levy. The use of the annual innovation fund will be discussed with Stadium Authority staff and reported to the Board.

**RECOMMENDATION**

Authorize the Executive Director to execute a contract with Levy's for Concession Services at Levi's Stadium for 12 years.

  
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Walter C. Rossmann  
Chief Operating Officer

APPROVED:

  
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Deanna J. Santana  
Executive Director

*Documents Related to this Report:*

1. *Stadium Manager Letter dated Feb. 21, 2018*
2. *Concessions Agreement with Levy*
3. *Exit Agreement between Centerplate and Levy*