



## Agenda Report

22-1415

Agenda Date: 12/6/2022

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Action on the Stadium Manager's Request to Execute an Amendment to Existing Owner's Club Stadium Builders License Agreements to Extend the Term by One Year Due to COVID-19 Impacts

#### **BOARD PILLAR**

Ensure Compliance with Measure J and Manage Levi's Stadium

#### **BACKGROUND**

As the Stadium Manager, Forty Niners Stadium Management Company, LLC is responsible for making recommendations to the Stadium Authority with respect to marketing, monitoring, and managing Stadium Builder License agreement (SBL) as required by the Management Agreement between the Stadium Authority and Stadium Manager.

The Stadium Authority's sale of SBLs is a source of revenue for the repayment of debt associated with the construction of the Stadium. The revenue generated by the sale of SBLs are dedicated for this purpose. Generally speaking, and for the vast majority of SBLs, an SBL Licensee (SBL Holder) generally has rights to separately and annually purchase 49ers season tickets for particular seats and priority right to purchase tickets to other non-NFL events at Levi's Stadium for the "Life of the Stadium". "Life of the Stadium" is defined in the SBL Agreement as the following: "so long as the Stadium is used for Events/Games; provided, if at some time following the thirtieth anniversary of the date of the first Event/Game, the Stadium undergoes a renovation or rebuilding that costs in excess of \$300,000,000, then 'Life of the Stadium' shall not include the period from and after such renovation."

On the other hand, the category of SBL Holders who purchased "Owner's Club" level SBLs have different contract terms. First, the term of the agreement is limited to 20 years. Second, Owner's Club SBL Holders paid upfront for their SBL Agreement amenities, which include tickets to Team Games and other ticketed non-NFL events at Levi's Stadium. This payment is reflected in the price of their SBL. At \$250,000 per SBL/per seat, Owner's Club SBLs are priced significantly higher than the next most expensive category of seats, which are Club Seats priced at \$80,000 per SBL/per seat. There is a total of 100 Owner's Club seats in Levi's Stadium, all of which have SBLs. A copy of the Owners Club SBL Agreement form is attached to this report for reference (Attachment 1).

During the height of the COVID-19 Pandemic, the State of California and Santa Clara County's Shelter-in-Place orders, together with restrictions imposed by the NFL, prohibited mass gatherings. As result, the 49ers team cancelled some games, and played the remainder of the 2020 NFL season without fans in attendance. Owner's Club SBL Holders, having already paid for tickets to the 2020 NFL games in the cost of their SBL, were uniquely affected by the COVID-19 restrictions.

In July 2020, in anticipation of the impact on the Owner's Club SBL Holders, the Stadium Manager approached Stadium Authority staff regarding a proposed Amendment to existing Owner's Club SBL Agreements. However, in August 2020, before any action could be taken on the request, the Stadium Authority was served with a class action lawsuit by an SBL Holder (purportedly on behalf of all SBL Holders, including Owner's Club Holders) regarding their inability to attend events because of COVID-19 restrictions. As a result, the Stadium Authority could not take action on the Stadium Manager's request regarding the Owner's Club SBL Amendment until that litigation was dismissed this summer.

The proposed Amendment to existing Owner's Club SBL Agreements is attached to this report (Attachment 2).

### **DISCUSSION**

The Stadium Manager's proposed Amendment to existing Owner's Club SBL Agreements contains the following changes:

- The term of the Agreement will be extended from 20 years to 21 years; and
- SBL Holder acknowledges and agrees that they were not entitled to receive any tickets, benefits, or other rights under their SBL Agreement during the period from April 1, 2020 through March 31, 2021.

Under the proposed Amendment, Owner's Club SBL Holders will still receive 20 years' worth of benefits, since during the 2020 season they did not receive the benefit of tickets they had already paid for. The acknowledgement set forth in the second bullet point operates essentially as a waiver of any legal arguments the Owner's Club SBL Holders may have regarding the missed season.

While there are fiscal impacts associated with the approval of these Amendments, they are difficult to determine. For example, the proposed one-year extension may delay the Stadium Authority's ability to resell the Owner's Club SBLs for an additional year. However, the Stadium Authority has not decided how the Owner's Club SBLs will be resold after the existing Owner's Club SBL Agreements expire and the terms that would be included in those new SBLs (e.g., term of agreement, cost of SBL, amenities, etc.) so it is unclear what the potential loss of revenue associated with the delay would be. Separately, if the Stadium Authority decides to forego selling SBLs for the Owner's Club seats after the existing SBL Agreements expire, there may be a year's worth of revenues from tickets sold for games and events that the Stadium Authority would not receive due to the extension. Similar to the SBL resale scenario, it is unclear what the potential loss of revenue would be in this case, if any.

Based on these considerations, along with the general principle that the Owner's Club SBL Holders are entitled to the benefits outlined in their SBLs for 20 years, staff recommends approval of the proposed Amendment and authority for the Executive Director and Stadium Manager to execute such Amendments to existing Owner's Club SBL Agreements to make up for the year that the Owner's Club SBL Holders did not receive their benefits due to COVID-19 impacts.

**ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

**FISCAL IMPACT**

As described above, the proposed Amendment to existing Owner’s Club SBL Agreements will have fiscal impacts due to the potential loss of revenue associated with the one-year extension. However, the revenue impacts are unknown at this time.

**COORDINATION**

This report has been coordinated with the Treasurer and Stadium Authority Counsel’s Offices.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**ALTERNATIVES**

1. Approve the Amendment to existing Owner’s Club SBL Agreements;
2. Authorize the Executive Director and Stadium Manager to execute the Amendment to existing Owner’s Club SBL Agreements; or
3. Take no action.

**RECOMMENDATION**

Alternatives 1 and 2:

1. Approve the Amendment to existing Owner’s Club SBL Agreements; and
2. Authorize the Executive Director and Stadium Manager to execute the Amendment to existing Owner’s Club SBL Agreements.

Prepared by: Christine Jung, Assistant to the Executive Director

Approved by: Rajeev Batra, Executive Director

**ATTACHMENTS**

1. Owner’s Club SBL Agreement Form
2. Proposed Amendment to Existing Owner’s Club SBL Agreements