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REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Draft 2020 Non-NFL Events Marketing Plan for Levi's® Stadium in accordance with Section 4.10 of the Stadium Management Agreement [Board Pillar: Ensure Compliance with Measure J and Manage Levi's Stadium]

BACKGROUND

The Stadium Management Agreement (Management Agreement) between the Stadium Authority and Forty Niners Stadium Management Company, LLC (ManCo), requires ManCo to develop a Marketing Plan for Non-NFL events for inclusion in the Stadium Operation and Maintenance Plan (SOMP) and mutual agreement of it by the Stadium Authority, the Management Agreement reads as follows:

4.10 Marketing Plan. Until the exercise of any Non-NFL Event Replacement Right, the Stadium Operation and Maintenance Plan shall include a marketing plan setting forth in reasonable detail the Stadium Manager's plans to develop, implement and monitor marketing, booking, advertising and promotion of Non-NFL Events for the Stadium, ***which marketing plan shall be mutually agreed upon by the Stadium Manager and the Stadium Authority*** (the "Marketing Plan"). If the Stadium Authority exercises the Non-NFL Event Replacement Right, the Stadium Authority and the Stadium Manager will develop a similar plan with the third-party provider.

Historically, the Marketing Plan was reviewed in the form of a slide deck presentation at the time the Stadium Authority budget was considered for approval, which provided the Board and ManCo little opportunity to discuss and deliberate about the strategies employed to promote profitable events. This approach also offered little transparency and awareness for the Board to understand effectiveness relative to the marketing and booking strategies utilized by ManCo.

Beginning in FY 2018/19 (April 1, 2018 - March 30, 2019), Stadium Authority staff proposed that the Board and ManCo review the draft Marketing Plan in a Study Session to better determine mutual agreement with the strategies employed by ManCo. Stadium Authority staff and ManCo mutually agreed and presented the draft 2018 Non-NFL Events Marketing & Business Plan (2018 Marketing Plan) to the Board during a Study Session on March 13, 2018. As a result of that discussion, ManCo committed to develop key performance indicators (KPIs) during the first quarter of FY 2018/19 to evaluate the effectiveness of the Marketing Plan strategies/initiatives, as well as inform the decision-making process for the 2019 Marketing Plan. Ultimately, after significant support from Stadium Authority staff and several delays in fulfilling its commitment to the Board, ManCo never developed KPIs. This was despite the Stadium Authority's development of KPI templates, support with developing metrics, and year-long efforts to work collaboratively on this endeavor. The Board's request to develop metrics to track ManCo's performance over time was very reasonable in light of ManCo's failure to produce profitable events.

On March 19, 2019, Stadium Authority staff transmitted ManCo's draft 2019 Non-NFL Events Marketing Plan to the Board. By this time, ManCo had already advised through the media that the projected revenues for FYs 2018/19 and 2019/20 would decrease significantly. Appropriately, the Stadium Authority expected that strategies in the draft 2019 Marketing Plan would reflect significant changes to the business strategies and/or initiatives to correct the trend and restore revenues to past levels. It is completely reasonable for the Board to expect that Stadium Manager is equally committed to promptly addressing changing trends when business practices are fiscally unfavorable. That was not the case: ManCo continued with its same business practices, which included:

- Failure to complete Key performance indicators (KPIs) and corresponding data to measure the effectiveness of the 2018 Marketing Plan and inform the 2019 marketing strategies;
- No meaningful discussion regarding the Naming Rights Agreement requirement to hold at least 36 "Major Events" (with 25,000+ attendees) and lack of plan to meet the minimum goals,
- Significant decrease in projected net revenue (\$750,000) for FY 2018/19 Non-NFL events and strategies to mitigate any losses; and,
- Inadequate explanation of how ManCo's practice of giving free tickets away for events and other promotions/giveaways was an advantageous marketing strategy for non-NFL events.

Based on the Board's discussion, the draft 2019 Marketing Plan was not mutually agreed upon. These contextual matters are important as they relate to the Marketing Plan because, on December 17, 2019, after months of waiting for the FY 2018/19 Fourth Quarter (Q4) data, Stadium Authority staff presented the Q4 fiscal status report for FY 2018/19. While Quarters 1-3 had shown no material changes in fiscal trend information, Q4 showed that Non-NFL event activity only generated \$18,591 in net revenue, reflecting a \$5.1 million loss in net revenue compared to the previous fiscal year.

ManCo has already advised of similar results for this current fiscal year and has only reflected "TBD" for FY 2020/21. Given that this would mark the third fiscal year with unfavorable financial activity, ManCo's proposed 2020 Marketing Plan should detail how it is commercially reasonable to continue the status quo trend and not require a "turnaround" strategy.

DISCUSSION

As fiduciaries under the Management Agreement to act in the Stadium Authority's best interest, ManCo has a duty through its marketing plan efforts to demonstrate how it proposes to restore

financial viability for the Stadium Authority and a “turnaround” strategy for the past fiscal year’s unfavorable booking practices with respect to business terms (e.g., large money-losing events).

No reasonable business/agency public or private would continue to expend multi-million dollar budgets to only yield \$18,000 in annual revenue without stopping to question its marketing strategies. Particularly, the Board and Manco should not allow for this trend to continue for three fiscal years without requiring a strategic discussion that results in a “turnaround” strategy that change this trajectory.

This section of the report discusses the merits of the proposed draft 2020 Marketing Plan by reviewing the Marketing Plan by: (1) Data Results, (2) Alignment to Management Agreement provisions, and (3) Other Key Information.

Marketing Plan Data Results -- In absence of KPI data committed to by ManCo, Stadium Authority staff compiled several key charts that contain ManCo’s performance with respect to managing/operating ticketed and non-ticketed Non-NFL events. The combination of these charts provides meaningful data for the Board to determine the merits of the draft 2020 Marketing Plan.

The Tables below illustrate how ManCo ended FY 2018/19 and their overall management of Non-NFL events based on their existing Marketing Plan strategies and practices. ManCo has been late with providing reports for Q1 and Q2, staff is also delayed with getting financial activity reports to the Stadium Authority Board for FY 2019/20. Given that FY 2020/21 is under review, it is important to note that ManCo has only submitted a “TBD” as projected revenue which provides some indication of their continued anticipated inadequate performance.

(Note: As of writing this report, staff is scheduled to present this information on March 24, 2020; in lieu of current data, the following tables are provided that show how FY 2018/19 ended and likely how FY 2019/20 is trending.)

Table 1. Total Non-NFL Net Revenue, FYs 2014 - 2020

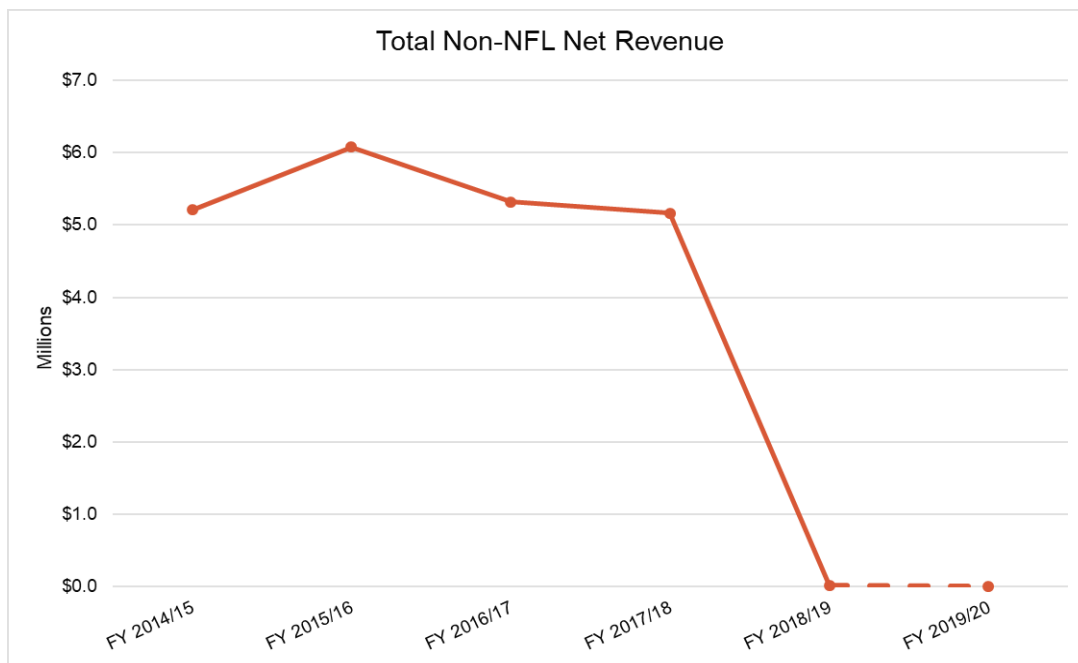


Table 2. Net General Fund Impact for Stadium Authority

Net General Fund Impact

For Stadium Authority Fiscal Year to Date Ending March 31, 2019

Ground Rent	\$ 320,000
Performance Rent	-
Senior and Youth Fee	227,933
Tasman Lots Parking Fee	23,645
Sales Tax	619,224
Total Net General Fund Impact	\$ 1,190,802

Marketing Plan key considerations from Tables 1 and 2:

- Since FY 2015/16, total Non-NFL net revenue has declined year after year.
- Total Non-NFL net revenue dropped most significantly from FY 2017/18 to FY 2018/19, reflecting a \$5.1 million decrease.
- The decreased revenue is expected to continue, as stated by ManCo during the development of FY's 19/20 Budget.
- There is no net revenue proposed by ManCo for FY 2020/21.
- The draft 2020 Marketing Plan offers no new strategies to maximize revenue or reduce this financially unfavorable condition. In fact, there is no acknowledgement in the draft Marketing Plan of how poorly ManCo has been performing.
- With results of this nature, a Marketing Plan should include a “turnaround” strategy, especially when faced with the potential to experience this financial trend for three consecutive fiscal years.
- The sum of these data demonstrate that both the Stadium Authority and City of Santa Clara make no revenue from ManCo’s booking and operations of Non-NFL events.

Further, for over many fiscal years, the Board has been trying to obtain detailed data on the financial performance of Non-NFL events. Staff has worked over the past two years to provide the Board with data and it is now able to report on event by event, which Table 3 shows for FY 2018/19:

Table 3. Marketing Plan Results, FY 2018/19

2018/19 Ticketed Non-NFL Events Revenue and Expenditure Summary

In Millions \$

Ticketed Events	Revenue	Expenses	Net
Monster Jam	1.4	1.6	(0.2)
Taylor Swift Tour Day 1	5.1	6.9	(1.8)
Taylor Swift Tour Day 2	10.5	7.8	2.7
Stadium Links	0.1	0.0	0.0
Manchester United vs Earthquakes	1.6	1.9	(0.3)
ICC: Barcelona vs AC Milan	4.4	4.0	0.4
High School Football Series	0.1	0.1	0.0
Jay-Z/Beyonce	8.4	7.9	0.5
SJSU vs Army	0.2	0.4	(0.2)
Pac-12	1.3	4.0	(2.7)
Redbox Bowl	4.6	5.2	(0.6)
Mexico vs Paraguay	3.6	4.1	(0.5)
Events to date	41.3	43.9	(2.6)

Marketing Plan key considerations from Table 3:

- 75% of Non-NFL ticketed events in FY 2018/19 are money-losers, nine of the twelve events lost money or made zero revenue for the Stadium Authority. Overwhelmingly, it is more likely than not that when the Stadium is activated for a ticketed Non-NFL event, it is at a cost to the Stadium Authority.
- ManCo's action to abruptly book a second day Taylor Swift concert was a bad financial decision for the Stadium Authority, costing \$1.8 million.
- ManCo's booking of Non-NFL football events is a bad financial decision for the Stadium Authority, costing \$3.5 million.
- ManCo's booking of soccer games, that were once profitable, have now begun to lose the Stadium Authority money, costing about \$800,000.
- FY 2019/20 Q1 and 2 results will be presented on March 24, 2020 and the Board will be presented with FY 2019/20 results, which ManCo has already reported would be similar.
- Unless new strategies are employed, the Stadium Authority cannot expect a change in the above results. While we have asked in the past, ManCo has not explained how these actions are commercially reasonable.

Table 4. Levi's Stadium Net Revenue for Non-NFL Events by Event Type as of March 31, 2019

EVENT TYPE	2014/15		2015/16		2016/17		2017/18		2018/19	
	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue
Ticketed Events										
Concerts	0	\$ -	7	\$ 3,791,985	4	\$ 2,424,572	2	\$ 1,819,099	3	\$ 1,438,848
Sporting events:										
Football (non-NFL)	5	(3,007,907)	4	(2,316,903)	4	(2,946,165)	4	(3,601,827)	4	(3,437,297)
Soccer	2	3,948,144	2	891,300	5	2,414,209	3	3,228,754	3	(267,981)
Miscellaneous events	2	2,504,912	4	(149,392)	5	(159,175)	4	76,379	2	(67,502)
Subtotal Ticketed Events	9	\$ 3,445,149	17	\$ 2,216,989	18	\$ 1,733,441	13	\$ 1,522,405	12	\$ (2,333,932)
Special Events (weddings, corporate events, etc.)	186	\$ 1,762,404	204	\$ 3,862,027	127	\$ 3,583,453	113	\$ 3,640,924	100	\$ 2,352,523
Total Non-NFL Net Revenue	195	\$ 5,207,553	221	\$ 6,079,016	145	\$ 5,316,894	126	\$ 5,163,329	112	\$ 18,591
Total Performance Rent paid to the General Fund		\$ 2,513,777		\$ 2,932,008		\$ 2,533,447		\$ 2,439,164		\$ -

Marketing Plan key considerations from Table 4:

- Year after year, Non-NFL football events have lost money for the Stadium Authority. In fact, Table 4 shows that these events have cost the Stadium Authority over \$15 million in its first five years. However, ManCo continues to book the same number of Non-NFL football events touting a sentiment that "it costs money to make money" or that without these events, it would be hard to book other events. However, considering that 75% of events are money-losers or that the Stadium Authority is nearing three fiscal years without revenue, that argument is unsupported by their own fiscal performance.
- Special events, non-ticketed Non-NFL events, generate revenue for the Stadium Authority; in fact, in most fiscal years, they generate more revenue than Ticketed events.

- Special Events (e.g. weddings, corporate events, etc.) have consistently generated revenue for the Stadium Authority, but these events have declined since FY 2015/16. Based on the financial reviews, there should be more investment in booking these events since they have a greater financial return than Ticketed Non-NFL events.
- The amount of total performance rent paid to the General Fund has also decreased year after year since FY 2015/16. There was zero performance rent paid to the General Fund in FY 2018/19 compared to \$2.4 million in FY 2017/18.

ManCo's draft 2020 Marketing Plan proposes to largely maintain a "business as usual" approach for operating Non-NFL events. There is mention of the recent addition of a LinkedIn site and a proposal to issue a quarterly newsletter. In light of the significant decline in financial performance, it appears that the proposed strategies do not match in magnitude the solutions expected of an agency holding full responsibility for booking events, maximizing operating revenues, or upholding its fiduciary responsibilities.

Alignment to Management Agreement Provisions

The Management Agreements provides various references that articulate the duties of marketing, booking, and, in general, operating Non-NFL events. This section highlights key provisions of the Management Agreement and Stadium Authority's staff as they relate to the draft 2020 Marketing Plan.

Duty to Promptly Disclose -- ManCo has a duty to manage its marketing, booking and operations of Non-NFL events and articulate them in its Marketing Plans. There are various sections that speak to how ManCo must maintain its responsibilities. For example, Section 2.6.20 of the Management Agreement requires that ManCo notify the Stadium Authority with respect to material variations from the budgeted line item revenues of expense projection as promptly as practicable after the Stadium Manager becomes aware. Specifically, Section 2.6.20 reads as follows:

2.6.20 Notify (i) StadCo, with respect to the Stadium Operations Budget, and (ii) the Stadium Authority with respect to the Annual Stadium Authority Budget, of any **expected material variations from budgeted line item revenues and/or expense projections as promptly as is practicable** after the Stadium Manager becomes aware of such likely variation from such budgeted amounts as set forth in any such Budget previously delivered to StadCo and/or the Stadium Authority;

While the Marketing Plan focuses on attracting and retaining Non-NFL business, this provision speaks to the actions that ManCo must take when there are material variations to the Board's adopted budget. In this case, for FY 2018/19, expenses increased by \$2.4 million compared to the prior year without any detailed report to the Stadium Authority, other than inaccurate reports through the media in January 2019 and emails as part of the budget development process that claimed revenues would be approximately \$750,000.

At the time that ManCo produced last year's Marketing Plan, it was well within the fourth quarter of that fiscal year where ManCo should have projected more accurate expenditures to promptly report to the Board and seek amendment to the 2019 Marketing Plan and Adopted Budget to mitigate and plan for these losses. ManCo did not take any action, nor formally advise the Board of increased expenditures. As part of the 2020 Marketing Plan review, ManCo should proactively disclose any financial matters that enable the Board to make sound decisions as required.

In fact, its draft 2020 Marketing Plan and related proposed budget at best can only disclose a “TBD” for its projected revenue. The Stadium Authority Board should expect more from ManCo on financial projections. Approval of draft 2020 Marketing Plan comes with the ongoing risk of ManCo continuing its past actions of non-disclosure and poor financial performance.

Standard of Care -- The requirement to utilize commercially reasonable business practices is outlined in the Management Agreement, Standard of Care (Section 2.9) which states:

2.9 Standard of Care. Subject to the limitations set forth in this Agreement, the Budget, and the Stadium Lease, the Stadium Manager shall exercise prudent, commercially reasonable good faith efforts in managing and operating the Stadium in accordance with the terms hereof so as to (a) **maintain the Stadium in the Required Condition and operate the Stadium as a quality** NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility, to a standard of quality comparable to other similar facilities (except that the parties recognize that portions of the Stadium may be in need of capital upgrades); (b) **control Manager Operating Expenses**, StadCo Operating Expenses and Stadium Authority Operating Expenses; and (c) **maximize Operating Revenues**.

The draft 2020 Marketing Plan does not reflect an urgency and effort on ManCo’s part to meet the above three requirements. As a Board, it is reasonable to question how the Board can invest in the 2020 Marketing Plan when it doesn’t generate any revenue from the requested investment. In other words, who can argue that spending nearly \$12 million on Shared Stadium Expenses is a good business decision on the part of the Board to make less than \$19,000 in revenue or settle for a “TBD” for FY 2020/21.

During FY 2019/20, City staff discovered that ManCo was not maintaining the Stadium in the required condition. In fact, the combination of the below information should raise serious safety and operations concerns:

- **Failure to Maintain a Stadium Fire Alarm System** - ManCo was put on notice by the Fire Department to not only correct several fire code violations, but to obtain the annual system certification for the Fire Alarm System. ManCo knowingly allowed for the Stadium to operate for multiple months, during the NFL season where upwards of 60,000+ attendees convened for games, without a Certified Fire Alarm System that is commonly used to provide verbal instructions to attendees in the event of emergencies or of safety emergencies that require public safety response, etc. This was only corrected when the Fire Department began to engage in stricter enforcement: needless to say, the Board should expect that ManCo safely manages events where the public assembly facility, that draws 50-70,000 attendees, has the most basic safety measures in place. As this is now known to City staff, quick actions to cease this activity will be taken.
- **Failure to Control Manager Operating Expenses** - See “Duty to Promptly Disclose.”
- **Failure to Maximize Operating Revenue** - See “Marketing Plan Data Results.”

ManCo should at minimum reference the strategies to book safety public assemblies in its submittal and explain how these activities are commercially reasonable with meeting its Standard of Care duties.

Booking Duties and Responsibilities -- Another provision in the Management Agreement that

needs to be evaluated when reviewing the 2020 Marketing Plan is the engagement requirements for the Stadium Manager (ManCo). Section 3 provides contextual information about how ManCo should perform its duties for marketing, promoting, and booking the Stadium. The section reads as follows:

3.2 Marketing Plan; Contracting Authority. The Stadium Manager, or a person or persons designated by the Stadium Manager or selected in accordance with Section 3.3.1 of the Existing Management Agreement, shall, following the Effective Date, and throughout the Term of the Management Agreement, prepare and provide the Stadium Authority with the Marketing Plan required by Section 4.10 of the Existing Management Agreement. In addition, subject to all limitations and exclusions contemplated by the Major Contracts, **on behalf of the Stadium Authority only (not StadCo), (a) the Stadium Manager shall use commercially reasonable efforts, consistent with the Marketing Plan, to market, promote, schedule and book Non-NFL Events and other activities at the Stadium** in accordance with the Scheduling Procedures; and (b) without limiting, and in addition to, the Stadium Manager's rights granted pursuant to Paragraphs 2 and 4 hereof and any separate contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion (i) to determine which Non-NFL Events, including performances, telecasts, broadcasts or other transmissions in, from or to the Stadium, or any part thereof, shall be booked from time to time in accordance with the Scheduling Procedures; (ii) to negotiate, execute and perform all contracts, use agreements, licenses and other agreements with the persons who desire to conduct such Non-NFL Events or who desire otherwise to use the Stadium or any part thereof; other than contracts, use agreements, licenses and other agreements that StadCo has the right to negotiate, execute and perform under the Stadium Lease.

Section 3 of the Management Agreement makes clear that ManCo is to exclusively engage in marketing, promotion and booking services with respect to Non-NFL Events and, in turn, the Stadium Authority will pay a fee for this service. Particularly, this section makes clear that ManCo's work is done **"on behalf of the Stadium Authority only (not StadCo), (a) the Stadium Manager shall use commercially reasonable efforts, consistent with the Marketing Plan, to market, promote, schedule and book Non-NFL Events and other activities at the Stadium."**

Stadium Authority staff has been stating for several years now, the contract terms that ManCo enters into could also result in significant losses to the Stadium Authority. ManCo's own Non-NFL documents have already surfaced valid concerns about their questionable business practices of not working exclusively for the Stadium Authority when booking Non-NFL events. For example, at the December 2019 Board meeting where the Redbox Bowl was discussed, several key issues surfaced that show ManCo's actions directly conflict with the Section 3 of the Management Agreement. In this instance, the Redbox Bowl revealed that ManCo's actions to negotiate contracts exclusively on behalf of the Stadium Authority resulted in more losses and potential self-dealing by President Al Guido. Particularly, the results of these actions resulted in less revenue and greater expenditures and, as the Stadium Authority would later find out, President Al Guido took action to execute contracts that directly financially benefited StadCo without any disclosure to the Stadium Authority.

The December Stadium Authority Board discussion revealed several terms that were committed to by ManCo, on the part of the Stadium Authority, lowered profitability, e.g., funding a minimum of 600 rooms for four-night stays at a downtown San Francisco, top-of-the-line hotel and providing the option to stay at a hotel near or in Santa Clara only the night before the event, complimentary gifts to

each participant, three complimentary meals to each participant, courtesy vehicles, practice facilities, event week activities, etc.

That discussion also included a redacted contract where ManCo attorneys revealed to the Stadium Authority Counsel that those sections were financial commitments made to StadCo. Below is a year to year chart reflecting the financial activity surrounding this event which provides a valid basis of why both data and the quality of contract negotiations are important for the Marketing Plan to focus on. Table 5 confirms these financial trends.

Table 5: Foster Farms - Redbox Bowl Financial Activity re Sponsorship and Partner Payments

SCSA NON-NFL P&L
Summary of College Football Bowl Games
Foster Farms and Redbox Bowls

	12/30/2014	12/26/2015	12/26/2016	12/30/2017	12/31/2018	
	Foster	Foster	Foster	Foster	RedBox	
	Farms Bowl	Farms Bowl	Farms Bowl	Farms Bowl	Bowl	Totals
Revenue						
Seating Bowl Revenue	2,229,000	600,158	1,749,344	1,709,883	2,106,960	8,395,345
TM Fees	33,885	26,118	15,876	20,403	31,609	127,893
Suite Revenue	60,379	90,834	26,759	51,382	58,426	287,779
F & B Revenue	146,307	158,572	90,072	102,043	147,527	644,522
Parking Revenue	155,393	138,130	59,760	66,005	97,073	516,361
Rental / Guarantee	-	-	-	-	-	-
Sponsorship	-	-	1,332,125	496,600	499,800	2,328,525
Merchandise	-	1,096	21,378	16,551	11,402	50,427
Other Revenue	-	7,000	1,666,524	1,628,368	1,658,827	4,960,718
Total Revenue	2,624,965	1,021,907	4,961,838	4,091,234	4,611,625	17,311,570
Expenses						
Guest Service Representatives	60,541	78,979	57,361	30,513	59,024	286,419
Public Safety Cost	171,161	163,416	156,643	110,560	326,096	927,876
Security	142,201	131,060	113,802	58,266	104,234	549,562
Janitorial / Maintenance	88,483	107,097	98,391	81,527	10,164	385,661
Field Conversion / Replacement	15,280	10,619	4,413	3,387	840	34,538
Other Stadium Operations	30,693	27,303	23,814	35,155	92,023	208,987
Utilities	20,518	15,324	20,658	20,544	19,368	96,412
Other Gameday Staff	25,913	57,614	118,887	74,377	179,425	456,216
Transportation	25,958	25,573	(2,429)	26,895	21,238	97,236
Parking Operations	149,630	164,686	148,866	91,034	151,318	705,535
Parking - 3rd Party Lot Rentals	-	13,759	1,071	1,601	(6,653)	9,778
Credit Card Fees	1,236	9,795	5,633	3,616	710	20,990
Catering	59,940	9,281	86,213	36,039	87,388	278,862
Partner Payments & Guarantees	2,143,404	412,939	3,615,000	3,600,000	3,602,535	13,373,878
Ticket Sales Commissions	24,975	7,292	7,515	1,779	3,597	45,157
Marketing Expense	7,998	11,087	137,068	105,666	108,500	370,320
Bowl Committee Expenses	-	-	456,023	441,253	397,554	1,294,830
Partner Reimbursement	-	-	(65,026)	(77,658)	-	(142,684)
Total Expenses	2,967,932	1,245,822	4,983,901	4,644,556	5,157,362	18,999,573
Net Profit/(Loss)	(342,967)	(223,915)	(22,063)	(553,322)	(545,737)	(1,688,003)

ManCo has not explained why it is commercially reasonable to enter into contracts for Non-NFL events that result in deeper losses for the Stadium Authority. For example, Table 5 shows when 49ers President Al Guido changed the terms of the Levi's Stadium Venue Use Agreement for the Redbox Bowl in 2016, Stadium Authority financial losses nearly doubled [See: Net Profit/(Loss)]. ManCo also has not explained how it is legal, and consistent with the requirement to exclusively work for the Stadium Authority, when President Al Guido entered into a Title Sponsorship Agreement where revenue was diverted to StadCo and decreased revenue more than half [See: Table 5, Sponsorship].

It is unknown if this is the extent of these potential violations. However, it is known that separately, the City has received notices from ManCo's General Counsel divesting both Al Guido, President, and Jim Mercurio, General Manager, from individual financial engagements that each participated in while concurrently administering the duty to perform marketing, booking, contracting, advertising, etc. services for operating on behalf of the Stadium Authority.

Given these discoveries, and no booking guidelines or disclosures, the Board's consideration of the draft 2020 Marketing Plan does not provide assurances that ManCo will fulfill its duties to maximize revenue by pursuing more favorable financial terms for the Stadium Authority, not engage in self-dealing or violations of law, and work exclusively for the Stadium Authority when negotiated Non-NFL

contracts and not StadCo.

Disclosure and Reporting “Without Limitation” -- The Stadium Authority staff has already notified ManCo several times of concerns with their full compliance with Section 3.3. from the Management Agreement. While ManCo has provided minimal, non-detailed, information about events occurring on a quarterly basis, Stadium Authority staff and the Board continue to learn about Non-NFL events through the media, e.g. Justin Bieber and BTS. Stadium Authority staff has also requested the executed contracts for these recent bookings, but ManCo has not provided them even though they are the Stadium Authority documents.

For reference, the Management Agreement provision allowing for disclosure, reporting and any other matters without limitation on ManCo’s activities and implementation of the Marketing Plan is referenced below:

3.3 Quarterly Status Meetings. The Stadium Manager and the Executive Director shall, at the request of the Executive Director, at a mutually convenient time, meet and confer no less often than quarterly during the Term of the Management Agreement to **report on the status of the Stadium Manager's activities pursuant to Paragraph 3 .2 above and the then approved Marketing Plan, including, without limitation, the status of Stadium Manager's marketing and promotional efforts, the status of any ongoing negotiations with respect to Non-NFL Events, financial performance and other matters relating to past Non-NFL Events, development of the Marketing Plan for the succeeding fiscal year**, and such other similar or other topics as the Stadium Authority may request. In addition, and without limiting the Stadium Manager's obligation to provide an Annual Statement of Stadium Operations pursuant to Section 4.2 of the Existing Management Agreement, **the Stadium Manager shall furnish the Executive Director, within 45 days of each Non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events**, such written revenue or other reports relating to NonNFL Events as the Parties may agree from time to time.

Additionally, ManCo has been delayed on more than one occasion with providing the Stadium Authority staff with “45-day reports” on the outcomes of Non-NFL events. This makes it difficult to produce timely reports for the Board that contain accurate quarterly data and do not allow for the Stadium Authority to conduct its oversight timely. For example, last year ManCo was significantly delayed with providing Q4 data which Stadium Authority was eagerly awaiting to determine the financial losses that ManCo had disclosed through the media.

It is prudent for the Board to seek a response from ManCo to ask how the above activities are not only commercially reasonable and, more importantly, how some of these activities are legal. In fact, there is risk that the Board’s approval of the draft 2020 Marketing Plan enables this continued activity when we now knowingly have examples of violations of this provision and law.

Other Key Information -- ManCo provided the draft 2020 Non-NFL Events Marketing Plan (2020 Marketing Plan) on February 14, 2020. The draft 2020 Marketing Plan reflects many of the same issues that were highlighted in the March 19, 2019 Study Session Draft 2019 Marketing Plan. As already stated, while entering a third year of no revenue for the Stadium Authority and significant money losing events, any responsible business would be focused on new approaches to resolve or mitigate this fiscal trajectory.

The draft 2020 Marketing Plan appears to poorly plan for or gauge the seriousness of ManCo's poor financial performance, arising from their marketing, booking, and operations of Non-NFL events. For example, not once in the draft 2020 Marketing Plan are these serious business conditions addressed and connected to new strategies that advance change and improvement. In fact, the draft 2020 Marketing Plan raves about their activities and presents much of what prior year's Marketing Plan's proposed. For example, the draft 2020 Marketing Plan states:

"It was a busy year for Special Events at Levi's Stadium including the busiest December since 2015...Outside of event bookings, the Levi's Stadium Special Events Sales team was busy taking part in national conferences, attending local networking events, partnering with industry organizations to amplify the brand, hosting prospecting events at the stadium, and reaching out to prospects with updated sales collateral. In addition to sales efforts, the stadium experienced continued success with consistently high client survey scores in event booking, event planning and event execution categories." - page 3

"The Special Events team was able to double attendance from 2018 and capture many qualified leads and contacts from this year's event. The stadium has found that getting people in the door is the first step to selling events but leaving them with a lasting memory and personal takeaway, will create an experience they will never forget." - pages 6-7

"The Levi's Stadium's Major Event business since the stadium's inception has been a key driver in propelling the venue's reputation and popularity. This past season we proudly hosted the USWNT v South Africa on their sendoff tour, the Mexican National Team and Rolling Stones. Major Events also drive the Special Event business, enticing corporate and social clients to book events at Levi's Stadium based on its popularity and prominence in the sports and entertainment industry." - page 12

"After four years of attracting, contracting, and successfully executing several high-profile events and shows, we will continue to focus on innovation for both the fan's experience and the venue's brand." - page 13

"In conjunction of our existing relationships with teams, league, and industries, tremendous potential exists to bring in new events that could not only serve immediate financial and community benefits, but also create financial sustainability as reoccurring events." - page 13

"With four successful previous years of hosting events we can leverage past results and key event metrics, including attendance, average ticket prices (ATP), revenue per fan by event, number of new fans versus returning fans." - page 14

"We are confident that we have outlined a marketing plan and overall strategic approach that will continue to drive high-impact events and revenues for Levi's Stadium..." - page 16

ManCo references a high volume of activity, but does not mention the quality of that activity, e.g., whether it is value add relative to profitability. Indeed, we know more than likely that it is not profitable given ManCo's track record.

Additionally, as stated last year, the Naming Rights Agreement requires ManCo to hold at least 36 Non-NFL "Major Events" (with 25,000+) attendees every three contract years. As of this report, the current number of large events held at the Stadium during the current three-year period is 18. The

draft 2020 Marketing Plan does not mention this requirement, nor does it include any strategy or plan to meet this requirement for the next three contract years.

These concerns, and the 2020 Marketing Plan's shortcomings, are especially important because the: sum of the above Tables reflect continued downward trend in financial performance (with no planned improvement by ManCo); non-compliance with Management Agreement provisions; and, sizeable investment in Non-NFL event activity by the Stadium Authority that yields no revenue for the Stadium Authority or City of Santa Clara, but poses continued risk to public safety, financial performance, and legal compliance.

Due to all the above, unless a dramatic financial "turnaround" strategy is presented or a valid explanation for how this continued performance is commercially reasonable, the Stadium Authority staff cannot recommend investment in or approval of the 2020 Marketing Plan.

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

There is no cost to the Stadium Authority other than administrative staff time and expense. However, the effectiveness of the Marketing Plan to market and book Non-NFL Events at Levi's® Stadium has a direct impact on the amount of Stadium Authority revenue, and the amount paid to the City's General Fund. The Stadium Authority's significant loss in net revenue in FY 2018/19 only further demonstrates the need for an effective Marketing Plan.

COORDINATION

This report has been coordinated with the Stadium Authority Counsel's Office.

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>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Stadium Authority Board Discussion and possible action on ManCo's draft 2020 Marketing Plan.

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Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. Draft 2020 Non-NFL Events Marketing Plan