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3/2/2021	1	Council and Authorities Concurrent Meeting	Continued	Pass

## REPORT TO STADIUM AUTHORITY BOARD

### SUBJECT

Study Session: Draft 2021 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 Manager and Stadium Authority. The provision 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 completed developing the 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 (2019 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.** That was not the case: ManCo continued with its same business practices, which included:

- Failure to develop and include 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 for FY 2018/19 Non-NFL events and lack of strategies to mitigate any losses. This ultimately resulted in \$18,000 total net revenue, which reflected a \$5.1M decrease from FY 2017/18; 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. Similarly, the draft 2020 Non-NFL Events Marketing Plan (2020 Marketing Plan) was not mutually agreed upon for many of the abovementioned reasons, as well as ManCo's poor booking and financial performance from FY 2015/16 through FY 2019/20, misalignment with key provisions in the Management Agreement (e.g., duty to notify, standard of care, booking duties and responsibilities, etc.), and other key issues (e.g., not meeting the number of Non-NFL "Major Events" as required by Naming Rights Agreement, lack of addressing poor performance, etc.). During the 2020 Marketing Plan discussion, the Board directed staff to share a list of questions that Board members had about the 2020 Marketing Plan for response from ManCo in light of ManCo's absence from the Study Session. To date, ManCo has not responded to the Board's questions.

After several years of Non-NFL events, had KPIs been developed the Stadium Authority and ManCo would have had the benefit of trend information of what is working and what is not. The financial trend of ManCo's performance is a strong indication that the Marketing Plan is not working and not

maximizing revenue for the Stadium Authority. In fact, the concerns regarding previous years' draft Marketing Plans remain relevant as FY 2020/21 marks the fourth fiscal year of unfavorable financial activity. In FY 2019/20, ManCo's financial performance continued to decline which resulted in \$2.7M loss in Non-NFL net revenue for the Stadium Authority. While FY 2020/21 has been an unusual year defined by the COVID-19 pandemic and the suspension of Non-NFL events at Levi's Stadium, it is clear that ManCo cannot simply return to the same marketing strategies that were being used prior to the pandemic as it prepares for the return of events.

## **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 after a year of COVID-19 impacts and to provide a "turnaround" strategy for the previous fiscal years' unfavorable booking practices (e.g., large money-losing events) as requested by the Stadium Authority during last year's discussion of the 2020 Marketing Plan. The draft Marketing Plan presented by ManCo does not include recovery measures and, when combined with ManCo's proposed financial performance (loss of \$600,000), it appears that ManCo's Marketing Plan continues the trend of money losing events at the Stadium Authority's expense without any new strategies to prevent losses.

This section of the report discusses the merits of the proposed draft 2021 Non-NFL Events Marketing Plan (2021 Marketing Plan) (Attachment 1) by reviewing the Marketing Plan by: (1) Data Results, and (2) Alignment to Management Agreement and Naming Rights Agreement provisions.

**Marketing Plan Data Results** -- With the continued absence of KPI data from 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 2021 Marketing Plan.

The Tables below illustrate how ManCo ended FY 2019/20 and their overall management of Non-NFL events based on their existing Marketing Plan strategies and practices. *(Note: As of writing this report, staff is scheduled to present this information later this year)*

**Table 1. Total Non-NFL Net Revenue, FYs 2014/15 - 2020/21**

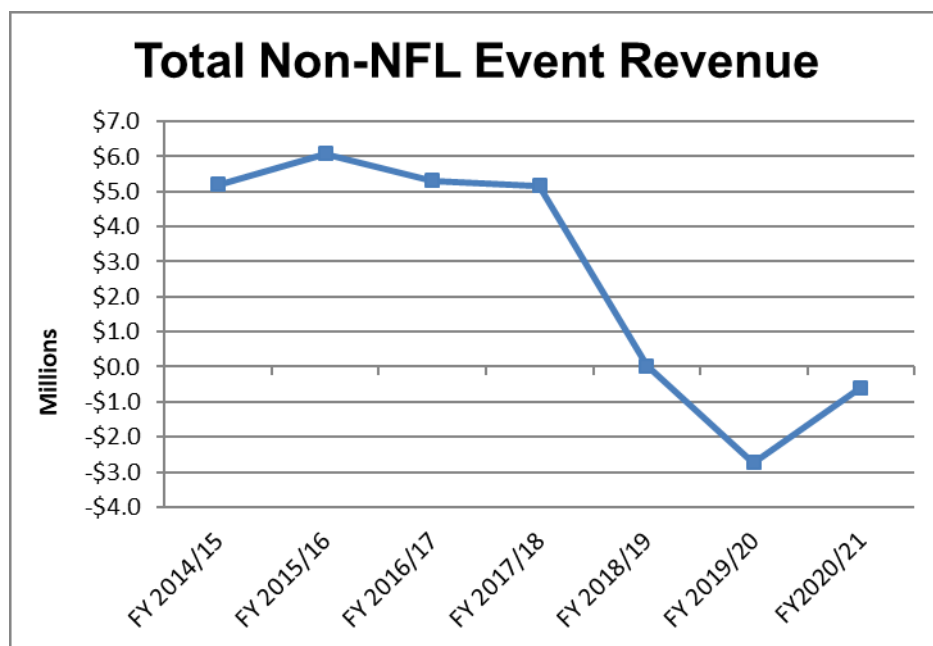


Table 2. Net General Fund Impact for Stadium Authority

## Net General Fund Impact For Stadium Authority Fiscal Year to Date Ending September 30, 2021

Ground Rent	\$	390,00
Performance Rent		-
Senior and Youth Fee		-
Tasman Lots Parking Fee		-
Sales Tax		20,12
<hr/>		
<b>Total Net General Fund Impact</b>	<b>\$</b>	<b>410.12</b>

Marketing Plan key considerations from Tables 1 and 2:

- Total Non-NFL net revenue dropped most significantly from FY 2017/18 to FY 2018/19, reflecting a \$5.1 million decrease.
- Total Non-NFL net revenue continued its downward trend in FY 2019/20, resulting in a \$2.7M loss.
- Since FY 2015/16, total Non-NFL net revenue has declined year after year until FY 2020/21, which is anticipated to have a net shortfall of \$600,000.

While a shortfall is generally expected during a year when there are no Non-NFL events being held at the Stadium, the Stadium Authority actually anticipated breaking even during the pandemic through expected reductions in staffing and utilities. This expectation was due to the significant losses that resulted from ManCo's Non-NFL activity during the past few fiscal years. This data is telling of ManCo's performance that the Stadium Authority lost more money the last fiscal year when Non-NFL

events were being held than this fiscal year when events were suspended. It is important to note that the Santa Clara Convention Center, which is owned by the City of Santa Clara, took immediate action to limit expenditures during the pandemic while events and gatherings were prohibited by State and local Stay-at-Home Orders.

The draft 2021 Marketing Plan provides some insight into ManCo's 2020 marketing activities, which were focused on canceling/postponing booked events (pg. 3), growing their client base (pg. 3), implementing client touchpoints (pg. 4), sponsoring the Silicon Valley and San Francisco Admin Awards (pg. 5), and conducting a client survey that focused on how companies and organizations were dealing with the pandemic (pg. 6).

As part of the budget process, the Stadium Authority sent comments and concerns to ManCo regarding the draft 2021 Marketing Plan, which ManCo did not consider for amendment to the draft Marketing Plan. Specifically, Stadium Authority staff had concerns or clarifications to make about the canceled/postponed events, client touchpoint activities and client survey results, as follows:

- ManCo misrepresents the percentage of **canceled/postponed events** in the draft 2021 Marketing Plan by stating that it was able to postpone 50% of the events that were booked between March - December 2020, when the data does not show that. The Stadium Authority requested the number of events that were postponed and number of large events (1,000 attendees) and in response, ManCo stated that 29 events were booked in 2020 and as of February 18, 2021, 11 postponed (38%) and 18 canceled (62%). It is not clear why ManCo did not correct canceled/postponed events since its data is incorrect.
- **Client touchpoints** are described as "personal check-ins and educational calls" and "the team shared recipes, favorite books, TV shows and ways to relax and improve mental health with clients" (pg. 4). ManCo noted that its team executed over 3,900 client touch points that were recorded and followed through their CRM system. While the draft 2021 Marketing Plan states that the conversations eventually led to clients inquiring about event future opportunities and the development of new event packages, it is unclear what financial benefits those interactions have especially in the context of a projected \$600,000 loss for FY 2020/21 and limited future bookings and rescheduled events. There should be a cost-benefit KPI that tracks the investment in this outreach and the bookings that result from investing in this effort.

In response to Stadium Authority's questions, ManCo responded that it projected \$400,000 savings in labor costs (furloughed staff) and marketing expenses (team did not attend in-person sales events or conferences and did not host any client/prospecting events) and stated, "Conducting consistent outreach during the pandemic is long-term client retention strategy and the financial results/benefits will not be evident until the stadium is able to host events again and the team and track bookings linked to these efforts".

- The **client survey** had limited and mixed responses, which ManCo used to come to the following conclusion:

*most clients were shifting their focus to planning in-person events in 2021, with the exception of virtual events in 2020. The survey results provided enough information to begin planning for a return to events in 2021, building out packages for outdoor events and incorporating virtual enhancements.*

Stadium Authority staff communicated their concerns that 17 responses (4% rate of response) out of 431 surveys sent was not enough to draw valid conclusions-- or consider it a statistically valid survey. Therefore, the survey responses should not be used to make conclusions that claim to represent client's opinions for informing decision-making.

Additionally, staff asked for additional evidence/documentation to support its strategy to begin planning events in 2021 (e.g., responses from clients during client touchpoint conversations) and a contingency timeline for events returning. In response, ManCo stated that the survey was sent out in August 2020 and the team planned to send out a follow up survey in March/April 2021 or later pending State and County information. ManCo declined to provide a contingency timeline which should be of concern since economic recovery and "turnaround" strategies should be addressed urgently to stop multiple fiscal years of losses.

While these efforts appear to be proactive on ManCo's part, Stadium Authority staff continue to stress the need for data driven decisions and KPIs. It remains unclear what positive financial benefits these efforts will yield as events continue to be suspended due to the pandemic. There is no reason why the Marketing Plan can not capture both quantitative data and qualitative information to inform strategic decisions: indeed, quantitative data over time assist with understanding trend activity and business practices that may or may not benefit the Stadium Authority.

Staff has worked for years to obtain information from ManCo and provide the Board with detailed data on financial performance for Non-NFL Events. Tables 3 and 4 show a breakdown of FYs 2018/19 and 2019/20 ticketed events:

**Table 3. Marketing Plan Results, FY 2018/19**

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

In Millions \$

<b>Ticketed Events</b>	<b>Revenue</b>	<b>Expenses</b>	<b>Net</b>
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)
<b>Events to date</b>	<b>41.3</b>	<b>43.9</b>	<b>(2.6)</b>

Table 4. Marketing Plan Results, FY 2019/20

<b>Levi's® Stadium</b> <b>Ticketed Non-NFL Events Revenue and Expenditure Summary</b> <b>FY 2019/20 Quarter 4</b> In Millions \$			
<b>Ticketed Event</b>	<b>Revenue</b>	<b>Expense</b>	<b>Net</b>
Monster Jam	\$ 1.6	\$ 2.0	\$ (0.4)
Bay Area Wedding Fair	0.0	0.0	0.0
USWNT vs South Africa	0.3	0.1	0.2
ICC: Chivas vs Benfica	1.2	1.5	(0.3)
Rolling Stones: No Filter Tour	11.4	10.5	0.9
High School Football Series	0.1	0.1	0.0
Pac-12 Championship	3.1	5.7	(2.6)
Redbox Bowl	4.6	5.2	(0.6)
<b>Total Ticketed Non-NFL Net Revenue to date</b>	<b>\$ 22.3</b>	<b>\$ 25.1</b>	<b>\$ (2.8)</b>
*Numbers may vary due to rounding			

Marketing Plan key considerations from Tables 3 and 4:

- 75% of Non-NFL ticketed events in FY 2019/20 are money-losers, six of the eight events lost money or made zero revenue for the Stadium Authority. This data is consistent with FY 2018/19's performance, of which 75% of Non-NFL ticketed events were also money-losers. Based on the data from these two fiscal years, it appears that the Stadium Authority will more likely than not lose money when the Stadium is activated for a ticketed Non-NFL event.
- ManCo's booking of Non-NFL football events continues to be a bad financial decision for the Stadium Authority, costing \$3.2 million in FY 2019/20.
- ManCo's booking of soccer games, which were once profitable, has continued to lose the Stadium Authority money.
- The concept of *losing money to make money* has not paid off for the Stadium Authority after several years of observed fiscal performance and, therefore, should not be considered a viable framework to accept from ManCo. It is understood that this may be a framework on a smaller scale (by event), but when 75% of Non-NFL ticketed events lose money with year-end deficits, ManCo should be directed to reveal its plan of when fiscal performance will improve.

Like previous Marketing Plans, the draft 2021 Marketing Plan acknowledges the need to increase "the diversity of ticketed events beyond large-scale concerts and sporting events by evaluating smaller and more intimate events as well" (pg. 12). ManCo discusses the types of potential events that are being evaluated, which include obstacle course racing, golf, comedy shows, book tours, rugby, lacrosse, food and music festivals, however, does not provide detail on whether those potential events will generate revenue. Mentions of this research are also included in the draft 2019 and 2020 Marketing Plans, but ManCo has never provided its findings and it appears that significant time has passed to offer some strategy for these activities. Additionally, previous years' Marketing



Plans do not outline a plan for sporting events, but sporting events continue to dominate every fiscal year's Non-NFL event activity, including FY 2020/21.

As we look forward to events returning to Levi's Stadium, ManCo's research into the cost benefits of other types of large events will be especially important since sporting events, especially Non-NFL football, continue to be money-losers for the Stadium Authority. Even more important is ManCo's commitment to book revenue-generating events for the Stadium Authority and use data to guide their decision making.

**Table 5. Levi's Stadium Net Revenue for Non-NFL Events by Event Type as of March 31, 2020**

Levi's Stadium Net Revenue for Non-NFL Events by Event Type As of March 31, 2020												
EVENT TYPE	2014/15		2015/16		2016/17		2017/18		2018/19		2019/20	
	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	No. of Events	Net Revenue
<b>Ticketed Events</b>												
Concerts	0	\$ -	7	\$ 3,791,985	4	\$ 2,424,572	2	\$ 1,819,099	3	\$ 1,438,848	1	\$ 856,583
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)	3	(3,170,926)
Soccer	2	3,948,144	2	891,300	5	2,414,209	3	3,228,754	3	(267,981)	2	(65,295)
Miscellaneous events	2	2,504,912	4	(149,392)	5	(159,175)	4	76,379	2	(67,502)	2	(458,609)
Subtotal Ticketed Events	9	\$ 3,445,149	17	\$ 2,216,989	18	\$ 1,733,441	13	\$ 1,522,405	12	\$ (2,333,932)	8	\$ (2,838,247)
Subtotal Ticketed Events - Other Expenses												\$ (167,217)
Subtotal 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	79	\$ 1,492,331
Subtotal Other Operating Expenses												\$ (1,227,881)
<b>Total Non-NFL Net Revenue</b>	<b>195</b>	<b>\$ 5,207,553</b>	<b>221</b>	<b>\$ 6,079,016</b>	<b>145</b>	<b>\$ 5,316,894</b>	<b>126</b>	<b>\$ 5,163,329</b>	<b>112</b>	<b>\$ 18,591</b>	<b>87</b>	<b>\$ (2,741,014)</b>
<b>Total Performance Rent paid to the General Fund</b>		<b>\$ 2,513,777</b>		<b>\$ 2,932,008</b>		<b>\$ 2,533,447</b>		<b>\$ 2,439,164</b>		<b>\$ -</b>		<b>\$ -</b>

#### Marketing Plan key considerations from Table 5:

- Year after year, Non-NFL football events have lost money for the Stadium Authority. In fact, Table 5 shows that these events have cost the Stadium Authority \$18.5 million over the span of six years. It is unclear what ManCo's future plans are for booking Non-NFL football events since they are not mentioned in the draft 2021 Marketing Plan (they were not mentioned in the 2019 and 2020 Marketing Plans either); however, ManCo cannot resume booking these types of events as it has before while stating its strategy is that "it costs money to make money" or that without these events, it would be hard to book other events. Year after year, their fiscal performance continues to demonstrate that Non-NFL football events are money-losers so there must be a turnaround strategy. ManCo also does not demonstrate how booking these events have a direct impact on revenue-generating events.
- Non-ticketed Special Events (e.g. weddings, corporate events, etc.) have consistently generated revenue for the Stadium Authority; in fact, since FY 2015/16, they generate more revenue than ticketed events. ManCo's Marketing Plan should provide stronger strategy on these events and, once and for all, complete its multi-year commitment to conduct studies on smaller scale events (as mentioned above) where the likeliness of generating positive fiscal performance is higher than larger events.
- While non-ticketed Special Events have generated revenue for the Stadium Authority, these events have also declined in numbers since FY 2015/16. As stated in previous years, 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 FYs 2018/19 and 2019/20.



There two key areas of interest in the draft 2021 Marketing Plan as ManCo plans their 2021 marketing efforts in the context of ManCo's projection of a \$600,000 loss to \$0 revenue for FY 2021/22:

- **New event packages:** The COVID-19 pandemic has prompted ManCo to evaluate and focus on non-ticketed special events through the development of various new event packages. Historically, non-ticketed Special Events have generated the most revenue for the Stadium Authority and Stadium Authority staff has long recommended that ManCo focus on these events. As part of ManCo's responses, ManCo projected 25 to 35 mixed catered events that will generate revenue averaging between \$40,000 to \$60,000 per event (\$1M to \$2.1M). It is unclear whether ManCo also expects to hold additional non-catered events: these events should also be pursued if they generate net revenue for the Stadium Authority. ManCo must continue to focus on non-ticketed special events, even after larger ticketed events are able to resume, rather than decreasing the number of non-ticketed special events as it has done year after year since FY 2015/16. Within the context of COVID, where larger events may have restrictions for some time, the booking of non-ticketed events may prove to be a valid strategy where COVID safe smaller events may allow for some activity at the Stadium.
- **Marketing budget:** ManCo emphasized the need for a marketing budget several times in the draft 2021 Marketing Plan. Stadium Authority staff were concerned about this budget given that ManCo anticipated a loss or breaking even and asked for: 1) more clarification about whether the marketing budget was a new request and 2) why it was needed given the anticipated poor financial performance. In response, ManCo stated that the budget was needed to ensure a successful sales pipeline, educate clients/prospects on new protocols, guidelines and offerings post-COVID, and engage artist management, tour promoters, leagues, teams, and tournaments. However, ManCo provided two budget amounts (\$115,000, which it said was on par with the 2019 marketing spend, and \$50,000) and it is unclear whether the two marketing budgets are mutually exclusive of each other. In such case, ManCo would be expending an additional \$115,000 to \$165,000 on marketing events that will lead to a loss or breaking even for the Stadium Authority. In a scenario of multiple years of financial loss, requests for additional funding should be very clear and well defined, including purpose and strategy.

### **Alignment to Management Agreement and Naming Rights Agreement Provisions**

The Management Agreement provides various references that articulate the duties of marketing, booking, and, in general, operating Non-NFL events. The Naming Rights Agreement sets forth all the understandings and agreements between the Stadium Authority and the Naming Rights Sponsor, Levi's, with respect to the Naming Rights Entitlements. This section highlights key provisions of the Management Agreement and Naming Rights Agreement, and Stadium Authority's staff concerns as they relate to the draft 2021 Marketing Plan and future events.

**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 2021 Marketing Plan does not reflect an urgency and effort on ManCo's part to meet the three above requirements. During FY 2019/20, Stadium Authority staff discovered that ManCo was not maintaining the Stadium in the required condition. This lack of proper maintenance of the Stadium has continued into FY 2020/21 as many capital projects have been delayed and carried into the proposed FY 2021/22 CapEx Budget. For example, ManCo was responsible for CapEx projects totaling over \$8.9M in FY 2020/21 but only projects a \$289,034 (3.2%) spend. This reflects a continuing trend as ManCo was responsible for \$12.5M in FY 2019/20 but only expended \$254,753 (2%), an amount that the Stadium Authority has not reimbursed due to lack of supporting documentation and/or concerns over prevailing wage issues.

Additionally, ManCo continues to face numerous violations issued by the City's Fire Department. After repeated failures by ManCo to follow their own compliance plans, the Fire Department took a more formal approach to fire code violations at the Stadium, issuing multiple citations and fines totaling more than \$75,000 and also placed holds on all non-violation related construction permits and inspections to gain compliance on some major violations. ManCo recently hired new consultants to assist with correcting the outstanding violations and the Fire Department is working with both parties. ManCo must adhere to the Management Agreement's Standard of Care requirement to ensure that events, when they can resume, can operate safely at Levi's Stadium.

**Booking Duties and Responsibilities** -- Another provision in the Management Agreement that needs to be evaluated when reviewing the 2021 Marketing Plan is the engagement requirements for 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 shared previously with the Board that the contract terms that ManCo enters into may also result in significant losses to the Stadium Authority. For example, ManCo's own Non-NFL documents (e.g., 2019 Redbox Bowl) have surfaced valid concerns about their questionable business practices of not working exclusively for the Stadium Authority when booking Non-NFL events. As ManCo resumes engaging in negotiations and booking events for the Stadium Authority, it is important that there be transparency, no conflicts of interest/self-dealing, and demonstrated adherence to the Management Agreement requirement to do work on behalf of the Stadium Authority.

**Required Major Events** - The Naming Rights Agreement between Stadium Authority and Levi's 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 12. The draft 2021 Marketing Plan, like previous years' Marketing Plans, does not mention this requirement, nor does it include any strategy or plan to meet this requirement for the next three contract years. In response to ManCo's budget submittal, the Stadium Authority asked ManCo to provide their assumptions and details for their projection of a \$600,000 loss to \$0 revenue for FY 2021/22, and ManCo responded that *"the assumptions include two (2) TBD concerts."* While it is understood that this is not exactly an "apples to apples" comparison, it should not be overlooked that this assumption differs greatly than what other major event venues in the region are projecting in terms of 2021 activity. Despite the COVID scenario, to date, San Jose's SAP Center has 10 events, San Francisco's Chase Center has 12 events, and the Oakland Arena has six events on their respective 2021 non-sports related event calendars (we fully understand that these are indoor venues, which happen to be more COVID restrictive).

The draft 2021 Marketing Plan is being considered at a time in which events continue to be suspended and are expected to continue to be suspended until Fall 2021. As such, this discussion and potential investments in marketing efforts are even more important as the Stadium Authority looks to recover losses and generate revenue for the City's general fund.

## **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 to review and approve the draft 2021 Marketing Plan. 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 losses in net revenue in FYs 2018/19 and 2019/20 only further demonstrate the need for an effective Marketing Plan to recover from COVID-19 pandemic-related impacts.

### **COORDINATION**

This report has been coordinated with the Stadium Authority Counsel and Treasurer'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) <<mailto:clerk@santaclaraca.gov>>.

### **RECOMMENDATION**

Stadium Authority Board discussion and possible action on ManCo's draft 2021 Marketing Plan.

Prepared by: Christine Jung, Assistant to the Executive Director

Approved by: Deanna J. Santana, Executive Director

### **ATTACHMENTS**

1. Draft 2021 Non-NFL Events Marketing Plan