



Meeting Minutes

Monday, January 9, 2017 – 5:30pm

**Committee Members present:**

Chairperson Lisa M. Gillmor

Board Member Teresa O'Neill

**Staff present:**

Rajeev Batra, Interim Executive Director

**1. Status update from Harvey Rose Associates, LLC**

Dan Goncher and Fred Brousseau gave an update on Status Report #11 for the period of December 20, 2016 – January 6, 2017, which included activities and accomplishments during the reporting period, issues and challenges during the reporting period, potential audit issues that were identified, tasks to be completed during the next reporting period (January 10, 2017 – January 20, 2017), pending matters and other issues (Report attached).

**2. Approval of Minutes**

A. Motion was held and seconded to approve the minutes for the meeting of December 8, 2016.

**3. Questions and Comments by Committee Members**

A discussion was held by Committee Members, Interim Executive Director, Mr. Brousseau and Mr. Goncher. The main topics included the following:

A. Interim Executive Director noted that the City had received the following documents from the Management Company:

- i. Stadium Operations Agreement
- ii. User Policies and Procedures for Non-NFL Events
- iii. Personnel Policies and Procedures
- iv. Chart of Accounts, Accounting Policies and Accounting Controls (Effective Internal Accounting Controls)
- v. Preventative Maintenance Policies, Procedures and Systems
- vi. Safety Policies For All Users of The Stadium
- vii. Develop and Implement Pre-Opening Promotional Materials
- viii. Initial Public Safety Plan
- ix. Statement of Stadium Operations
- x. Stadium Operation and Maintenance Plan, including Annual Shared Stadium Expense Budget, Annual Public Safety Budget and Annual Capital Expenditure Plan
- xi. Operating Budget, including Stadium Operations Budget, Stadium Authority Budget, and StadCo Budget
- xii. Shared Stadium Expenses Budget, including a five-year projection
- xiii. Capital Expenditure Plan
- xiv. Marketing Plan for Non-NFL Events

It was noted that some of the above listed documents had information redacted and that there were other confidential documents that had not been delivered.

B. Chairperson Gillmor asked Harvey Rose Auditors to look into how the City of San Jose obtains all documents, including confidential documents, for the SAP Center. She also confirmed that Harvey Rose Auditors will be looking into how the costs for background checks for double badger officers for Stadium event security are billed and paid. It was announced that the Forty Niners had filed suit against the Stadium Authority for not signing the Estoppel Certificate.

**4. Questions and Comments by the Public**

Several members of the public addressed the Committee. The main topics included the following:

- A. General comments regarding the difference between StadCo and ManCo, the Non-Disclosure Agreement, how the processes with documents will be corrected, how double badger officers are paid.
- B. It was noted that the City Attorney had resigned and the question was raised about how quickly the position would be filled.
- C. It was also noted that no one from the Forty Niners were present.

**5. Adjournment:**

Chairperson Gillmor adjourned to the next meeting on Monday, January 23, 2017 at 5:30pm.

Prepared by:



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Lynn Garcia  
Executive Assistant to the Mayor and City Council



**Comprehensive Audit of Stadium Authority Finances**

January 9, 2017

**TO:** Audit Ad Hoc Steering Committee  
**FROM:** Fred Brousseau, Principal-in-Charge  
**SUBJECT:** Status Report #11

**Period covered:** December 20, 2016 – January 6, 2017

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**1. Activities and Accomplishments during Reporting Period**

- a. Using information provided by the Stadium Authority (City) Finance Department, we previously identified which records of Stadium revenues and expenditures are kept by ManCo and which are kept by the Stadium Authority. Those kept by ManCo include Non-NFL event revenue and expenses, Stadium Manager expenses, utilities, Stadium Builders Licenses (SBLs) sales and service costs, and the use of StadCo Tenant Improvement fees. The Stadium Authority maintains records for all other revenues and expenses.
- b. During the reporting period, we reviewed a sample of Stadium Authority revenues and expenditures maintained by the Finance Department from Stadium Fiscal Years 2014-15 and 2015-16. We reviewed the backup documentation for each sample item selected and received explanations of how revenue and cost information is transferred between ManCo and the Stadium Authority as well as the internal controls and processes by which the revenues and expenditures are transmitted and booked and reported to the Stadium Authority Board. We also tested pertinent transactions for compliance with the City's Stadium Authority Procurement Ordinance.
- c. We began preparation of summary tables and written descriptions of our analysis and related findings pertaining to Stadium Authority revenues and expenses for inclusion in our audit report. This work will fulfill our Audit Work Plan Task #5: Review and Analysis of Stadium Operating Costs. However, at this time, our work on this task excludes review and analysis of any revenue, expense or other records maintained by ManCo. As previously reported (see our Status Report #09 dated December 8, 2016), ManCo requested that we sign a non-disclosure agreement that would allow us to only review their documents and data, but not to disclose their contents if ManCo deems them confidential to any third party such as the Stadium Authority Board. This could include all non-NFL event revenue and expense details since only ManCo has possession of this information. This impediment to our audit work is currently under review by the Stadium Authority, as discussed further in the Issues section below.

- d. Our review and analysis of Non-NFL Event revenues and expenses (Audit Work Plan Task #6) has been suspended as the information needed for that task for is primarily maintained by ManCo and we did not have access to those records during the reporting period, as discussed above.
- e. We completed our review of sample City and Stadium Authority records for comparison with corresponding City payroll records to determine if all staff time spent on Stadium-related activities have been recorded and reimbursed by the 49ers entities or the Stadium Authority. We are working with City departments to finalize our analysis and findings in this area. The events selected for this analysis include: three NFL events and two Non-NFL events from both Stadium Fiscal Years 2014-15 and 2015-16, and one Non-NFL event from Stadium FY 2016-17, for a total of eleven samples.
- f. We previously analyzed City off-site parking fee revenue against measures such as the number of cars parked, event tickets sold, lots utilized, for presentation of trends for NFL and Non-NFL events in our report. We reviewed parking plans provided by ManCo in the form of their off-site parking permit applications from 2014. During this reporting period, we reviewed parking operators' off-site permit applications and supporting documents provided by the City's Community Development Department for Fiscal Years 2014-15 through 2016-17.
- g. We began preparation of other sections of our draft audit report including our summary of the Joint Powers Agreement that created the Stadium Authority, Measure J and the agreements between the Stadium Authority, the City of Santa Clara and the 49ers entities: Manco and StadCo. We also worked on our written overview of the Stadium budget and finances that will be presented in our audit report.

#### **Issues/Challenges during Reporting Period**

The audit timing and schedule have been affected by delays in obtaining an initial meeting with ManCo and being allowed to review documents and data in their possession. Further, ManCo's requirement during a previous reporting period that we sign a non-disclosure agreement prohibiting us from reporting any information in their possession that they deem confidential to third parties has put another impediment in audit timing and content.

As previously reported, we did not sign the non-disclosure agreement prepared by ManCo as it would prohibit us from including any ManCo cost or other information that we have reviewed in our audit report, as planned, to the Stadium Authority Board. Without our signing it, ManCo will not allow us to further review documents and data maintained at their offices.

Review, analysis and presentation of information now maintained by ManCo in our audit report are two elements in our audit work plan. Examples of information that would be precluded from presentation in our report include non-NFL event revenue and expense details, which serve as the bases of Stadium Authority revenue and performance-based rent for the City's General Fund, and information in the Operation and Maintenance Plan (since only ManCo has this document) specifying the Required Condition in which the Stadium is to be maintained.

The proposed non-disclosure agreement did allow for our reporting ManCo's confidential information to the Stadium Authority if it were presented in such a way as to be exempt from provisions of the California Public Records Act, the California Evidence Code and the California Civil Code that would allow for its public disclosure. This appears to allow for presentation of the confidential information in a confidential report to the Stadium Authority Board. ManCo has stated that they are open to suggested changes to the draft agreement.

At the status report meeting on December 8, 2016, the Stadium Audit Ad Hoc Committee decided to obtain legal advice on how to proceed on this matter.

## **2. Potential Audit Issues Identified:**

As reported in previous status reports, the audit team identified two initial issues that will be among matters investigated and reported on in our audit report. As with all status reports submitted to date, the issues presented are *preliminary* in nature and still subject to further review and analysis.

### ***Direction to City employees***

As the Stadium was constructed and began operations, the City's Finance Department created time codes and worked with individual City employees to assist them in tracking and recording their time spent on Stadium-related tasks after Stadium construction was completed. However, until August 2016, when the Acting City Manager issued a directive to all employees on this topic, the City apparently did not provide central Citywide direction to all employees clarifying what work activities are attributable to the Stadium and subject to reimbursement. As a result, some staff time for all relevant activities may not have been billed and reimbursed or some staff time may have been incorrectly billed.

In previous reporting periods, the audit team prepared proposed amendments to the City Manager's Directive 136: *Stadium and Special Event Time Reporting and Reimbursement for City Services* to help clarify activities that should be recorded and charged to the 49ers entities or the Stadium Authority, previously submitted to the Ad Hoc Committee (see Status Reports 5, 6 and 7). The Acting City Manager requested some changes and reviews of certain amendments proposed by the audit team, particularly in the areas of specifying what activities and physical locations constitute Stadium-related activities for staff billing purposes. A revised version of the Directive incorporating the Acting City Manager's suggested changes dated November 17, 2016 was prepared and distributed to City employees.

### ***Absence of key plan and budget documents***

A second potential audit issue also identified in previous status reports is that a number of Stadium-related plan and budget documents required to be prepared by ManCo in Stadium Authority agreements with the 49ers entities have not been: 1) individually presented to the Stadium Authority Board, 2) consistently provided, and/or 3) provided in the level of detail in the Stadium Authority budget and financial status reports as required in the agreements. Arrangements have reportedly been made between ManCo and Stadium Authority staff in some instances that alter provisions in the agreements but, to date, we have not seen documentation codifying such arrangements.

- a. **The Stadium Operation and Maintenance Plan:** The Lease Agreement requires that this plan be prepared by the Stadium Manager (ManCo) to establish the “Required Condition” for the Stadium and “policies and procedures for operating and maintaining the Stadium Complex in accordance with good, sound and prudent engineering practices...” (Lease Article 7.1.1). In spite of the importance of all parties agreeing to a Required Condition for the Stadium, the Stadium Authority Board and current staff do not have a copy of this document.

In our Status Report #6, we stated that ManCo had informed the audit team that the Operation and Maintenance Plan was not prepared as a stand-alone document but incorporated in the annual Stadium Authority budget. This representation was based on what the five members of our audit team present heard at our meeting with ManCo representatives on October 21, 2016 and the absence of ManCo or Stadium Authority/City staff providing the document in response to our repeated requests starting October 3, 2016. We reported that none of the budget documents reviewed by the audit team to date provide the information required in the Operation and Maintenance Plan according to the agreements.

In Status Report #7, we reported that ManCo informed us that they stated at our October 21, 2016 meeting that the Operation and Maintenance Plan was in fact produced as a stand-alone document in 2014 and provided to Stadium Authority staff and that it was agreed that it would be a confidential document due to security issues in the document. None of the five members of the audit team present heard this representation. No City staff that we have queried have this document or have a record indicating it is confidential and to be kept only by ManCo.

ManCo provided a copy of the 2014 Plan document for our review at their site on November 22, 2016. We were not allowed to take a copy or photocopy any pages from it. We did take notes about its content. Updates to the Plan for 2015 and 2016 are available at the ManCo offices but we have not yet reviewed them in detail.

The key issue about the Operation and Maintenance Plan is that, according to Stadium Lease Agreement Section 7.2, the Plan is supposed to be presented to the Stadium Authority and Stadium tenant for review and approval. It is to serve as the basis of how the Stadium is maintained and should inform the operating and maintenance costs included in the budget. For Stadium Authority Executive Director and Board members not to have a copy of the document and for the budget document not to explicitly incorporate the standards in the document leaves the Stadium Authority at a disadvantage in assessing the appropriateness of Stadium operation and maintenance costs.

ManCo representatives have indicated that the Operation and Maintenance Plan should not be made public as it contains sensitive security information about the Stadium. As this constitutes only a portion of the document, such information could potentially be redacted or removed for presentation to the Stadium Authority Board and availability to the public.

- b. **The Capital Expenditure Plan and Budget:** The Stadium Lease Agreement calls for preparation of a draft capital expenditure plan for mutual approval by the Stadium Authority and the 49ers

entities. It is to be adopted as part of the Stadium Operation and Maintenance Plan and is to include both a budget year and five year plan (Lease Article 10.4.1).

The annual Stadium Authority budgets presented to the Stadium Authority Board for Fiscal Years 2015 and 2016 did include a one-year capital budget, but not a five year plan, as required in the agreements. For Fiscal Year 2016-17, the budget did include a five-year capital plan.

A ManCo representative has stated that a five year capital plan was not presented in the first two fiscal years as a cost allocation plan detailing construction costs and remaining construction funding available was not finalized until November 2015. The FY 2016-17 Stadium budget does include a one and five year capital plan. There is no explanation of the absence of five year capital plans in the Stadium Authority's budgets for FY 2014-15 and 2015-16.

- c. **The Annual Shared Stadium Expenses Budget:** The Lease Agreement requires that an Annual Shared Expenses budget detail costs to be shared by the Stadium Authority and the 49ers entities. These are the costs incurred for both NFL and Non-NFL events such as landscaping services, stadium insurance and stadium management fees. Non-shared expenses are allocated between the parties depending on whether they are attributable to NFL or Non-NFL events.

The Lease Agreement calls for shared expense information to be more particularly described in the Stadium Operation and Maintenance plan, a draft and final Annual Shared Expense budget, and the Public Safety Plan, and to include five year projections of shared expenses.

A more detailed breakout of the Annual Shared Expense budget was produced and presented to the Stadium Authority Board as part of the current Fiscal Year (FY) 2016-17 budget but was not provided in the budget documents for FYs 2014-15 and 2015-16. Stadium Authority staff and ManCo both reported that such information is embedded in the annual Stadium Authority budget.

We received a confidential draft version of the shared expense budget for FY 2014-15 from City staff during the previous reporting period. The detail in that document was not included in the final budget presented to the Board. Stadium Authority staff reports that five year projections of shared expenses have been produced and/or provided to the Stadium Authority as required in the Lease Agreement but, to our knowledge, Stadium Authority staff do not have a copy of the FY 2015-16 version or documentation indicating that these drafts were reviewed and approved.

Shared expenses are reportedly embedded in the Stadium Authority budget line item "Stadium Operating Expenses-Stadium Manager". For Fiscal Year 2016, the final total budgeted amount for this single line item was \$7,561,000, but detail about the composition of these costs, and to what extent they are shared expenses, is not presented.

The Lease Agreement calls for Stadium Authority review and approval of the plan and budget documents discussed above, though such approval is delegated to the Stadium Authority Executive Director for approval, consent, or waiver on behalf of the Stadium Authority rather than requiring approval by the Board. To the extent the required plan and budget documents are provided to the Executive Director, the process is consistent with provisions of the Lease Agreement. However, the current Executive Director does not have copies of these documents.

To the extent they were provided to the previous Executive Director in draft or final form, records of receipt of such documents and their approval, or copies of the documents themselves are not in Stadium Authority records.

Presentation of the details of the plan and budget documents discussed above, confirmation that they include all elements required in the agreements, and details of how exactly they are incorporated in the SCSA budget would better assist the Board in their role overseeing SCSA's revenues and expenses. Further, the Stadium Authority should receive and maintain its own copies of the documents in accordance with a consistent process and format and including all information required in the leases, management and related agreements.

**3. Tasks to be Completed during the Next Reporting Period (January 10, 2017 – January 20, 2017):**

Subject to direction for the Stadium Audit Ad Hoc Committee, the audit team will work with the Stadium Authority Board, staff and ManCo to resolve issues about what information and documents are confidential and what information can be included in the audit report. Once resolved, we will continue our analysis of Non-NFL Event revenues and expenses and Stadium operating costs for which ManCo is responsible.

The audit team will continue with preparation of our draft report, covering the following areas.

We will work to finalize our review of staff activities, payroll and other costs compared to actual reimbursements from the 49ers entities or SCSA.

We will continue with our analysis of Stadium Authority revenue and cost information that is maintained by the Stadium Authority. Our review of a samples of individual transactions will be used as the basis for assessing controls to ensure accurate and appropriate amounts are being received or expended.

We will continue with our analysis of off-site parking fee revenue. Samples of individual transactions will be reviewed and controls in place to ensure accurate revenue is being transmitted to the City will be identified and evaluated.

**4. Pending matters**

No other pending matters at this time.

**5. Other issues**

Prior to the issue of ManCo requesting that we sign a non-disclosure agreement pertaining to review and presentation of their financial and other Stadium-related documents and records, we were only allowed to review ManCo documents and data at their site, without the right to obtain and keep copies for our work papers. This limits our adherence to Generally Accepted Government Auditing Standards requirements. We will need to disclose that limitation in our audit report.