



Meeting Minutes

Monday, January 23, 2017 – 5:30pm

Committee Members present:

Chairperson Lisa M. Gillmor
Member Patrick Kolstad
Member Teresa O'Neill

Staff present:

Interim Executive Director, Rajeev Batra
Acting Stadium Authority Counsel, Brian Doyle

1. Status update from Harvey Rose Associates, LLC

Dan Goncher and Fred Brousseau gave an update on Status Report #12 for the period of January 10, 2017– January 20, 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 24, 2017 – February 3, 2017), pending matters and other issues (Report attached).

2. Approval of Minutes

A. Motion was made and seconded to approve the minutes, as amended, for the meeting of December 19, 2016.

3. Questions and Comments by Committee Members

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

- A. Welcome greeting to the Acting Stadium Authority Counsel.
- B. Interim Executive Director Batra noted that the City of San Jose had amended their Stadium Management Agreement from an annual Performance Rent payment to an annual fixed sum payment. He noted that City Staff had been preparing a matrix for the Management Agreements in order to track dates for required actions. It was also noted that a budget template had been prepared and would be shared with the Stadium Authority at the Council Goal Setting meeting on January 26, 2017.
- C. Chairperson Gillmor explained that the Stadium Authority Fiscal Year runs from 4/1-3/31 and that the Stadium Authority would need to see the budget soon in order to approve the budget by mid-March. It was confirmed that City employees are not having issues any longer with reporting their Stadium hours and the Harvey Rose Auditors confirmed that only one whistle blower had come forward in recent weeks.
- D. Member O'Neill suggested that the Oakland Stadium and Coliseum agreements might be a good source for the Auditors to compare with City agreements. Chairperson Gillmor requested that Harvey Rose Auditors contact the City of Oakland to request this information and report their findings to the Committee.
- E. Member O'Neill inquired as to whether the Procurement Ordinance is being followed for Stadium operations. Information was requested to know who holds the Stadium parking records.

- F. A discussion followed regarding the hiring of an outside counsel for Stadium issues. It was confirmed that per the Joint Powers Agreement, the Stadium Authority Counsel is the designated counsel. The Acting Stadium Authority Counsel explained that the Joint Powers Agreement could be amended to allow for an outside Counsel to be hired.
- G. It was reported that the preparation of a job description for the Stadium Manager had been put on hold until the audit has been completed.

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 what version control ManCo uses annually to distinguish the agreements from year to year, why the City of San Jose amended their agreements from a Performance Rent payment to a lump sum payment and whether the Procurement Ordinance directed the use of local or City businesses.
- B. It was clarified that ManCo initiated the lawsuit against the Stadium Authority. It was requested to know the steps being taken to obtain the requested Stadium documents.
- C. It was noted that no one representing the Forty Niners was present at the meeting.

5. Adjournment:

Chairperson Gillmor adjourned to the next meeting on Monday, February 6, 2017 at 5:30pm.

Prepared by:



Lynn Garcia

Executive Assistant to the Mayor and City Council



Comprehensive Audit of Stadium Authority Finances

January 23, 2017

TO: Audit Ad Hoc Steering Committee
FROM: Fred Brousseau, Principal-in-Charge
SUBJECT: Status Report #12

Period covered: January 10, 2017 – January 20, 2017

1. Activities and Accomplishments during Reporting Period

- a. During the reporting period, we continued our analysis of a sample of Stadium Authority revenues and expenditures maintained by the Finance Department from Stadium Fiscal Years 2014-15 and 2015-16. We previously 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 continued our testing of pertinent transactions for compliance with the City's Stadium Authority Procurement Ordinance.
- b. This analysis does not include the revenues and expenses that comprise the Stadium Authority's non-NFL Event revenues and expenses or other financial records in the possession of ManCo since, as previously reported (see our Status Report #09 dated December 8, 2016), ManCo has prohibited us from reviewing such documentation unless we sign a non-disclosure agreement under which we would be allowed to review their documents but to not report their contents if ManCo deems them confidential to any third party such as would be the case in our audit report to the Stadium Authority Board of Directors. This impediment to our audit work is currently under review by the Stadium Authority, as discussed further in the Issues section below.
- c. We continued our preparation of summary tables and written descriptions of our analysis and related findings pertaining to Stadium Authority revenues and expenses, less those for which the pertinent records are in ManCo's possession. This analysis and the transaction sampling described above is fulfilling our Audit Work Plan Task #5: Review and Analysis of Stadium Operating Costs.
- 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 their 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 have

completed our analysis and will be 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 continued with our 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 continued work on our written overview of the Stadium budget and finances that will be presented in our audit report.
- g. At the request of the Stadium Audit Ad Hoc Steering Committee, we contacted the City of San Jose to collect information about how they receive and keep information sensitive business confidential about the financial performance of the SAP Center. We have not yet received information in response to our inquiry but will provide a report to the Committee when this occurs.
- h. The Stadium Authority Acting Executive Director/City Manager reported at the Stadium Audit Ad Hoc Steering Committee meeting on January 9, 2017 that he had received various documents from ManCo, some of which pertained to requests for information we had submitted to ManCo as part of this audit. We have scheduled a review of those documents for the next reporting period.

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, and discussed above, that we sign a non-disclosure agreement prohibiting us from reporting to third parties any information in their possession that they deem confidential 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 cost or other information in the possession of ManCo 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. A redacted version of at least one of the documents in ManCo's possession that we requested from them at the outset of the audit, the Stadium Operation and Maintenance Plan, has reportedly been delivered to the Acting Executive Director/City Manager and we will be reviewing that in the next reporting period.

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 one source of Stadium Authority revenue and of performance-based rent for the City's General Fund.

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 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

We previously reported on the need for further clarification of the City Manager's Directive 136, issued in August 2016 that directed employees to record all of their time spent on Stadium-related activities on their time cards so that it could be billed to the Stadium Authority or 49ers entities. In previous reporting periods, we concluded that while the directive was the first and much needed directive providing information on the topic, further clarification was needed to ensure that the same definition of Stadium-related activities was understood by all City employees.

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.

The audit team has been informed that arrangements were reportedly made between ManCo and Stadium Authority staff in some instances that altered requirements in the agreements pertaining to

the preparation and submission of some of these documents to the Stadium Authority 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 did not have a copy of this document until this month, when a redacted version was provided to the Stadium Authority Executive Director/Acting City Manager. We will be reviewing this document during the next reporting period.

ManCo provided a copy of the 2014 Operation and Maintenance 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 had not reviewed them in detail before ManCo terminated our access to documents in their possession.

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 the Stadium Authority 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 previously 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. That appears to be the approach ManCo took in recently providing a copy of the document to the Acting Executive Director/City Manager.

- 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 have received a confidential draft version of the shared expense budget and what appears to be a final budget for FY 2014-15 from City staff during previous reporting periods. The details in those documents were not included in the 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 five year projections or a 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 24, 2017 – February 3, 2017):

Subject to Stadium Audit Ad Hoc Committee direction, 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:

A summary of the agreements between the City, Stadium Authority and 49ers entities, including identification of areas of non-compliance or where amendments would be appropriate to clarify or improve on current provisions.

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 prepare projections of total unreimbursed costs for the two year audit review period based on the results from our sample events.

We will continue with our analysis of Stadium Authority revenue and cost information 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.

We will continue with our request to the City of San Jose to learn the format of and procedures in place for the City's receipt of financial information pertaining to the operations of SAP Center.

We will review the documents recently provided by ManCo to the Acting Executive Director/City Manager.

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.