



Meeting Minutes

Monday, February 6, 2017 – 5:30pm

Committee Members present:

Chairperson Lisa M. Gillmor

Board Member Teresa O'Neill

Staff present:

Assistant City Manager, Alan Kurotori

Interim Stadium Authority Counsel, Brian Doyle

1. Status update from Harvey Rose Associates, LLC

Fred Brousseau and Dan Goncher gave an update on Status Report #13 for the period of January 23, 2017 – February 3, 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 (February 7, 2017 – February 22, 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 January 9, 2017.

3. Questions and Comments by Committee Members

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

- A. A discussion regarding some of the Stadium Management Agreements which may be in contrast to Measure J and the Joint Powers Agreement. Interim Stadium Authority Counsel stated that the agreements could be amended by a Resolution approved by the Stadium Authority Board.
- B. Assistant City Manager Kurotori reported that the Interim Executive Director has directed staff to prepare a timeline to track obligations and actions required by the Stadium Agreements. Chairperson requested that the timeline be provided to the Interim Stadium Authority Counsel for review prior to presenting the document to the Stadium Authority. He also noted that the Stadium Authority Fiscal Year is April 1st – March 31st and that per the Management Agreement, a draft Stadium Budget must be provided 45 days prior to the beginning of the Fiscal Year, which would be February 15, 2017.
- C. Chairperson Gillmor requested that a new structure for the Stadium Authority be provided for accountability, and that the Stadium Agreements be aligned with Measure J. She requested Harvey Rose Auditors to provide a copy of the KPMG Cost Allocation Report Summary to the Stadium Authority. She also requested to know the cost of the Cost Allocation Report and who paid for the report.
- D. Chairperson Gillmor also noted that the Stadium Authority would start meeting separately in the near future.
- E. Mr. Brousseau clarified that Harvey Rose Auditors have requested all Non-NFL event revenue and expense documents from ManCo, which are used to calculate Performance Rent and Shared Expenses.

- F. Interim Stadium Authority Counsel Doyle reported that he was able to acquire the Management Agreement for the San Diego Padres Stadium and would provide this to Harvey Rose Auditors.
- G. Chairperson Gillmor requested that Harvey Rose Auditors bring to the next meeting a Preliminary Audit Report, and a contract revision and extension, which should show the cost for the delay to the audit.

4. Questions and Comments by the Public

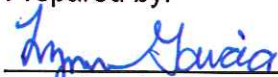
Several members of the public addressed the Committee. The main topics included the following:

- A. General comments regarding which agreements take precedence over other agreements, the Free Ticket policy with regards to the Performance Rent calculations, Harvey Rose Auditors' process for event sampling during their audit, ManCo's processes for hiring vendors and whether they adhere to the Procurement Policy, as well as the records retention period for recordings of public hearings for Measure J.
- B. A reminder to secure the money owed to the Stadium Authority for the Golf Course loss of revenue and a suggestion to have quarterly business reviews implemented and made available to the public. Version control of documents process by Harvey Rose Auditors was reviewed.
- 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 Thursday, February 23, 2017 at 5:30pm.

Prepared by:



Lynn Garcia

Executive Assistant to the Mayor and City Council



Comprehensive Audit of Stadium Authority Finances

February 6, 2017

TO: Audit Ad Hoc Steering Committee
FROM: Fred Brousseau, Principal-in-Charge
SUBJECT: Status Report #13

Period covered: January 23, 2017 – February 3, 2017

1. Activities and Accomplishments during Reporting Period

- a. During the reporting period, we completed 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 from Stadium Authority staff about how funds and revenue and cost information are transferred between ManCo and the Stadium Authority, as well as the internal controls governing such transfers, and any reports on these matters to the Stadium Authority Board. We completed tests of pertinent transactions for compliance with the City's Stadium Authority Procurement Ordinance. We worked on our draft report summarizing these revenues and expenses and related findings and recommendations.

Our analysis thus far does not include the revenues and expenses that comprise the Stadium Authority's non-NFL Event revenues and expenses or other financial records that ManCo possesses since, as previously reported (see our Status Report #09 dated December 8, 2016), ManCo has prohibited us from further review of such documentation unless we sign a non-disclosure agreement. Under the terms of the proposed agreement, we would be allowed to review their documents but not to report their contents if ManCo deems them confidential to any third party such as 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.

- b. We completed our review of a sample of City and Stadium Authority records for comparison with corresponding City payroll records to determine if all staff time spent on Stadium-related activities has 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. During the reporting period, we worked

- on our draft report summarizing unreimbursed costs and related findings and recommendations.
- c. We continued with our analysis and preparation 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.
 - d. 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 sensitive business information confidential concerning the financial performance of the SAP Center. The City has not been responsive to our requests, though staff has indicated that they are preparing related information for the Stadium Authority's Acting Executive Director. We have explained that our audit is separate from his request but the City has not provided any further response.
 - e. We reviewed documents provided to the Acting Executive Director by ManCo, some of which we had also requested of ManCo for the audit. The documents provided to the Acting Executive Director do not include information that would allow us to complete our review and analysis of the Stadium Authority's Non-NFL Event revenue and expenses consistent with our audit work plan.

Issues/Challenges during Reporting Period

The audit timing and schedule have been affected by delays in obtaining an initial meeting with ManCo in the fall 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 that would prohibit 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 cost or other information in the possession of ManCo that we have reviewed in our audit report 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 is required to fulfill two of our audit work plan tasks. Examples of information that would be precluded from presentation in our report under the proposed non-disclosure agreement are 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.

a) Direction to City employees

We previously reported on the need for further clarification of the City Manager's Directive 136, *Stadium and Special Event Time Reporting and Reimbursement for City Services*, issued in August 2016. That directive instructed City 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. We previously recommended further clarification and changes to the Directive. After discussion with the Acting City Manager, a number of those changes and clarifications were made and a revised version of the Directive was provided to all City staff.

b) 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.

Among the documents we previously requested from the Stadium Authority and/or ManCo but were either not available from the Stadium Authority or ManCo, or were only available for review at ManCo offices include:

- 1. 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 January 2017, when a redacted version was provided to the Stadium Authority Executive Director/Acting City Manager.

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. We have reviewed the redacted copy of the 2016 plan now in the possession of the Acting Executive Director.

2. **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.

3. **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 to be provided to the Stadium Authority, with the draft document including 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, until January 2017 the current acting Executive Director did not have copies of these documents and now only received some of them.

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 (February 7, 2017 – February 22, 2017):

Subject to Stadium Audit Ad Hoc Committee direction, the audit team will continue to 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 which are not dependent on ManCo records:

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.

Results of 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.

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, expended and reported to the Stadium Authority Board.

We will continue with our analysis of off-site parking fee revenue. Samples of individual transactions will be reviewed and controls 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.

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.