



December 12, 2016

MEMORANDUM

TO: MSFA Commissioners

FROM: Jay Lindgren, General Counsel

SUBJECT: Policy and Purpose for Usage of MSFA Suites by Authority Board Members, Staff and SMG

The Authority – like many other public building owners around the state and throughout the country – has negotiated the right to use certain suites during Stadium events with no charge. The Authority had access to three suites in the Hubert H. Humphrey Metrodome, and similarly has access to two suites in the U.S. Bank Stadium for certain events. It is common knowledge that other publicly-owned Minnesota facilities have similar agreements for suite access during events. The Authority has previously determined that using these suites *to market the Stadium* meets the important public purposes that have been placed on the Authority by the Legislature for the operation and success of the Stadium. The Authority is, in addition, very committed to being responsive to recent questions raised about this suite access.

The attached policies are intended to:

- even more tightly align suite use procedures to the Authority’s marketing responsibility;
- create heightened reporting and procedural requirements; and
- very clearly articulate the main purpose of its use of these suites -- ensuring that the facility is wisely managed and effectively marketed, to allow for the maximum return and public benefit of the Minnesota taxpayers’ significant investment into the facility.

To the best of my knowledge, this will be the most detailed and stringent policy governing the use of publicly-owned suites for any similar Minnesota venue. The policy may also very well be one of the most stringent – if not the most stringent – for any stadium in the nation. As such, the policy can help the Authority be a leader in shaping the policies that govern how assets such as the suites are used for maximum public benefit.

Marketing the Stadium is an Important Public Purpose

Recognizing the value of this access and the ability to use this unique asset to further the objectives given to the Authority by the Legislature, the Authority has, since the Stadium’s July 2016 opening, used the suites to further the public purpose of effectively marketing this world-class facility to entities around the country, while allowing Authority board members and executives the opportunity to observe operation of the facility first-hand, to assist with their obligations to provide operational oversight. Suite access affords potential users of the Stadium the unique opportunity to witness the capabilities of the facility during an event, which is very

different – and much more compelling – than taking a tour of an empty building or reviewing specifications of the facility on paper. Use of suites also affords a business-like setting for marketing where potential event users can converse and ask questions, and where Authority personnel can provide information about the facility’s remarkable capabilities and the assets and attractions in the Minneapolis-St. Paul region.

The Legislature determined in the Stadium Legislation that there is a public purpose for the Authority to conduct events for professional football and a broad range of other civic, community, athletic, educational, cultural, and commercial activities. The Legislature specifically tasked the Authority to achieve two main goals in operating and maintaining the facility:

- 1) Maximizing access for public and amateur sports, community and civic events as well as other public events in type and on terms consistent with those held at the previous stadium.¹
- 2) Operating the facility “in a first-class manner, similar to and consistent with other comparable NFL stadiums.”²

In particular, the Legislature’s public access requirement requires the Authority to book and hold a significant number of public and amateur sports, community and civic events *at a significant financial loss*. The Authority has already held numerous youth football events, has over 200 amateur baseball games scheduled for 2017 and is starting rollerblading and running events in the near future. Note, in particular, this statutory requirement:

297A.9905 Sec. 7. Use of the Stadium

Subdivision 1. Amateur Sports Use. The lessee of the stadium must make the facilities of the stadium available to the Minnesota Amateur Sports Commission up to ten days each year on terms satisfactory to the commission for amateur sports activities consistent with Minnesota Statutes, chapter 240A, each year during the time the bonds issued pursuant to the act are outstanding. The commission must negotiate in good faith and may be required to pay no more than actual out-of-pocket expenses for the time it uses the stadium.

Subdivision 2. High School League. The lessee of the stadium must make the facilities of the stadium available for use by the Minnesota State High School League for at least seven days each year for high school soccer and football tournaments. The lessee of the stadium must provide, and may not charge the league a fee for, this use, including security, ticket taker, custodial or cleaning services, or other similar services in connection with this use.

In compliance with this requirement, the Authority recently held 8 days of high school football and soccer events this fall at the Stadium with no use charge to the Minnesota State High School League.

The practical impact of the Legislative requirement to operate the facility in a first-class manner is that the Authority must maintain the facility at the same condition as other modern NFL stadiums, including for example, AT&T Stadium in Dallas and Lucas Oil Stadium in Indianapolis. This will require the Authority to generate sufficient revenue to attain this requirement. In your current 5-year capital plan projection, you’ve determined that approximately \$30 million will be required to satisfy that requirement.

¹ Minn. Stat. § 473J.13, subd. 3.

² Minn. Stat. § 473J.13, subd. 1.

The ability to meet these twin statutory directives directly depends on the success of the marketing efforts for profitable events on an on-going basis. You have clearly determined that an aggressive and on-going marketing effort is vital to attract and retain commercial spectator events, as well as mega-events such as the Super Bowl and NCAA Men's Final Four that maximize revenues. The Authority is responsible for ensuring that the facility is wisely managed and effectively marketed, to allow for the maximum return and public benefit of the Minnesota taxpayers' significant investment into the facility. For these reasons, marketing the Stadium is a vital public purpose.

There is no payment to the Vikings or other Stadium User for the Authority Suites

The Authority negotiated an agreement with the Minnesota Vikings to carve out two suites that remain controlled by the Authority, while the remaining assets of the facility are controlled by the privately-owned Vikings or another private party. This suite access does not require payment of any public funds. If this negotiation had not been successful by the Authority, the two suites in question would now be controlled by the Vikings and generate revenue for the Vikings.

During these negotiations, the Authority and the Vikings agreed that the Authority would have access to two suites in U.S. Bank Stadium, similar to the arrangement in the Metrodome. Access to two suites – instead of one – allows the Authority to market to a larger audience and allows active and simultaneous participation by all board members, without any risk to transparency of operations. The Authority believes it is important to have two suites, to allow board members to actively participate in marketing without ever having a quorum of the board in one location, which could lead to allegations that the board was engaging in communications outside of the Open Meeting Law.

Access to these Authority suites is provided at no charge to the Authority. The Use Agreement allows the Vikings the right to license all suites in the Stadium *except* the two suites that are owned and controlled by the Authority. The Authority retains use of those suites and does not pay any license fee to the Vikings. In addition, the Vikings provide the Authority with a specified number of tickets for Vikings stadium events, free of charge, to allow individuals to enter the facility and access the Authority's suites. Likewise, the Authority does not pay any other event promoter for access to the suite during other stadium events. The Authority does not pay any fee or other payment of any kind to the Vikings or any event promoter for use or services that are provided to the Authority for the Authority suites, but the Authority must pay Aramark for the cost of any food or beverages consumed in the suites. Alcoholic beverages have never, and will never, be paid for by public funds.

The Authority cannot license its suites to outside parties for Vikings games. By contract with the Vikings, the Authority does not have the right to license the Authority Suites for Team Stadium Events (including Vikings home football games). The Vikings would never allow the Authority Suites to be sold in a manner that competes with the Vikings' contractual right to sell suites. The Suites are for Authority purposes during Team Stadium Events.

The Authority has significant limits on its ability to license its suites to outside parties for other events. The Authority could potentially license the Authority suites for Authority events, such as certain concerts, but there is a significant question of whether there is adequate demand to support a reasonable return on any effort to license the suites. There are two reasons for this: (1) the demand may be insufficient: the Authority would be marketing its own suites against the other suites it already offers, and which oftentimes it is unable to license; (2) any profits generated by the Authority may need to be shared with the concert promoter, reducing any benefit to the Authority. The majority of the Authority events would likely not provide much, if any, additional revenue opportunities given the limited demand for those events and the other suite products

that the Authority already markets. For some of the larger stadium events, such as major concerts, there could be a market for the Authority Suites in addition to the suite products that the Authority currently markets, however, the ability to generate revenues from the licensing the Authority Suites for an event is a direct function of the demand for such Suites at a specific Authority Event. Regardless, such revenue generated from the Authority Event for which the Authority Suites are licensed could be subject to sharing with the event promoter.

Unlike the public entities overseeing other local facilities – such as Target Field and the Xcel Energy Center – the Authority has been charged with responsibility for operating U.S. Bank Stadium on a day-to-day basis. The Authority has also been charged with the responsibility to maximize the public’s access to the facility, for example through use for public high school sporting events. And unlike other public facilities in the region, the Authority does *not* seek public funding to cover the ongoing cost of operations and management. To achieve these goals – successful operation of the Stadium in a manner competitive with other world-class facilities – without ongoing public funding, and continuously maximizing public access to the Stadium – the Authority must actively engage in a sophisticated marketing strategy to attract significant private clients and large-scale events, revenue from which will help to support public access and operation of the Stadium without the need for ongoing public funding.

Having Two Authority Suites Serves the Public Interest

The Authority has successfully negotiated the right to continue to use two suites, at no cost to the public. As part of the current public discussion, there been a suggestion that the Authority should, perhaps, control one suite rather than two suites. If this were to occur, the Vikings would control the returned suite during Vikings’ events. If so, the only result is to increase the revenue for a private party and deprive the Authority of a powerful marketing tool. As previously stated, licensing the suites to generate revenue for the Authority is not a viable option: the Authority is not permitted to license the suites for Vikings events, and the demand for suite use at other events is questionable. The only benefit would be to a private company – the Minnesota Vikings, which would be able to collect ticket and seat license revenue on an asset that is currently public property. In addition, the revised policy reflects that Authority Board Members can play an important role in both marketing the Stadium and observing its operational management. The Authority is bound by and must always comply fully with the Minnesota Open Meeting laws. Even though an exception to the Open Meeting Law may apply, it is my recommendation that a quorum of the Board should never be together in an Authority Suite during an event. For this reason, having two suites allows a majority of the Board to assist with Stadium marketing at an event without even the appearance of an improper public meeting. For these reasons, transfer of this public asset to the private sector would not serve the public interest or the interests of the State of Minnesota.

Conclusion

It is currently the policy of the Authority that, given the other suite products the Authority markets and the need to share profits with a promoter, that utilizing the Authority suites for marketing is a better and higher use of the Authority Suites. The Authority is responsible for the marketing, booking and financial performance of U.S. Bank Stadium. The Stadium competes with other stadiums and entertainment venues, a number of which are operated by private professional sports franchises, to attract a wide variety of events to the Stadium and thereby the State of Minnesota. The booking of events at the Stadium is a very competitive business as other venues across the country and region actively market to those events utilizing all of their available assets to attract and book many of the events the Stadium is competing for as well. Given the highly competitive landscape to attract events (such as the NCAA Final Four, X-Games, major concerts, motor events, national and international sporting events), the Authority suites provide a key asset and opportunity for the Authority to host the event promoters and decision makers at the Stadium during a Vikings or Authority Event.

It is reasonable to conclude that Commissioners and executive staff have a key, ongoing role in assisting with the marketing activities at the Stadium. The opportunity to use the Authority suite as a base to observe an event from its opening to its conclusion, get a sense of the event atmosphere and of the buildings operations in an environment that allows the attendees to ask questions of the Authority, SMG, board members and others assisting in the marketing of the Stadium. By adopting this policy, the Authority can continue to meet your legislatively-mandated responsibilities and do so in a manner that can serve as an example to other facilities around the state and country.

Recommendation: *The Board of the Minnesota Sports Facilities Authority approves and adopts the Policy and Purpose for Usage of MSFA Suites by Authority Board Members, Staff and SMG*

Policy and Purpose for Usage of MSFA Suites by Authority Board Members, Staff and SMG

I. Background and Legislative Goals for the Authority

The Legislature found in the Stadium Legislation that there is a public purpose for the MSFA to conduct events for professional football and a broad range of other civic, community, athletic, educational, cultural, and commercial activities. The Legislature specifically tasked the Authority to achieve two main goals in operating and maintaining the facility:

- 1) Maximizing access for public and amateur sports, community and civic events as well as other public events in type and on terms consistent with those held at the previous stadium,³ and;
- 2) Operating the facility “in a first-class manner, similar to and consistent with other comparable NFL stadiums.”⁴ In addition, the Board has tasked staff to develop short and long term Capital Plans to ensure that the facility stays in good repair and that necessary improvements such as technology upgrades or acquisition of additional stadium infrastructure should be foreseen and properly budgeted.

Successful marketing is a key component of reaching these goals. The Authority finds that in order to meet the twin goals of community and amateur sports access at affordable rates, as well as keeping the facility in a first class and competitive state, requires an aggressive and on-going marketing effort to attract and retain commercial spectator events as well as mega-events such as the Super Bowl and NCAA Men’s Final Four that will maximize revenues. The Authority is responsible for ensuring that the facility is wisely managed and effectively marketed, to allow for the maximum return and public benefit of the Minnesota taxpayers’ significant investment into the facility.

II. The Authority’s Opportunity to Use Suites to Further Legislative Goals

Through its Use Agreement with the Minnesota Vikings and other relevant agreements, the Authority has control of two suites – at no cost to the Authority or the public – whose purpose is to enable the Authority and SMG to successfully market the facility to potential and current commercial events. In addition, the Authority will need to market to other mega events as well as community and amateur sports entities during NFL and other significant events.

Consistent with their obligations to effectively manage and market the facility and achieve a maximum return on Minnesota taxpayers’ substantial investment in this facility, the MSFA Board, staff, and SMG staff will actively participate in such marketing activities and efforts during Authority events.

The Authority recognizes that there are a limited number of individuals or groups that may book the stadium for a particular type of event, such as a high-attendance sporting event. However, the Authority believes that certain aspects of the facility – including its infrastructure, concessionaire services, day-of-event services (such as security, etc.), and other aspects – remain relatively constant even when the type of event varies. As such, the Authority has determined that use of the suites is a critical tool in its marketing plan, whether the potential user plans to host a high-attendance sporting event or some other type of event (such as a concert).

³ Minn. Stat. § 473J.13, subd. 3.

⁴ Minn. Stat. § 473J.13, subd. 1.

III. Restrictions on Suite Access for Marketing Purposes

The Authority's suites are to be used to fulfill its Legislatively-assigned purposes, including effective marketing of the facility and overseeing operation of the facility in a first-class manner. When distributing tickets for the suite, these purposes must be kept in mind.

Depending upon the circumstances, it may be appropriate to invite the following people to attend an event in one of the Authority's suites:

Authority board members and executives. Authority board members and executives may use the suite to actively participate in marketing activities with external invitees. While attending the game, the Authority board member or executive must observe the operation of the stadium and must pay attention to any facts or issues that would allow the Authority to better fulfill its purpose, including: operations, crowd management, facilities, upkeep, staffing, and opportunities for alternative uses or improvement. He or she must communicate any concerns or suggestions, based on his or her observations at these games, to Authority staff and/or the Authority Board.

Other Authority personnel and SMG personnel. In certain situations, it may be appropriate for other Authority personnel to attend to further support this marketing role by, for example, assisting with hosting external invitees and/or acting as a resource of information about the region, community or facility to further the marketing goal. It may also be appropriate for certain SMG staff to attend to assist in this marketing effort.

Users and potential users of the facility. As has been the historical practice, Authority and SMG staff are strongly encouraged to invite potential users to observe the operation of the facility to allow the potential user to see the capabilities and operations of the facility during an event individuals or groups considering whether to book the facility for an upcoming event. In limited circumstances, it may be appropriate to invite individuals/groups who have already entered an agreement to host an event at the facility if (1) allowing the individual to observe the operation of the facility during an event would resolve specific, significant challenges or issues related to the upcoming event, or (2) the Authority board member or executive has reasonably determined that allowing the individual to observe the operation of the facility for this specific event would assist in efforts to convince the individual to book additional upcoming events at the facility.

Community member groups. Certain local coordinator or community member groups – such as the Convention Bureau, Meet Minneapolis and others – can also substantially further the Authority's public goals of effective marketing of the facility. These groups are dedicated to the success of the Twin Cities, including success as a destination for large events drawing crowds from around the county. Allowing these groups to observe the operation of the facility and connect with potential users of the facility could be a significant component in encouraging outside groups to book the facility, or in providing the groups with sufficient information to allow them to refer outside users to the facility as a potential venue.

Public officials. Authority board members and executives should be sensitive that various legal and perception issues may limit the willingness of public officials to attend marketing events within the Authority suites. It is, however, appropriate under Minnesota law (specifically, the Campaign Finance and Public Disclosure statute, Minnesota Statutes, Chapter 10A) for Authority board members or executives to invite public officials to Authority suites if attendance otherwise meets the requirements of this policy.

Other. This is not intended to be an exclusive list, and Authority board members or executives may identify additional groups whose inclusion may also foster the Legislatively-established purposes of the Authority.

IV. Procedure for Use of Suites for Marketing

The Authority adopts the following procedures, in order to ensure that the Authority suites are being used for the maximum possible benefit.

Access to Tickets. Tickets for each event will be available to Board Members and the CEO/Executive Director for marketing purposes. The Authority will work with SMG to invite potential and recurring users to the event, along with mega-event customers and community users as well. Should either the CEO/Executive Director or an individual Board Member not be able to personally attend an event then their ticket(s) will be returned to the Authority for re-distribution.

Maintaining a Record of Attendees. The Authority will maintain a list of the individuals who use the Authority's suites. This list shall include: the date and type of event, the name of the individual attending, the individual's employer or organization, the Authority board member or employee who issued the invitation, and the public purpose for that individual's presence. By way of example only, below is a sample of entries that could be maintained:

Event	Invitee	Company	Host	Public purpose
12/1/16	Board Member 1	MSFA	n/a	Marketing
12/1/16 Vikings Game	John Smith	XYZ Events Co.	Board Member 1	Potential user of the facility
12/1/16 Vikings Game	Jane Doe	Minneapolis Civic Tourism Group, LLC	Board Member 2	Provide regional and city background and assist in marketing the facility to XYZ Events Co.

Responsibility of Board or Staff Member Using Suite. Each time an Authority board member or executive uses the suite, he or she must individually assess – using his or her background, experience, and knowledge about the marketing goals – whether his or her use of suite tickets serves a public purpose, keeping in mind the public purposes described in this policy and in the Stadium Bill. Each individual must think through the goals outlined for the Authority, and make clear in his or her own mind the public purpose that would be served. In particular, the authorized person must consider the individuals to whom it extends an invitation to use one of the tickets allocated to each member, and determine that inviting that person serves a public purpose. Any member or executive who has questions or wants counsel as to whether a particular use is appropriate should contact Jay Lindgren, the Authority's General Counsel.

V. Expenditures for Food and Beverage During Events

Although the Authority is entitled to access the suites free of charge, pursuant to certain contracts, any provision of food or beverages in the suite requires an additional expenditure. Expenditure of funds for food serves important public goals. One characteristic of U.S. Bank Stadium that makes it particularly attractive to events is its world-class catering, and the participation of local chefs and restaurants. Aramark, the Authority and the Vikings have worked to establish a partnership with "Minnesota's top chefs and premier restaurants [tha] will establish U.S. Bank Stadium as a leader in dining experience within

the Minnesota sports landscape and across the sports and entertainment industry.”⁵ Showcasing the unique food options available at the facility is a crucial component to an effective marketing plan.⁶ Providing food also serves a public purpose by supporting the goal of the meeting. The events often occur around mealtimes and it is not possible to reschedule the marketing event to a different time. Providing food allows the marketing meeting to continue without interruption and demonstrates the capabilities of the stadium to individuals and entities considering booking future events at the stadium. Of course, food expenditures must be reasonable; excessive food expenses do not serve a public purpose. Any member or employee who has questions or wants counsel as to whether a particular expenditure is appropriate should contact Jay Lindgren, the Authority’s General Counsel. Alcoholic beverages cannot be reimbursed by the Authority and a process will be established for user reimbursement or purchase of these beverages similar to the practices implemented at the Metrodome.

VI. Implementation of This Policy

This policy has been adopted to ensure that the Authority’s suites are used in a manner that will allow for the maximum return and public benefit of the Minnesota taxpayers’ significant investment into the facility. Any member or executive who has questions or wants counsel as to whether a particular use is appropriate should contact Jay Lindgren, the Authority’s General Counsel.

⁵ “Vikings, Aramark and MSFA Unveil Culinary Roster for U.S. Bank Stadium, May 24, 2016, available at <http://www.vikings.com/news/new-stadium/article-1/Vikings-Aramark-and-MSFA-Unveil-Culinary-Roster-for-US-Bank-Stadium/60273a7f-916e-431d-9290-e1a6f9b2203c> (Aramark President describing effort to “design an unprecedented and innovative dining experience at U.S. Bank Stadium that showcases the distinctive tastes and flavors of Minnesota and the very best from its burgeoning restaurant scene” and MSFA chair stating partnership with “Minnesota’s top chefs and premier restaurants will establish U.S. Bank Stadium as a leader in dining experience within the Minnesota sports landscape and across the sports and entertainment industry” and noting that “[t]hese Minnesota partnerships are an integral component of the stellar dining program being developed by Aramark, to complement the world-class status of the new stadium”).

⁶ See, e.g., “Inside the Vikings Stadium’s Medtronic Club,” *Finance & Commerce*, July 12, 2016, available at <http://finance-commerce.com/2016/07/inside-the-vikings-stadiums-medtronic-club/> (news outlet describing in detail the food offerings at U.S. Bank Stadium); “U.S. Bank Stadium’s World-Class Dining Experience to Showcase Minneapolis-St. Paul’s Premier Local Brands and Small Businesses,” July 12, 2016, available at <http://www.usbankstadium.com/news/detail/us-bank-stadiums-world-class-dining-experience-to-showcase-minneapolis-st-pauls-premier-local-brands-and-small-businesses> (““The unique line-up of local partners contributing to the food and beverage offerings at U.S. Bank Stadium fits directly into our vision of providing the best overall customer experience for our guests through all aspects of our operations,” said Patrick Talty, SMG General Manager at U.S. Bank Stadium.”).