



June 13, 2024

Stadium Authority  
c/o Ms. Nora Pimentel, Acting Secretary to the Stadium Authority  
1500 Warburton Avenue  
Santa Clara, California 95050

*Sent via email:* NPimentel@SantaClaraCA.gov

Dear Ms. Pimentel:

The 2023-24 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, ***Outplayed: Measure J, the City of Santa Clara, and the San Francisco 49ers.***

California Penal Code section 933(c) requires that a governing body of the particular public agency or department that has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code section 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this transmission.

Please note:

1. As stated in Penal Code section 933.05(a), attached, you are required to "Agree" or "Disagree" with each applicable Finding: 1, 2, 3, 4, 5, 6a, 6b, 6c, 7a, 7b, 8a, 8b, 9a, 9b, 9c, 10a, 10b, 11, 12, and 13. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code section 933.05(b), attached, you are required to respond with one of four possible actions to each applicable Recommendation: 1, 2, 3, 4, 5, 7a, 7b, 8, 9, 10, 11, 12, and 13.

Your comments are due to the office of the Honorable Beth McGowen, 2023-24 Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, CA 95113, no later than **September 11, 2024**. You may transmit these via email to [CGJ@scscourt.org](mailto:CGJ@scscourt.org). Copies of all responses shall be placed on file with the Clerk of the Court.

Stadium Authority

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If you have any questions, please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at (408) 882-2721 or [CGJ@scscourt.org](mailto:CGJ@scscourt.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen A. Enzensperger".

Karen Enzensperger

Foreperson

2023-24 Civil Grand Jury

Enclosures

cc: Hosam Haggag, City Clerk, City of Santa Clara  
Jōvan D. Grogan, City Manager, City of Santa Clara

## California Statutes Annotated - 2018

West's Annotated California Codes

Penal Code ([Refs & Annos](#))

Part 2. Of Criminal Procedure ([Refs & Annos](#))

Title 4. Grand Jury Proceedings ([Refs & Annos](#))

Chapter 3. Powers and Duties of Grand Jury ([Refs & Annos](#))

Article 2. Investigation of County, City, and District Affairs ([Refs & Annos](#))

West's Ann.Cal.Penal Code § 933.05

§ 933.05. Responses to findings

[Currentness](#)

(a) For purposes of [subdivision \(b\) of Section 933](#), as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of [subdivision \(b\) of Section 933](#), as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall

respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

#### Credits

(Added by [Stats.1996, c. 1170 \(S.B.1457\)](#), § 1. Amended by [Stats.1997, c. 443 \(A.B.829\)](#), § 5.)

#### HISTORICAL AND STATUTORY NOTES

##### 2008 Main Volume

[Stats.1997, c. 443 \(A.B.829\)](#), in subds. (a) and (b), in the introductory paragraphs, substituted “(b)” for “(c)”; in subd. (b)(3), substituted “head” for “director”; in subd. (c), inserted “agency or” throughout; inserted subd. (e), relating to investigations and meetings with the grand jury; and, in subd. (f), substituted “presiding” for “supervising”.

#### CROSS REFERENCES

Grand jury defined, see [Penal Code § 888](#).

Words and phrases, “county”, see [Penal Code § 691](#).

#### RESEARCH REFERENCES

##### Encyclopedias

[Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 716](#), Recommendations and Reporting.

[Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 717](#), Responses to Findings.

##### Treatises and Practice Aids

[Witkin, California Criminal Law 4th Introduction to Criminal Procedure § 43](#), Reports.

West's Ann. Cal. Penal Code § 933.05, CA PENAL § 933.05

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OUTPLAYED:

Measure J, the City of Santa Clara, and the  
San Francisco 49ers



2023-24 Santa Clara County  
Civil Grand Jury

*June 13, 2024*

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## GLOSSARY AND ABBREVIATIONS

<b>Fixed Base Rent</b>	As stated in Measure J, the Ground Lease shall require the Santa Clara Stadium Authority to pay into the City of Santa Clara's General Fund a fixed base rent totaling \$40.875 million over 40 years.
<b>Ground Lease</b>	The agreement between the City of Santa Clara and the Santa Clara Stadium Authority to lease the Stadium Site. The lease has an initial term of 40 years, with an extension option that could extend the term up to another 20 years.
<b>Ground Rent</b>	The fixed base rent and performance-based rent are payable by the Santa Clara Stadium Authority to the City of Santa Clara under the Ground Lease.
<b>JAMS</b>	United States-based for-profit organization of alternative dispute resolution (ADR) services, including mediation and arbitration.
<b>ManCo</b>	Forty Niners Stadium Management Company LLC, an affiliate of the Forty Niners SC Stadium Company LLC; manages the Stadium's operations and books non-NFL events.
<b>Measure J</b>	The Santa Clara Stadium Taxpayer Protection and Economic Progress Act passed by the voters of Santa Clara in June 2010. This measure modified the City of Santa Clara Municipal Code, adopted a term sheet for the development and operations of the Stadium upon which future agreements would be based, and contemplated the creation of the Santa Clara Stadium Authority.
<b>Naming Rights Agreement</b>	A sponsorship agreement that gives Levi Strauss & Co. the right to name the stadium Levi's Stadium and sets the terms of the agreement.
<b>Non-NFL Events</b>	Events such as concerts and sporting events that are held at the Stadium.

**Santa Clara Stadium  
Authority**

A Joint Powers Authority and the managing entity of the Stadium contemplated by Measure J to construct and own Levi's Stadium while insulating the City of Santa Clara taxpayers from any financial liability deriving from Levi's Stadium construction, maintenance, and operation.

**StadCo**

Forty Niners SC Stadium Company LLC, an affiliate of the San Francisco 49ers NFL football team and the tenant of Levi's Stadium.

**Stadium Lease**

The agreement between the Santa Clara Stadium Authority and the Forty Niners SC Stadium Company LLC to lease Levi's Stadium. The lease has an initial term of 40 years, with an extension option that could extend the term up to another 20 years.

**Stadium Management  
Agreement**

The contract between three entities: StadCo, ManCo, and the Santa Clara Stadium Authority that designates ManCo as the stadium manager for both the NFL and non-NFL seasons at Levi's Stadium.

## CONFLICTS

Members of the Civil Grand Jury are conflicted from a Civil Grand Jury investigation if, as a result of prior or current employment or associations, investment in public or private enterprise, financial interest, bias, or personal relationship, they are subject to recusal from participating in a matter before the Civil Grand Jury. Two jurors recused themselves from this matter.

## SUMMARY

Levi's Stadium's (Stadium) inaugural game, the San Jose Earthquakes versus the Seattle Sounders FC, was played on August 2, 2014. Within a year, the Stadium's home team, the San Francisco 49ers Football Company LLC (the 49ers), had upset locals over their failure to follow up on promises made to the Santa Clara Youth Soccer League, which had an existing control over fields adjacent to the newly built Stadium and coveted by the 49ers for VIP parking. Since then, there have been dozens of disputes and court actions, including lawsuits and counterclaims between the various 49ers entities and the Santa Clara Stadium Authority (Stadium Authority) over management of the Stadium and money.

Furthermore, 49ers entities have inserted themselves into the local political landscape; 49er-funded independent expenditure campaign contributions for the last two election cycles in the City of Santa Clara (City) totaled over \$7.5 million. This has led to divisiveness, distrust, and rancor among City leaders and garnered distrust from the residents.

In 2010, City voters passed Measure J, which brought the \$1.3 billion Stadium to the City. As presented to voters, the Stadium would deliver significant economic benefits to the City and its residents. The campaign painted a picture of the Stadium as a safe but lucrative investment for the City, which would benefit the community by providing much-needed funding for libraries, schools, and senior and youth programs, and be a multi-use community facility that could be used for civic events. A decade after the Stadium opened, however, the results are mixed.

As promised by Measure J, the City's General Fund has been protected, Stadium debt has been paid down, and reserves have been funded more quickly than originally planned. But the revenues that were promised to the City, which were actually quite modest at about 1% of the City budget, have been hard won.

The revenue calculations are extremely complicated and contingent upon many factors; the financial structure ensures that the City is the last to get its cut of profits. The public safety costs (PSCs) for National Football League (NFL) events were wildly underestimated and have soared, resulting in less revenue for the City. The contracts and agreements are also very complex and heavily skewed in favor of the 49ers. Most importantly, there is no incentive for the Stadium management company, which is a 49er affiliate, to increase non-NFL revenue for the Stadium Authority and, unlike for any other employee in any other circumstance, there are no consequences if non-NFL events are not successful and do not make a profit.

Additionally, the 49ers have been litigious, fighting the Stadium Authority and the City at every turn, over transparency and financial issues. And although the 49ers occupy the Stadium year-

round, notably through their exclusive ownership of luxury suites, restaurant space, a team merchandise store, and other commercial areas, they won a lawsuit to decrease their property tax bill to only cover the six-month NFL season, to the detriment of the Santa Clara Unified School District.

The Stadium Authority Board/City Council, both past and present, have compounded the issues by 1) allowing changes to the already 49er-friendly terms in Measure J to be adjusted in the Stadium's legal agreements to further and materially benefit the 49ers; 2) giving away what little leverage and control they did have in settlement agreements; and 3) relinquishing its power to the 49ers over the last decade. By taking a passive role in its oversight duties, the Board has undermined Stadium Authority staff.

For this report, the 2023-24 Santa Clara County Civil Grand Jury (Civil Grand Jury) took the unprecedented step of hiring expert consultants, to better understand the complexities of the various contracts and to gain transparency into the financial documents of the publicly owned Stadium.

## BACKGROUND

The Stadium is a 1.85 million-square-foot venue, seating approximately 70,000, and sits on public land on the north side of the City. The publicly owned Stadium, which opened in August 2014, cost over \$1.3 billion and was built through a public-private partnership between the City and the 49ers. The Stadium is home to the San Francisco 49ers; valued at \$6 billion, the team is ranked the ninth-most-valuable team in the NFL franchise, and the fourteenth-most-valuable professional sports team in the world (Lu, 2024).

### History

In the 1990s, three major Bay Area sports teams—the 49ers, the San Francisco Giants (Giants), and the Oakland Athletics (A’s)—were looking for new homes. The 49ers and Giants needed to replace the aging Candlestick Park, and the A’s were facing an expiring lease in the City of Oakland. City and County of Santa Clara (County) civic leaders and residents wanted to elevate Silicon Valley’s visibility and marketability. They envisioned enticing a major professional sports team with the promise of a new stadium.

In November 1990, County residents saw three propositions on the ballot. Two were County-wide; one was for City residents only. If passed together, the three measures would have brought the Giants to the City. But County residents were wary of the costs associated with a stadium, and the two County-wide measures failed. The City-only third measure, Proposition N, passed 51% to 49% and allowed the use of 98 acres of City-owned land between Great America Parkway and the Guadalupe River for a stadium (Associated Press, 1990). The stage was set for a stadium to come to the City.

The day after the vote, the *Los Angeles Times* reported that the 49ers would like to “build a multipurpose stadium with private funds in Santa Clara” (Newhan, 1990). The 49ers had been training in the City since 1979 and established a headquarters there in 1988; nevertheless, after the November 1990 vote, they spent a decade trying to work out a deal for a new stadium in San Francisco and were repeatedly rejected by San Francisco voters (Simers, 1997).

In November 2006, the 49ers formally announced their intent to build a football stadium in the City (City of Santa Clara, April 2, 2024). The City started negotiations with the 49ers in 2007 to develop a term sheet that would outline the complicated relationships between the City and the 49ers.

## **Measure J – The Santa Clara Stadium Taxpayer Protection and Economic Progress Act**

The Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J) was passed with a 58.2% majority vote in June 2010. The measure amended the City Charter, the legal document that defines the City's government structure, and created a joint powers authority, a separate legal entity known as the Stadium Authority. The ballot question asked:

Shall the City of Santa Clara adopt Ordinance 17.20 leasing City property for a professional football stadium and other events; no use of City General or Enterprise funds for construction; no new taxes for residents for stadium; Redevelopment Agency funds capped for construction; private party pays all construction cost overruns; no City/Agency obligation for stadium operating/maintenance; private party payment of projected fair market rent; and additional funds for senior/youth/library/recreation to City's General Fund? (City of Santa Clara, 2010)

The complete text of Measure J consisted of 25 pages (including a non-binding term sheet) and made many projections and promises about benefits and costs to the City and residents. Measure J described the parameters of the proposal for the Stadium's development and construction, and outlined the relationship between the City, the Stadium Authority, and the 49ers.

Ultimately, the City would lease public land to the newly created Stadium Authority and the Stadium Authority would lease the custom-built Stadium to a private tenant. This tenant would, in turn, lease to the team(s) (Measure J at Section 17.20.030, Section 8, 2010). Measure J stipulated that up to two professional football teams could use the Stadium as a home. Notably, Measure J stated that after it passed, it could only be amended by City voters, and promised that voters would maintain control over any proposed future changes.

### **Measure J Promise**

Measure J promised voters that the Stadium would:

- Generate new revenue for the City and “further the City’s goal of creating an entertainment destination in the Bayshore North Redevelopment Project Area [to] provide a long-term revenue stream to the City” (Measure J at Section 2.A.1, 2010).
- Create thousands of new jobs in the City and the surrounding area, which would “generate tens of millions of dollars in new annual economic activity” for local businesses and the Santa Clara Convention Center (Convention Center). In addition, it would “encourage the creation of new businesses in the area” (Measure J at Section 2.A.2, 2010).

- Provide taxpayer protections by safeguarding the City’s general and enterprise funds. As the owner of the land, the City would “receive payment into the City’s general fund of fixed base rent and performance-based rent that together [were] projected to provide fair market rent” (Measure J at Section 2.A.3, 2010).
- Generate community funding by adding a fee “to the price of tickets for certain stadium events to secure additional funding for libraries, senior activities and [City operated] youth sports programs;” provide substantial new revenue, based on increased property taxes for the Stadium, for the Santa Clara Unified School District (Measure J at Section 2.A.4, 2010); and provide for the scheduling of “Civic Events” with the “provision of meeting space in the Stadium for community groups and non-profits” (Measure J at Section 13.6).

### **The City and the 49ers Establish New Entities to Carry Out Measure J**

Measure J also outlined specifics about how agreements among the various parties – City, Stadium Authority, private tenant (i.e., 49ers), and the management company (i.e., ManCo) – would be implemented to achieve the promise of Measure J. As an initial matter, both the City and the 49ers had to establish new entities.

#### **Stadium Authority**

In accordance with Measure J, and after its passing, the City and the now-defunct Redevelopment Agency of the City of Santa Clara entered into a Joint Exercise of Powers Agreement (JPA) to create the Stadium Authority as a “separate and distinct legal entity” from the City. The Stadium Authority would build, own, and operate the Stadium, thereby ensuring the City would not be liable for the debts or obligations of the Stadium Authority (Measure J at Section 2.B.2, 2010).

The Mayor and Councilmembers serve as the governing Board of the Stadium Authority and as the Santa Clara City Council (Council). Officers of the Stadium Authority include the City Manager, serving as the Executive Director; the City Attorney, serving as General Counsel; the City Finance Director, serving as Treasurer; the Assistant City Clerk, serving as Secretary; and an Auditor. The Board directs policy, and it is the responsibility of the officers to implement that policy. Since the Stadium Authority’s inception, the officers and their support staff have divided their time between City business and Stadium business. The elected Councilmembers function as both a City Council and as the Stadium Board, the meeting agendas are divided to accommodate the differing Council and Board roles. Therefore, Stadium business that requires Board direction is presented by City staff to the Board at public Council meetings; this includes quarterly Stadium Authority Financial Status Reports (Measure J at Article 2, Section 2.1, 2010).



Stated Board pillars are to “ensure Compliance with Measure J and Manage Levi’s Stadium” and to “enhance Community Engagement and Transparency” (City of Santa Clara, April 19, 2024). Additionally, the City’s website lists some examples of Stadium Authority functions as:

- Leasing the land from the City.
- Owning the Stadium.
- Financing contracts.
- Stadium Builder License (SBL) sales.
- Sale of Naming Rights.
- Leasing the Stadium.
- Managing day-to-day Stadium operations and the surrounding areas for football games and other Stadium events.

The creation of the Stadium Authority was meant to insulate and financially protect the City and public dollars. But as a sports economist noted in a *Los Angeles Times* article, the creation of the joint powers authority served another purpose as well:

In Santa Clara ... Goldman’s [Sachs] plan was to create a public authority to build and own the stadium, using the proceeds of a construction loan raised from private investors. The loan would be paid back using revenue from sponsorships, high-end seating and non-NFL events at the stadium and, in a two-team stadium ... using as much as \$800 million in personal seat licenses — upfront payments that allow fans to buy season tickets. The structure of the deal would also save both teams a lot of money in the long run, said John Vrooman, a sports economist at Vanderbilt University. Using a tax-exempt public authority to sell personal seat licenses and sponsorships allows the teams to avoid many taxes on those sales, saving them tens, perhaps hundreds, of millions of dollars, Vrooman said. The teams would also avoid property taxes on the building, though they would pay rent and other local taxes on the private use of a public facility.

Public agency bonds for the stadium would be tax exempt and sell at lower interest rates. “Goldman Sachs’ job is to use, if not disguise, every public funding tax shelter and loophole,” Vrooman said. (Logan, 2015)

### **49ers New Entities**

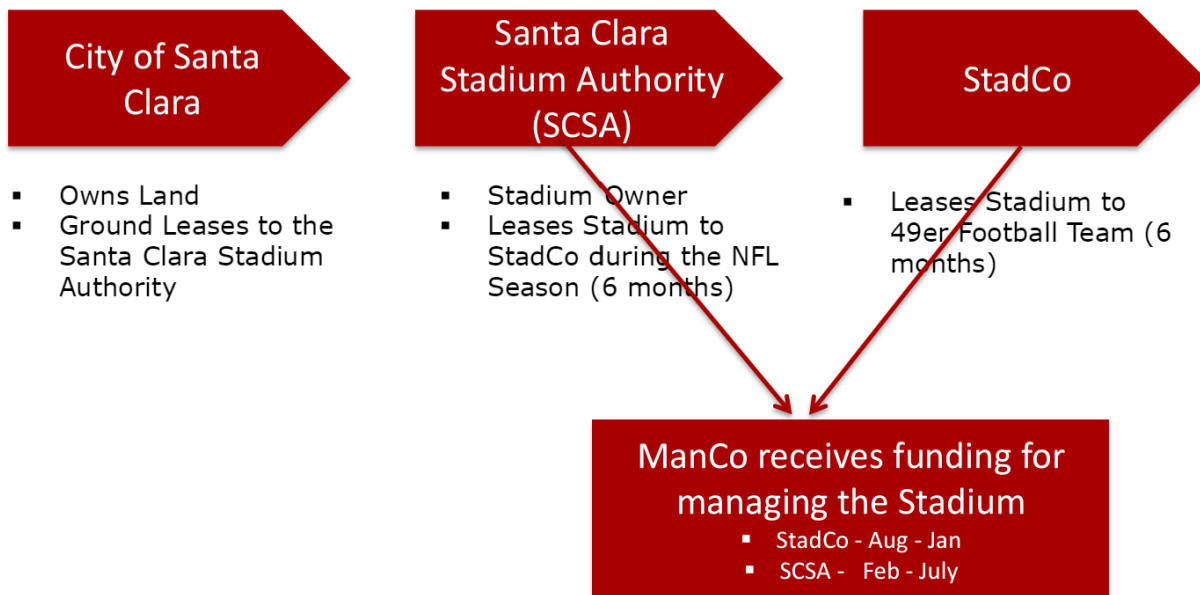
The 49ers created two entities that would be the main parties to all contract negotiations following the passing of Measure J: StadCo and ManCo.

As detailed in Measure J, it was expected that the Stadium would have a “Private Tenant,” which was the Measure J term to describe the 49ers affiliate that would occupy the Stadium. Thus, the 49ers formed the Forty Niners SC Stadium Company, LLC (StadCo) to ultimately act as the Stadium’s tenant. While Measure J used the term “Private Tenant” to describe the entity that

later would be known as StadCo, for clarity purposes, the Civil Grand Jury will use the term StadCo, not Private Tenant, in this report.

Measure J stated that the Stadium Authority could contract with a stadium management company after consulting with StadCo (Measure J at Article 8, Section 8.1.(a)). In anticipation of being selected as the stadium's management company, the 49ers also established the Forty Niners Stadium Management Company, LLC (ManCo).

Figure 1 below illustrates the relationships between the City, Stadium Authority, ManCo, and StadCo.



**Figure 1: City/Stadium Authority Flowchart (Santa Clara Stadium Authority, 2020)**

## The Agreements Anticipated by Measure J

### Ground Lease: The City and the Stadium Authority Enter into a Ground Lease for the Fair Market Value of the Public Land

Approved by Measure J, the City leased the land on which the Stadium would be built. The Ground Lease between the City and the Stadium Authority would have an initial term of 40 years, and construction of the Stadium could not begin unless a private tenant (the 49ers) had entered into a lease with the Stadium Authority for the Stadium. Additionally, Measure J required that the Ground Lease provide for the use of the Stadium as the home for one or two professional football teams.

The Stadium Authority would pay the City a fixed base rent totaling \$40.875 million over the 40-year term. Beginning in the 11<sup>th</sup> year of Stadium operations (fiscal year 2024-25), the fixed rent to the City's General Fund would be \$1 million per year. If a second professional football team made a long-term commitment to use the Stadium for home games, the minimum annual fixed base rent would increase by \$1 million (Measure J at Section 17.20.020(e,f), 2010).

In addition to fixed base rent, Measure J promised that the Ground Lease would require the Stadium Authority to pay performance-based rent (Performance Rent) into the City's General Fund. The Performance Rent, along with the fixed base rent, would provide fair market value rent to the City as determined by the City Council (Measure J at Section 17.20.020(g), 2010).

As anticipated by Measure J, on March 28, 2012, the City and the Stadium Authority entered into the Ground Lease. This lease allowed City-owned real estate to be used as the site for a Stadium suitable for the exhibition of professional football games and other events.

### **Stadium Lease: Stadium Authority Enters into a Stadium Lease with StadCo**

Per Measure J, the Stadium Lease (referred to as "Private Tenant Lease" in the measure) would require StadCo to pay rent to the Stadium Authority to provide them with the required funds to pay both the Ground Rent, to the City, and the operating and maintenance expenses of the Stadium (Measure J at Section 17.20.020(k)). The operating and maintenance expenses would include "without limitation, day-to-day expenses of operating and maintaining the Stadium, deposits to a reserve for capital improvements and reimbursement of reasonable costs incurred by the City in providing public safety and traffic management related to NFL Events and non-NFL Events" (Measure J at Section 17.20.020(l), 2010). Expenses for events conducted by the City or the Stadium Authority that were not approved by StadCo would not be included.

On March 28, 2012, the Stadium Authority and StadCo entered into the Stadium Lease. The initial term for the lease is 40 years with an option to extend. The lease year is defined as two distinct seasons: a "Tenant Season" and a "Stadium Authority Season."

The 49ers' existing Ground Lease for its 11-acre headquarters and training facility located at 4949 Centennial Boulevard (now identified as 4949 Marie P. DeBartolo Way) would be extended to be coterminous with the Stadium Lease (Measure J at Section 17.3, 2010). That feature of Measure J was executed on March 12, 2012, when the City Council approved an amended Lease Agreement extending the lease to 2042, with additional options that would allow the term to extend to 2074. In 2009, rent for the 11-acre facility was \$25,317. In 2012, the annual rent was \$28,196 and per the agreement, the rent would increase 4% annually (City of Santa Clara, 2012).

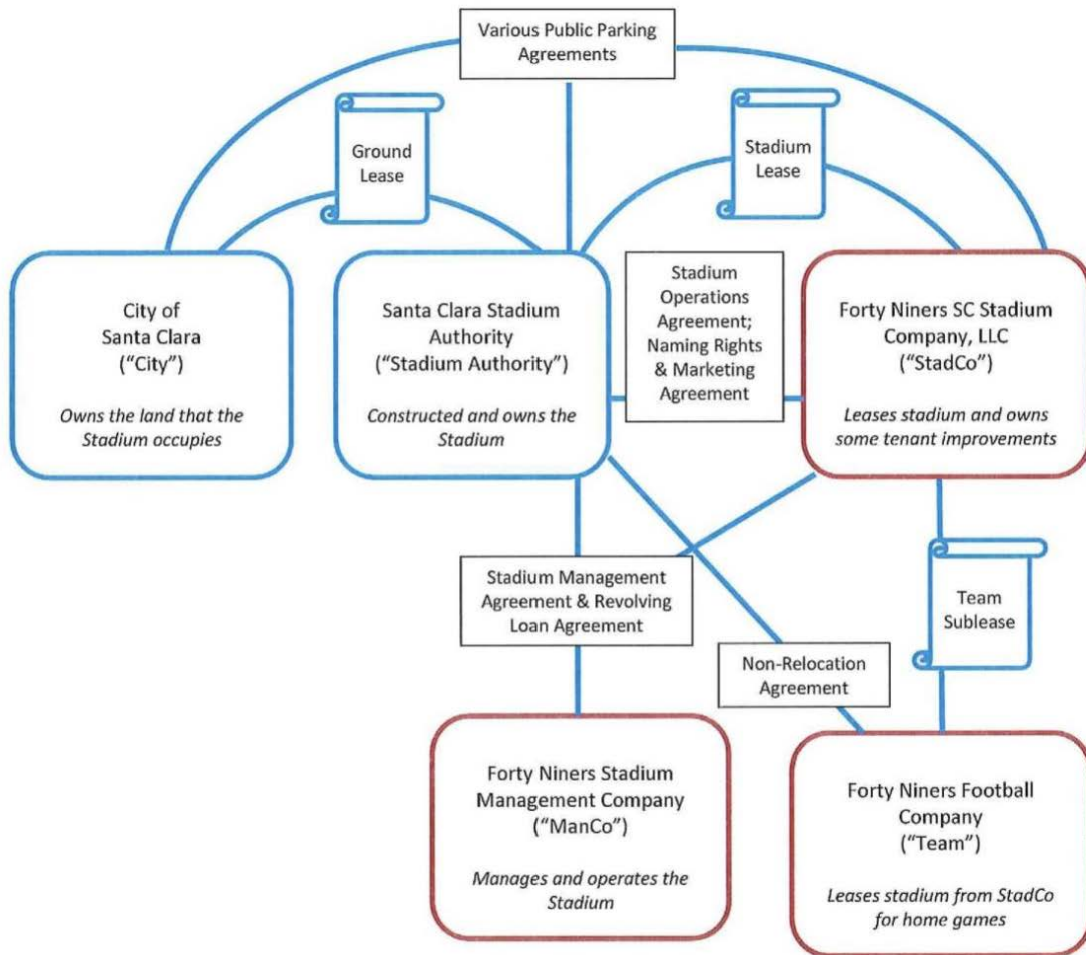
### **Management Agreement: Agreement Between Stadium Authority and Unspecified Management Company**

Measure J stated that the Stadium Authority would be responsible for the management and operation of the Stadium for NFL events, non-NFL events, and Civic Events (Measure J at Section 8.1, 2010). The Measure further stated that StadCo was expected to cooperate with the Stadium Authority in the operation of the Stadium. In that regard, Measure J noted that “certain operational standards would be negotiated by the Parties and will be set forth in a mutually agreed operation and maintenance plan for the Stadium designed to achieve a safe and well-maintained Stadium.” The Stadium Operation and Maintenance Plan and a Capital Expenditure Plan are required to be adopted annually by the Stadium Authority, subject to the mutual approval of the Stadium Authority and StadCo (Measure J at Article 8, Section 8.1, 2010).

Unlike the Stadium Lease, Measure J itself does not anticipate the Stadium will be operated by a 49ers affiliate. Measure J simply provides that the Stadium Authority “*may* [emphasis added], after consultation with 49ers Stadium Company, contract with a Stadium management firm to oversee the day-to-day operations of the Stadium. The Parties will identify a mutually acceptable process for selecting the management firm” (Measure J at Article 8, Section 8.1(a), 2010).

Ultimately, the Stadium Authority, StadCo, and ManCo reached a management agreement for the operations of the Stadium. The Stadium Management Agreement (Management Agreement), effective March 28, 2012, is a three-way agreement between the Stadium Authority, StadCo, and ManCo. The agreement stated that ManCo had been selected by StadCo and the Stadium Authority to manage and operate the Stadium in accordance with the Stadium Lease for both the tenant during the NFL season and the Stadium Authority during the non-NFL season. The Stadium Authority also selected ManCo to handle the marketing and booking of the Stadium Authority-owned non-NFL events. Four amendments were made to this original agreement, with the final amendment dated March 18, 2014.

Figure 2 below provides an overview of the Stadium-related agreements and leases created as a result of Measure J.



**Figure 2: Overview of Stadium-Related Leases and Agreements (City of Santa Clara, Agenda Report, 2017)**

All Stadium-related leases and agreements can be found [online](#).

## Stadium Authority Revenue Potential Under Measure J

Per Measure J, the Stadium Authority would receive Stadium Operating Revenues listed as follows:

- NFL Ticket surcharges, of an unspecified amount, not needed for debt service payment, or other financing costs (Measure J at Section 7.3(c), 2010).
- Annual proceeds from the City Senior and Youth Program Fee, which could not exceed \$250,000 per year (Measure J at Section 7.3(c), 2010).
- Naming rights revenue not needed for debt service or other financing costs (Measure J at Section 7.3(b), 2010).

- SBL sales, financing, and transfer revenue, excluding what would be needed to pay the initial development costs of the Stadium (Measure J at Section 7.3(a), 2010).
- Community Facilities District hotel tax amounts not needed for debt service and bonds financing (Measure J at Section 7.5, 2010).
- Facility Rent payable by StadCo amounting to \$5 million plus all net operating expenses, currently at \$24.8 million (Measure J at Section 5.3, 2010).
- Parking revenue: “All net revenues from the operation of surface lots or in parking structures owned or controlled by the Stadium Authority and revenue sharing or parking surcharge revenues generated from contracts with private parking lots in the vicinity of the Stadium, excluding Team Revenue” (Measure J at Section 10.7, 2010).
- Concession revenue, which would include all net revenues from concessionaires authorized by the Stadium Authority to sell food, beverages, and other goods in the Stadium or on parking lots or structures owned or controlled by the Stadium Authority. Stadium Authority concession revenue does not include Team Revenue. (Measure J at Section 10.8, 2010).
- Third-party rent from the lease of other leasable space in the Stadium excluding any and all space occupied or controlled by StadCo or the Team (Measure J at Section 10.9, 2010).
- Non-NFL Events revenue would include net revenue received from the promoter or other sponsor for the use of the Stadium (Measure J at Section 10.10, 2010).
- Non-NFL Event advertising revenue from transient electronic advertising on designated areas of the Stadium scoreboards during non-NFL Events with the stipulation that advertising would not conflict with advertising contracts that the Team(s) or StadCo had (Measure J at Section 10.11, 2010).

### **Team Revenue**

Measure J defined Team Revenue as belonging to StadCo, the Team, any second Team, or their affiliates. Team revenue is made up of NFL Events Revenue, NFL media advertising and Sponsorship Revenue, and all other NFL-related revenue from NFL operations, whether or not occurring at the Stadium. Team Revenue also includes all revenue from retail activities associated with the 49ers Team Store (Measure J at Section 11.1, 2010).

### **History of Audits and 2015-2016 Civil Grand Jury Report about Measure J**

Over the last decade, there have been many disputes over the accuracy and completeness of the financial records supplied by ManCo and StadCo and the Stadium Authority’s adherence to Measure J. Consequently, the Stadium Authority has initiated multiple independent audits in addition to mandated annual financial audits.

## **Annual Financial Audits**

The Stadium Authority undergoes a series of annual financial audits that are reviewed by the Council/Board and publicly presented at their meetings (City of Santa Clara, 2019). These audits are completed by KPMG LLP, an independent audit firm, and focus on the financial statements of the Stadium Authority. Overall audit reports have indicated that the Stadium Authority's financial statements are in compliance with U.S. Generally Accepted Accounting Principles and fairly present the financial situation of the Stadium Authority. KPMG LLP reports do not make any determination about the quality of financial information provided to the Stadium Authority by ManCo or StadCo.

## **2015-2016 Civil Grand Jury Report**

The 2015-2016 Santa Clara County Civil Grand Jury released a report titled "The City of Santa Clara, the Santa Clara Stadium Authority, Levi's Stadium, and Measure J." The report recommended that the Stadium Authority conduct an audit of Stadium operations to ensure compliance with the 2010 voter-approved Measure J. The Board agreed with all the recommendations in the report and, in 2016, approved a Measure J compliance audit.

## **2017 Harvey M. Rose Associates, LLC Measure J Compliance Audit**

In 2017, the audit firm of Harvey M. Rose Associates, LLC completed a forensic audit (an examination and evaluation of a firm's financial records) to evaluate compliance with Measure J. The final audit report, hereinafter referred to as the Harvey Rose Audit issued August 21, 2017, included 37 recommendations to improve transparency and management of the Stadium (City of Santa Clara, August 24, 2017). The Harvey Rose Audit came with the following disclaimer:

One of the objectives of this audit, review of non-NFL event revenues and expenses, could not be conducted as originally anticipated. Further, a number of other revenue and expense items could not be reviewed and reported on because the Forty Niners Stadium Management Company (ManCo), the company under contract with the Stadium Authority and the Stadium Management Company to manage the Stadium, would not allow the audit team to review and report on their records for non-NFL events or parking revenue without signing a non-disclosure agreement that would have prohibited presentation of information from those records in a public document such as this audit report. We did not sign such an agreement and, after that request was made, we did not review or analyze any records maintained by ManCo or include their contents in this report.

Ultimately, the Board voted 6-to-1 to accept the Harvey Rose Audit and its recommendations to improve billing, invoicing, financial transparency, and other such processes so that the Stadium Authority could plan and expect income from these activities.



### **J.S. Held Forensic Audit of non-NFL events at the Stadium, fiscal years 2015-2018**

In 2018, the Stadium Authority noted that various documentation provided by ManCo did not appear to reconcile. Specifically, the year-end non-NFL event income for fiscal years 2015-2018 did not equal the sum of non-NFL income from each individual event. The Stadium Authority engaged audit firm J.S. Held to determine the reasons for the differences and whether the non-NFL event revenue reported by ManCo was supported by their documentation. The results of this forensic audit were presented to the Stadium Authority by Timothy Gillihan, a certified public accountant with J.S. Held in December 2020. “We are not saying the results are inaccurate nor are we saying they are accurate, but from an accounting standpoint, we are unable to say whether or not they are accurate because the underlying supporting documents are not sufficient,” Gillihan said (City of Santa Clara, 2020).

The report continued:

The records were not adequate for making this determination because many of the documents provided by ManCo were not actual source records but were instead summary reports, with limited to no inputs that explain the summarized data, that appear to have been prepared by ManCo. Without the underlying source records or knowledge of the underlying inputs used for calculations, JSH cannot determine if the summaries were accurately prepared. This step of verifying financial data with the underlying source records is a basic step in accounting to confirm the accuracy of financial information (J.S. Held, 2020).

The Board voted unanimously to accept the report and extend the contract with J.S. Held to dive deeper into the 2016 financials and begin looking into 2018, 2019, and 2020.


### **J.S. Held Forensic audit of non-NFL events at the Stadium, fiscal years 2018-2020**

J.S. Held attempted to continue their forensic audit of ManCo records in 2020. The final report was presented to the Board on Tuesday, September 26, 2023. Auditor Timothy Gillihan again told the Board that ManCo failed to provide sufficient records to make the audit report as substantive as he would have liked. Despite having a good working relationship with ManCo during the audit for the first three years, Gillihan told the Board that ManCo started freezing his firm out beginning in September 2020. After a letter from ManCo’s lawyer accused the firm of being a “Trojan horse” designed to garner information for the City regarding lawsuits the two are embroiled in, he said communication halted (City of Santa Clara, 2023).

The Board eventually voted 4-to-3 to accept the report and then passed a second motion via a 5-to-2 vote to have City employees return with a clear scope of work for years 2020 through 2023 and a better understanding of ManCo’s willingness to provide the needed documents for all years studied.



## Good Neighbor or Litigious Partner



“The 49ers probably lead the league in their aggressiveness in dealing with Santa Clara. I’ve never seen anyone fight as hard as many times as the 49ers.”

- Roger Noll, Stanford Economics Professor (quoted in Williams and Kroichick, 2023)

The Court record reflects numerous legal actions, including notices of breach, lawsuits, arbitrations, and settlements between the 49er entities, the Stadium Authority, and the City over the last decade. A dispute over the use of the Youth Soccer Fields, which are adjacent to the Stadium and the 49ers’ headquarters, appears to have been an inflection point and forecasted the difficult relationship to come between the 49ers and the City.

### Rent Re-set Arbitration

In March 2016, the 49ers requested a rent reduction of \$4.25 million from the Stadium Authority (City of Santa Clara, 2018). This proposed reduction would reduce the 49ers’ annual rent from \$24.5 million to \$20.25 million per year. The Board unanimously refused the request and the 49ers started legal proceedings. On August 12, 2018, after the matter had been sent to arbitration, the 49ers’ litigation failed. In addition to siding with the Stadium Authority, the arbitrator found that the 49ers owed approximately \$262,000 more per year. The Stadium Authority also received back pay for rental payments, as well as attorneys’ fees and costs (City of Santa Clara, 2018). Many regard this as the beginning of the contentious relationship between the Stadium Authority and the 49ers.

### Stadium Management Disputes and Litigation

The myriad lawsuits fall into multiple categories. There have been disputes over ancillary items such as parking, contract interpretation, and rent. But primarily, there have been disputes over ManCo’s management of the Stadium and the financial performance of non-NFL events. As a public entity, the Stadium Authority needs to follow many requirements, including prevailing wage laws, procurement requirements, and transparency. ManCo struggled to understand this. The complicated history of the disputes, claims, and counterclaims shows that in the beginning, as the Stadium Authority attempted to hold ManCo accountable, the 49ers would escalate and respond with lawsuits. The fact that ManCo is part of the 49ers umbrella organization complicated things immensely as is more fully discussed in the “[Investigation](#)” section of this report.

An overview of the major disputes since the Stadium opened is shown below in Figure 3.

	Dispute	Description
1	Youth Soccer Park	* No litigation. * Many discussions and proposals to use the adjacent soccer park for Levi's parking.
2	Golf Course Parking	* 49ers sued Stadium Authority alleging they were overcharged by \$1 million for golf course parking. * Resolved in 2022. 49ers paid City \$300,000.
3	Rent Reset	* 49ers requested a \$4.3 million reduction in their \$24.5 million annual rent paid to Stadium Authority. * Stadium Authority won arbitration and a \$262,000 annual increase in Facility Rent.
4	Management Agreement	* Stadium Authority alleged serious performance issues by ManCo as Stadium Manager. * Two rounds of litigation with Stadium Authority attempting to terminate the Management Agreement. * Issues resolved under the August 2022 settlement agreement.
5	Procurement Contracts	* Stadium Authority alleged improprieties in ManCo contracts; required ManCo to obtain advance approval for all new contracts. * 49ers sued Stadium Authority. Issues resolved under the August 2022 settlement agreement.
6	Prevailing Wages	* Stadium Authority alleged "wage theft" by 49ers for failure to pay prevailing wages. * Issue resolved under August 2022 settlement agreement.
7	Stadium Financial Records	* Stadium Authority auditors unable to verify financial reports from 49ers for non-NFL events. * Stadium Authority threatened to fire ManCo as Stadium manager. Both parties filed lawsuits. * Issue resolved under the August 2022 settlement agreement.
8	Public Safety Costs	* Per Lease 7.5.4.b, City requests renegotiations on \$170,000 and PSC per game Threshold. * 2019 - 49ers sue Stadium Authority over contested PSC payments. * Resolved under May 2024 settlement agreement.
9	Property Taxes	* 49ers contested the initial assessment that they owe the full property tax bill for Levi's. * 49ers won an appeal and had taxes cut in half, reducing funding to local schools.
10	Gourmet Buffet	* 49ers billed \$4 million for four years of 2014-18 buffet costs for high-end SBL ticketholders. * Resolved under May 2024 settlement agreement.

**Figure 3: Summary of disputes involving the 49ers**

## A Politicized Partner

Since Measure J went on the ballot, the 49ers have been actively involved in the local political landscape. In addition to spending \$4.5 million to pass Measure J, which was estimated at the time to be \$300 per needed vote, the 49ers have created numerous independent Political Action Committees (PACs) (Mintz, August 2, 2010; Killion, 2010). Most of the PACs have been in support of the political campaigns of City Councilmembers who have been referred to by media outlets as the “49er Five,” and against their opponents and the current Mayor. In addition to supporting candidates, the 49ers were also involved in the City’s recent redistricting battle. However, the 49ers’ involvement went beyond supporting candidates and elected officials. During the 2022 election cycle, 49ers PAC campaign postcard mailers included an attack of the then-City Manager/Stadium Authority Executive Director and her salary, in spite of the fact that she had already been fired by the Councilmembers who had benefited from 49ers PACs. Her firing had come immediately after a Council meeting during which she criticized the 49ers (Williams and Kroichick, 2022).

Although the City has averaged only approximately 46,000 to 58,000 registered voters between 2010 and 2024, the 49ers have invested enormous amounts of money in recent election cycles:

- March 2020 election: Over \$600,000.
- November 2020 election: \$2.9 million.
- November 2022 election: Over \$4.5 million (City of Santa Clara, “Past Election Information and Results,” 2024).

Examples of PACs created by the 49ers can be found on the City’s Public Portal for Campaign Finance Disclosure and Lobbyist Filings and include but are not limited to the following (City of Santa Clara, 2024):

- No on C – Santa Clarans for Voting Rights, a coalition of community and civic org. and ind., sponsored by John Edward (Jed) York & Affiliated Entities, including the Forty Niners Football Company LLC, 2020 (I.D. Number 1424766).
- Citizens for Efficient Government & Full Voting Rights, supporting Bhatia, Park, Jain & Becker & opposing Watanabe, O’Neill, O’Keefe & Mezzetti – City Council 2020, sponsored by John Edward (Jed) York, 2021 (I.D. Number 1432043).
- Santa Clara Community Leaders Supporting Anthony Becker for Mayor 2022, sponsored by and major funding from DeBartolo Corporation & Affiliated Entities, including Forty Niners Football Company, LLC, 2022, 2023 (I.D. Number 1453491).
- Frustrated Santa Clarans Opposing Gillmor for Mayor 2022, sponsored by DeBartolo Corp. & Affiliated Entities, including 49ers Football Company, LLC, 2022, 2023 (I.D. Number 1453887).
- Santa Clara Neighbors Supporting Karen Hardy for City Council District 3 2022, sponsored by and major funding from DeBartolo Corp. & Affiliated entities, including 49ers Football Co., LLC, 2022, 2023 (I.D. Number 1453502).
- Santa Clara Neighbors Supporting Raj Chahal for City Council District 2 2022 sponsored by and major funding from DeBartolo Corp. & Affiliated Entities, including 49ers Football Co., LLC, 2022, 2023 (I.D. Number 1453495).
- Concerned Citizens Opposing Larry McColloch for City Council District 2 2022, sponsored by DeBartolo Corp. & Affiliated Entities, including 49ers Football Co. LLC, 2022, 2023 (I.D. Number 1454751).
- Concerned Citizens Opposing Christian Pellecchia for City Council District 3 2022, sponsored by DeBartolo Corp. & Affiliated Entities, including 49ers Football Co. LLC, 2022, 2023 (I.D. Number 1454122).

The [website](#) is clickable and searchable.

## METHODOLOGY

When the Civil Grand Jury decided to pursue this investigation, StadCo and ManCo already had a long history of not providing the City and Stadium Authority with relevant documents. The lack of cooperation had impeded the City and Stadium Authority auditors from conducting complete audits on several occasions. Although ManCo works for the Stadium Authority, and the contract between the parties gives the Stadium Authority the right to access financial documents and conduct an audit, the Board has historically been unable and unwilling to hold ManCo accountable for providing documentation to auditors.

Unlike the Stadium Authority, the Civil Grand Jury enjoys subpoena power to obtain documents from StadCo and ManCo (Pen. Code § 939.2). Further, under Penal Code section 926, a Civil Grand Jury may hire experts. When the Civil Grand Jury undertook this investigation, it was understood that the legal and financial relationships among the parties were very complex. Due to the complexity of the Stadium contracts, the Civil Grand Jury took the unprecedented step of hiring Sjoberg Evashenk Consulting, Inc. (Grand Jury Expert) as an expert consultant to assist the Civil Grand Jury in its investigation. The Grand Jury Expert is a management consulting and auditing service firm with expertise in performance audits, internal audits, management consulting services, and customized training involving nearly every area of state and local government.

The Civil Grand Jury subpoenaed thousands of financial and Stadium-related documents that were previously unavailable to the Stadium Authority auditors due to the lack of cooperation from both ManCo and StadCo. The Civil Grand Jury utilized the Grand Jury Expert to help it analyze the impact of the documents. The Grand Jury Expert helped the Civil Grand Jury reach various findings and recommendations, which are contained throughout this report.

Overall, the Civil Grand Jury and the Grand Jury Expert conducted, either together or separately, more than 55 interviews with City and Stadium Authority employees and officials, as well as with representatives from the 49ers, and watched video recordings of Council meetings from January 2019 to May 2024.

Additionally, the Civil Grand Jury and/or the Grand Jury Expert read and reviewed a vast array of documents including the following key items:

- Measure J.
- The Stadium Lease.
- The Naming Rights Agreement.
- The Management Agreement.
- Various Stadium Authority financial documents.

- The Annual Stadium Authority Operations Budgets and Annual Stadium Authority Budgets.
- Policies and procedures in use guiding budgeting, accounting, contracting, procurement processes, and activities.
- Budget calendars.
- Financial Accounting records for the Stadium Authority, StadCo, and ManCo.
- Public safety costs.
- Extensive financial materials related to non-NFL events.
- Marketing materials.
- FIFA-related materials (agreements, host agreement, etc.)
- Parking agreements.
- Data.
- Food and buffet costs.
- Information related to the community room.
- Naming rights materials.
- Concessioner contracts and related materials.
- Various auditing materials.

The Civil Grand Jury used these sources of information to analyze facts and develop findings and recommendations for this report.

## INVESTIGATION

There have been questions and complaints from civic leaders, City staff, and residents about the Stadium for years. The Civil Grand Jury watched hundreds of hours of Council meetings which have spotlighted the concerns about the presence of the Stadium, its management, and the complex and unequal relationship between the City, the Stadium Authority, and the various 49er entities.

Complaints about the Stadium and the 49er entities include accusations of a failure to comply with Measure J; mismanagement of the Stadium by ManCo and its failure to adhere to municipal laws; ManCo's lack of transparency and nebulous accounting practices; a lack of revenue into the City's General Fund; the 49ers involvement in local politics; and even accusations of unethical behavior and corruption of City Councilmembers in their dealings with the Stadium and the 49ers. The contentious relationship between the City, the Stadium Authority, and the 49ers has made national headlines, which have dubbed certain Councilmembers the "49er Five" and referred to the City as a "Company Town" and/or "Yorkville" (Gardiner, 2022).

The Civil Grand Jury felt compelled to attempt to unpack these important issues on behalf of the constituents of the City and County. For more than a year, the Civil Grand Jury has investigated these concerns, and, with the assistance of the Grand Jury Expert, the Civil Grand Jury has uncovered the following information.

### **Major Tenets of Measure J**

The major tenets of Measure J were to protect and insulate the City from any negative economic impact from the Stadium, thereby protecting the City's General Fund; to create an independent public entity that would be responsible for all aspects of management of the Stadium; and to bring revenue to the City, with a specific focus on development in the Northside, schools, libraries, and youth and senior programs.

Measure J itself is a legal promise to the voters. The details and nature of how a citizen or taxpayer can enforce any failures to implement a ballot measure promise involve many complexities and go beyond the scope of this report. Nevertheless, this report details many of the various agreements that have been reached to bring about the Stadium and its operation and the problems with those agreements. The Civil Grand Jury believes it is important to mention that the Stadium's origin and existence began with the 49er-backed initiative because voters were made certain promises outlined in Measure J.

## The Climate of Deal-Making and Contract Negotiation

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**Finding 1: From the beginning, the City was impatient and overmatched in its negotiation posture with the 49ers to the long-term detriment of the City/Stadium Authority.**

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The Civil Grand Jury heard repeatedly that during the negotiation process, the City's primary concern was protecting the City's General Fund and not ending up in the same situation as other cities that had built stadiums for major sports teams and lost public money. City staff members worried about the political dangers of bringing such a big entity to a small city, but they also believed the long-term revenue projections were optimistic and that they would be able to insulate the City.

However, the mostly eager City Council gave the upper hand to the 49ers from the beginning. At a December 15, 2009, City Council meeting, the City Council voted to put its own ballot measure on hold to allow a "citizen-sponsored" Stadium initiative written and funded by the 49ers to move forward. A qualifying initiative requiring voter signatures guaranteed that the Stadium measure would be on the June 8, 2010, ballot and less likely to be challenged. If the measure had been put on the ballot solely by a City Council vote, the measure could have been subject to potential legal challenges and delayed (Mintz, 2009). In addition to writing the initiative and funding the collection of signatures by "Santa Clarans for Economic Progress," the 49ers spent \$4.5 million to make sure it passed (Mintz, August 2, 2010).

The Civil Grand Jury learned that some things were non-negotiables for the 49ers from the start. Specifically (a) they would not change their name from the "San Francisco 49ers" to the "Santa Clara 49ers," (b) the lucrative luxury suites would be owned by the 49ers and all revenue from the suites for both NFL and non-NFL events would belong to the 49ers, (c) a 49er company would manage the Stadium year-round, and (d) all advertising media revenue would belong to the 49ers, except the Naming Rights revenue.

After Measure J passed, City staff began negotiating the key agreements that would define the relationships between the Stadium Authority, the 49ers, StadCo, and ManCo for the next 40 years. These key agreements were the Ground Lease; the Stadium Lease, which included the terms for the SBLs; the Naming Rights Agreement; and the Management Agreement. City staff had recognized during the term sheet negotiations that the 49ers did not want the Stadium on their balance sheet. To that end, the Stadium was leased to the 49ers. This allowed the 49ers to



reduce taxes by keeping the Stadium asset off their balance sheet and by keeping large income streams, such as from the sale of SBLs and Stadium Naming Rights, off their income statement.

Using the 49ers as the management company concerned City staff at the time, who recognized it was a conflict of interest for the 49ers to simultaneously be a tenant and a property manager; but the City had used the now defunct local Chamber of Commerce for decades as the manager of the Convention Center, which was also considered a conflict. That arrangement made management of the Stadium by the 49ers more palatable to the City Council. In retrospect, overlooking this conflict of interest was a major negotiating mistake.

Overall, City staff would spend the years 2007-2013 negotiating complex terms, contracts, and amendments to those contracts with the 49ers. During that time, as many as three days per week of City staff time were devoted exclusively to these negotiations. The Civil Grand Jury learned that after so many years of negotiating, the City Council was frustrated and impatient to finalize the Stadium's legal agreements, ultimately allowing themselves to be outmaneuvered by the 49ers on some key terms discussed below.

### **Property Tax Reassessment**

While Property Tax does not affect Stadium Authority revenues or the General Fund directly, Measure J did state that in addition to providing funding for libraries, senior activities, and youth sports, the Stadium would “also provide substantial new revenue for the Santa Clara Unified School District” (SCUSD) (Measure J at Section 2.A.4, 2010).

Nevertheless, one of the best examples of the sophistication of the 49ers contract bargaining position is regarding property taxes, or possessory interest taxes, for the Stadium. Property tax assessment for the Stadium is explained as follows:

California's property tax system assesses all property at its full value. (Cal. Const., art. XIII, § 1; Rev. & Tax. Code, § 401.) Full value is the cash price that the property would bring on the open market, assuming neither buyer nor seller could take advantage of the exigencies of the other, i.e., fair market value. Newly constructed property is assessed at its fair market value as of the date of completion and upon a change in ownership, with increases otherwise limited to two percent per year. While publicly owned property is generally either immune or exempt from taxation, private possessory rights in public property are subject to taxation...

Possessory interests in public property encompass a wide array of rights, including concessions, leases, airport permits, air rights, and mining rights. Taxation of possessory interests places rights holders in public property on equal competitive footing with rights holders in private, taxable property, who pay rent or contract prices informed by the



owner's property tax. And, in doing so, taxation of possessory interests fulfills the constitutional mandate that all owners of non-exempt property pay their fair share of the property taxes funding provision of local, public services. (County of Santa Clara et al. vs. Santa Clara County Assessment Appeals Board No. 1, Superior Court of California, County of Santa Clara, Case No. 19-CV-347946)

The 49ers and the Stadium Authority share year-round Stadium expenses. There is an exception per Article 4.3.1 of the Stadium Lease, in that some of the most valuable sections of the Stadium are designated as exclusive "areas" and are reserved for year-round use by the 49ers. These include the 49ers museum, all commercial areas (restaurants and team store), an owner's club and team suite, the locker rooms and training spaces, an auditorium, an audio/visual hub, and, most valuable of all, the suite tower and all 174 suites. The contract also gives the 49ers year-round rights to lease the commercial areas of the Stadium for retail, restaurant, or other purposes. Finally, the 49ers can use the Stadium year-round for marketing, promotional events, tours, and meetings as stated in the Stadium Lease:

4.3.1 Tenant's Exclusive Facilities. (a) For the entirety of each Lease Year during the Lease Term, including during each the Stadium Authority Season, Tenant shall have the right to use and operate Tenant's Exclusive Facilities, including (i) the Stadium Commercial Areas, including the Team Store and the Hall of Fame, depicted on the Stadium Plans, the revenues from which shall constitute Tenant Revenue as provided in ARTICLE 13 below, (ii) Tenant's Administrative Space depicted on the Stadium Plans, (iii) locker rooms and related training space, (iv) the Stadium Audio Video Facilities, (v) the Owners' Club, including the Team Suite, and (vi) the Suite Tower and all of the Suites in the Stadium, but excluding any Premium the Stadium Areas and Press Areas located in the Suite Tower. Tenant will have the exclusive use of Tenant's Exclusive Facilities, the Tenant's Parking Spaces, and the Intellectual Property Rights attendant thereto, at all times during the Lease Term, subject only to the provisions of the Stadium Lease Documents

Because of the 49ers' year-round ownership of these "exclusive areas" and the resulting revenues from non-NFL events, the Office of the Assessor, County of Santa Clara (County Assessor's Office) assigned the full value of the Stadium to StadCo's possessory interest.

The 49ers appealed its 12-month property tax assessment to a County Assessment Appeals Board (AAB), the local forum for property owners to challenge property tax assessments. The 49ers contended that they officially operated the Stadium for only six months because the Stadium Lease established two six-month seasons, one for StadCo and one for the Stadium Authority (Stadium Lease at Section 1.2.1, 2012). The AAB agreed with StadCo's argument and reduced the original property tax assessment by half.

The County Assessor filed a lawsuit to reverse this decision stating that StadCo was the principal at the Stadium (and the Stadium Authority was subordinate) with its year-round access and control to key areas and revenue streams, notably the luxury suites, restaurants, and other commercial areas. However, on January 23, 2024, the Superior Court of California, County of Santa Clara (Superior Court) denied this challenge, allowing the AAB property tax reassessment to stand resulting in a \$180 million cut in property taxes over 30 years (County of Santa Clara et al. vs. Santa Clara County Assessment Appeals Board No. 1, Superior Court of California, County of Santa Clara, Case No. 19-CV-347946).

The revenue shortfall from the AAB decision is large. The impact is decreased funding for multiple entities:

- SCUSD: 40% (-\$2.4 million per year).
- West Valley College: 11%.
- City of Santa Clara: 10%.
- County of Santa Clara: 18%
- Santa Clara County Office of Education: 4%.
- A fund created under state law for augmenting local education revenue: 15%.
- A local water district: 2%.

The judgment also caused the same entities to have to issue a one-time refund of \$36 million to the 49ers, including \$13 million from SCUSD.

In hindsight, this appears to be another well-planned long-term play by the 49ers as the Stadium Lease specifically gave them authority to challenge a property tax assessment (Stadium Lease at Section 9.1.2, 2013). The Civil Grand Jury learned that the 49ers designed the contract so a year-long property tax bill could eventually be contested. While this may have been a winning tax minimization strategy and a well-calculated and sophisticated 49ers negotiating position, local schools and the greater community are the losers.

## Measure J – New Jobs

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**Finding 2: The City has not studied the actual economic impact of the Stadium. The 49ers have produced their own studies, which they use to tout long-term unverified benefits and frame all discussions surrounding the success of the Stadium.**

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The text of Measure J projected that there would be significant economic benefits resulting from activities that support the Convention Center, local hotels, and restaurants, and that the Stadium would “encourage new restaurant and retail services to support daily business activity” (Measure J at Section 2.B.1, 2010). The broader long-term economic benefits from the Stadium that were cited in Measure J are either unproved or unrealized. Recent media reports issued by the 49ers purporting to show large economic benefits from the Stadium are self-serving and incomplete (Simon, 2023). In fact, the City has never done a comprehensive assessment of the City-wide local economic benefit of the Stadium, which could support or refute the claims made by the report conducted by the 49ers. Although the Stadium’s website continues to advertise opportunities for temporary gameday and special event positions, it is unclear how many permanent positions were created after the initial construction of the Stadium (Avalos, 2014). Additionally, there is no evidence that the Stadium has increased Convention Center business, or that the Convention Center has benefitted from NFL and non-NFL events. Likewise, Measure J’s promise that the City’s Northside would become an entertainment destination has not come to fruition.

Local hotels have seen an increase in their revenues due to large NFL and non-NFL events, as was expressed by general managers who called into the August 30, 2022, City Council meeting, during which the Council, acting in its capacity as the Board, was going to decide on a settlement agreement with the 49ers. The settlement agreement was related to the termination dispute with ManCo, and the Civil Grand Jury learned that the calls were coordinated by 49ers staff.

In sum, Measure J’s promise to create new jobs and realize economic benefits related to the Convention Center has not been meaningfully evaluated. Nevertheless, the 49ers tout this benefit to the City during disputes with the Stadium Authority. This topic is beyond the scope of the Civil Grand Jury’s investigation. However, it is an important element in understanding the success of Measure J and should be evaluated by the City.

## Measure J – Taxpayer Protections

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**Finding 3: Measure J's promise to protect the City's General Fund has been realized. The funding structure from the Stadium Lease has successfully allowed the Stadium Authority to pay off Stadium construction loans and fund required Waterfall reserves faster than originally planned.**

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Measure J stated that the Stadium development would not require or impose new or increased City taxes. Stadium Authority would lease the Stadium to an affiliate of the 49ers (StadCo) for an initial term of 40 years. The affiliate would pay a minimum base rent as well as the Stadium's operating expenses if the expenses exceeded the Stadium Authority's operating revenues. This would ensure that the Stadium Authority would have the funds required to pay both the rent to the City and operating expenses of the Stadium.

The promise of taxpayer protections has worked out well for the City and, by extension, the Stadium Authority. City taxpayers have been well-protected from covering the cost of building and operating the Stadium. In addition, the Stadium's funding structure has allowed the Stadium Authority to pay down construction loans and fund reserve accounts ahead of schedule. The Stadium Authority has sufficient revenue flows to pay for its share of the Stadium operations expenses, to pay for the Stadium Authority staff, to pay down the loans incurred building the Stadium, and to provide funding for various reserve accounts related to long-term Stadium operations.

## Measure J Promise on City Revenue: Missed Opportunities, Unfavorable Contracts

The Stadium's operating contracts have favored the interests of the 49ers to the long-term detriment of the City. This section contains some of the analysis and commentary created by the Grand Jury Expert's thorough review of Stadium Authority and the 49ers records. The topics covered in this section are:

- How the Money Flows to the City.
- How the Money Flows and Does Not Flow to the Stadium Authority.
- The Challenge with PSCs.
- Deficiencies in the Management Agreement with ManCo.
- Luxury Suite Revenue.
- Buffet Costs.

## **How the Money Flows to the City**

In the early years of the Stadium's operations, the total money estimated to flow annually to the City was approximately \$3 million, or roughly 1% of the City's annual budget. According to information learned by the Civil Grand Jury through its investigation, this was estimated to grow to about \$4 million in fiscal year 2024-2025.

Measure J contains a provision for excess revenues to be paid to the City, but this provision has not been realized as of today. The City receives money primarily from the following three sources (Measure J at Section 4.3, Article 4, 2010) which are broken out below.

### **1) Fixed Base Rent**

As noted above, fair market rent for the City's land, as defined by Measure J, consists of Fixed Base Rent and Performance Rent. The annual fixed rent from the Stadium Authority to the City increases yearly. It started at \$180,000 and beginning in year 11, has grown to \$1 million for the current fiscal year (Measure J at Section 17.20.020 (f)), 2010). The Fixed Ground Rent has been consistently paid as outlined in Measure J.

### **2) Senior and Youth Fee**

There is a 35-cent Youth and Seniors Program NFL game ticket surcharge. The surcharge has delivered \$230,000-\$250,000 to the City annually (Santa Clara Stadium Authority, 2024). The May 2024 settlement agreement increases the surcharge to 40 cents per NFL game ticket, raising approximately an extra \$30,000 annually.

### **3) Performance Rent**

Performance Rent is the other element that is designed to make up part of the calculation that results in a payment of fair market value to the City. Performance Rent is a complicated feature in Measure J. Performance Rent is derived from the profits from the Stadium Authority-owned non-NFL events. For a variety of reasons, the City's General Fund has not consistently received as much of the anticipated money as expected. And the lack of Performance Rent has been a major source of mistrust between the City, the Stadium Authority, and the 49ers. Additionally, it has become the most controversial and most discussed Stadium-related item during Council meetings.

Per the Stadium Lease Article 6.4.2, Performance Rent is calculated from half of the Stadium Authority's profits from non-NFL events (Figure 4, row 1), less credits for half of the Fixed Ground Rent (Figure 4, row 5), and less credits for accumulated overages in PSCs not reimbursed to StadCo from the current and prior years.

# OUTPLAYED

Figure 4 below uses information obtained from the Stadium Authority financial records as referenced in the Methodology section of this report.

		All figures \$K	Actual 2014-15	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19	Actual 2019-20	Actual 2020-21	Actual 2021-22	Actual 2022-23	TBD 2023-24	Budget 2024-25
NNE to SCSA	1	Non-NFL Events (NNE) Net Income	\$5,208	\$6,079	\$5,317	\$5,163	\$19	(\$2,741)	(\$510)	(\$286)	\$8,809	\$7,756	\$6,000
	2	Original 2013 Forecast	\$5,000	\$5,150	\$5,305	\$5,464	\$5,628	\$5,796	\$5,970	\$6,149	\$6,334	\$6,524	\$6,720
	3	% Actual vs. 2013 Forecast	104%	118%	100%	94%	0%	-47%	-9%	-5%	139%	119%	89%
Payments to City of Santa Clara	4	City Performance Rent = 50% NNE NI	\$2,604	\$3,040	\$2,659	\$2,582	\$9	(\$1,371)	(\$255)	(\$143)	\$4,405	\$3,878	\$3,000
	5	Credit – 50% Base Ground Rent	(\$90)	(\$108)	(\$125)	(\$143)	(\$160)	(\$178)	(\$195)	(\$213)	(\$230)	(\$248)	(\$500)
	6	Credit – PSCs over threshold	\$0	\$0	\$0	(\$660)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	7	Net Performance Rent to City	\$2,514	\$2,932	\$2,534	\$1,779	\$0	\$0	\$0	\$0	tbd	tbd	tbd
	8	Fixed Ground Rent Paid to City	\$180	\$215	\$250	\$285	\$320	\$355	\$390	\$425	\$460	\$495	\$1,000
	9	Senior and Youth fees to City (estimate)	\$230	\$230	\$230	\$230	\$230	\$250	\$100	\$230	\$250	\$250	\$230
	10	Actual Payments to City General Fund	\$2,924	\$3,377	\$3,014	\$2,294	\$550	\$605	\$490	\$655	\$710	\$745	\$1,230
	11	Original Measure J Estimates	\$2,820	\$2,913	\$3,007	\$3,104	\$3,204	\$3,306	\$3,410	\$3,517	\$3,627	\$3,739	\$4,090
	12	% Actual vs. 2013 Forecast	104%	116%	100%	74%	17%	18%	14%	19%	20%	20%	30%

**Figure 4: History of non-NFL Events Income and Stadium Authority payments to the General Fund**

Figure 4, Rows 1-3 show that net income from non-NFL events was at or near original expectations for the first four years of the Stadium operations, and the City received almost \$10 million in Performance Rent. Since then, the City has received zero Performance Rent due to:

- 1) Two controversial years of zero profits or losses on ManCo-managed non-NFL events (fiscal years 2018-2020).
- 2) Two years of almost no non-NFL event activity due to COVID-19 (fiscal years 2020-2022).
- 3) Most recently, despite a non-NFL event net income record high, due to the dispute over PSCs (fiscal years 2022-2024).

The May 2024 settlement agreement allowed \$7.1 million of Stadium Authority litigation reserves to be liquidated and paid to the City as Performance Rent for the fiscal years 2022-2024. The May 2024 settlement agreement is explained fully in the section of this report titled [“Management Agreement Termination, Litigation, and Settlements.”](#)

## How the Money Flows and Does Not Flow to the Stadium Authority

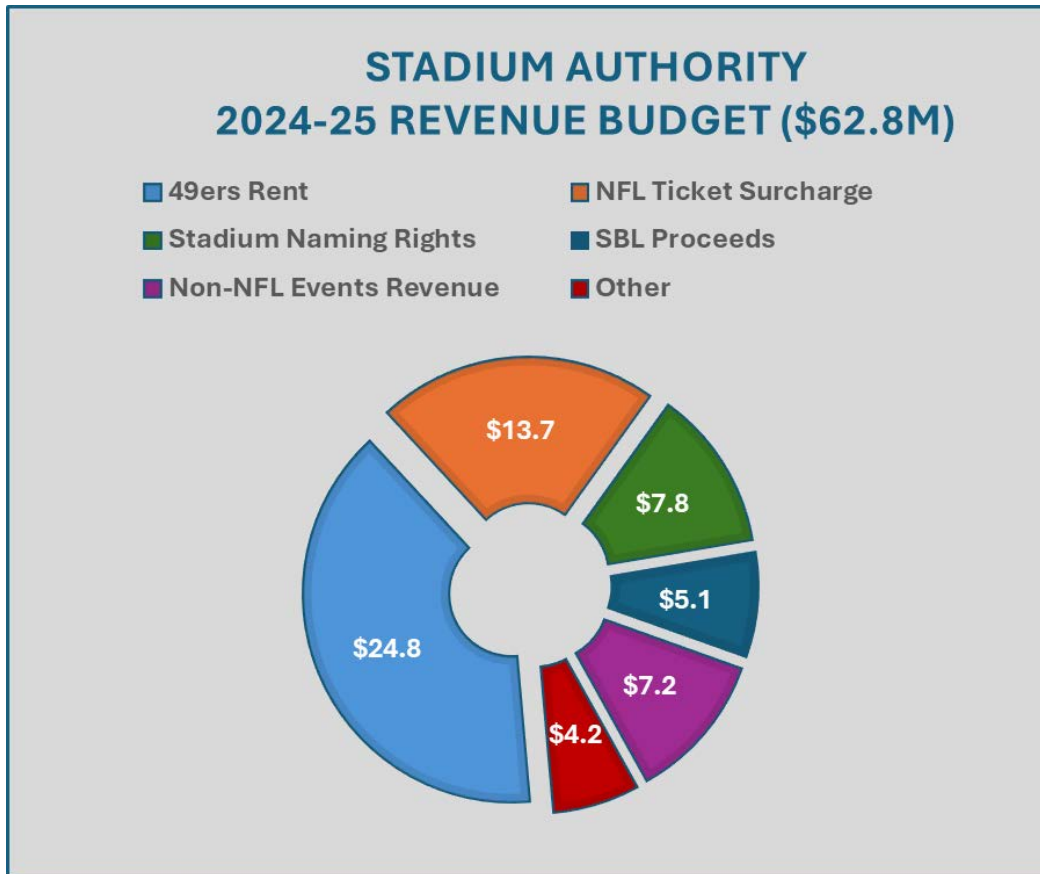
### Stadium Authority Revenues

The bulk of the Stadium Authority revenue comes from five sources:

- 1) Facility Rent paid by the 49ers.
- 2) A 10% ticket surcharge on all NFL ticket sales.
- 3) The Stadium Naming Rights payments received from Levi Strauss & Co.
- 4) The SBL revenue from payments for new or transferred seat licenses.

## 5) Revenue from non-NFL events.

Other much smaller sources of revenue include interest income and a \$4 ticket surcharge for non-NFL events. Figure 5 below shows a revenue budget of \$62.8 million for fiscal year 2024-2025 (Santa Clara Stadium Authority, 2024).



**Figure 5: Stadium Authority 2024-25 Revenue Budget**

The May 2024 settlement agreement will change the Stadium Authority's fiscal year 2024-2025 budget. It should increase revenue in future years by raising the non-NFL ticket surcharge from \$4 to \$8.

## Stadium Authority Expenses

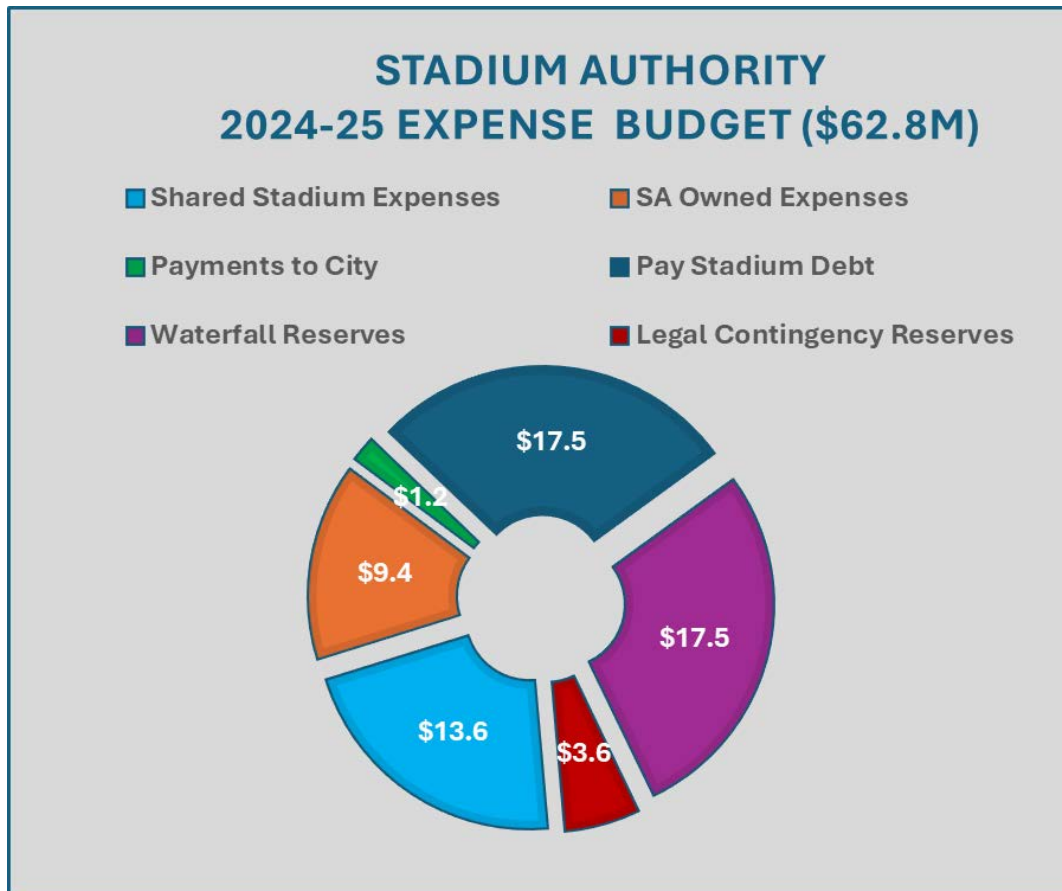
The Stadium Authority's expense budget has six main categories:

- 1) The Stadium operations expenses shared with the 49ers, including items such as engineering, groundskeeping, and insurance.
- 2) Stadium operations and management expenses owned by the Stadium Authority, including the costs of servicing and marketing SBLs, utilities, and the Stadium Authority administrative expenses.



- 3) Payments to the City for Fixed Ground Rent, Youth and Senior Services, and Performance Rent derived from non-NFL events net income. As noted previously, Performance Rent has been zero in recent years because of the legal dispute with the 49ers over PSC.
- 4) Debt Service: The Stadium Authority has been successfully paying down the Stadium loans over the past 10 years.
- 5) “Excess revenue”: All excess revenue flows through what is known as the “Waterfall,” described in the next section.
- 6) Payments to legal contingency reserves related to the two disputes: PSCs and buffet costs.

Figure 6 shows the six categories of the Stadium Authority’s \$62.8 million fiscal year 2024-25 expense budget (Santa Clara Stadium Authority, 2024).



**Figure 6: Santa Clara the Stadium Authority 2024-25 Budget – Expenses**

The May 2024 settlement agreement eliminates the expense category 6 (above) Legal Contingency Reserves. All of the money held in litigation reserves is now freed up. Under the settlement agreement, the City will receive approximately \$7.1 million of Performance Rent for the 2022-23 and 2023-24 lease years (City of Santa Clara, May 23, 2024).

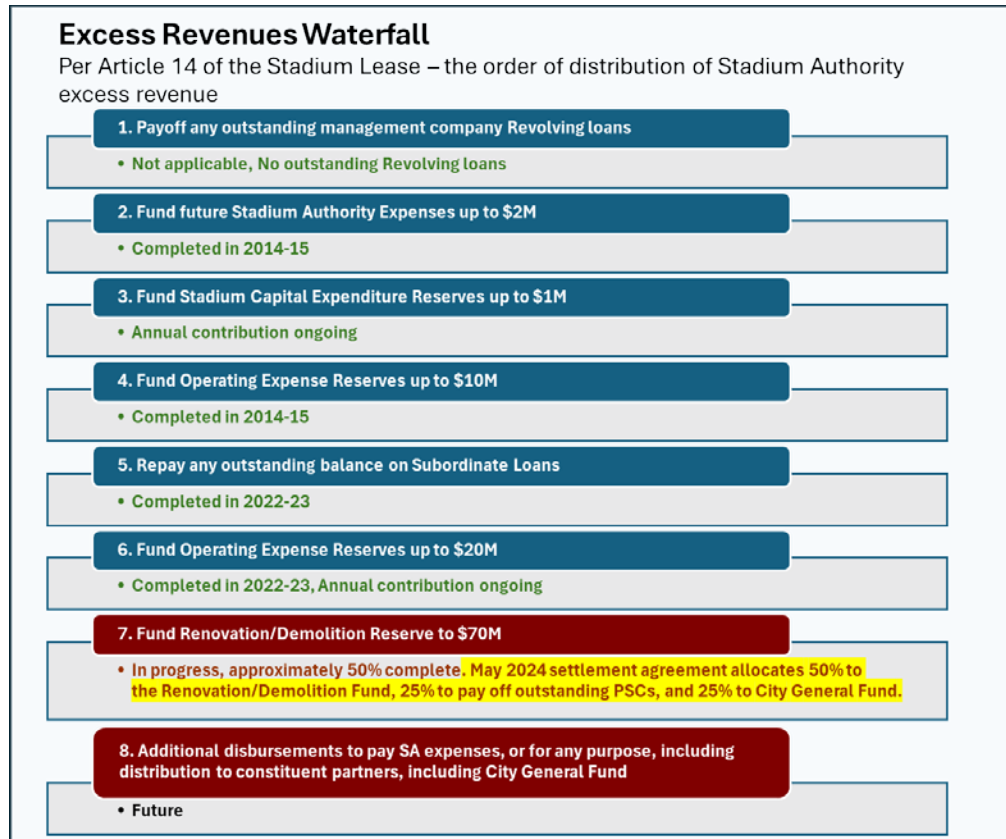


## **Stadium Authority Excess Revenue and the Waterfall**

Any Stadium Authority money left after payment of operating expenses and debt service is known as “Excess Revenue” (Stadium Lease Agreement, 2013). The Stadium Authority has had Excess Revenue yearly since the Stadium began operations in 2014. Article 14 of the Stadium Lease prescribes exactly how all the Stadium Authority Excess Revenue is applied. The structure of how Excess Revenue is applied is frequently referred to in the Stadium Authority budget presentations as the Waterfall. The Waterfall ensures sufficient funds are available for ongoing Stadium operating expenses, capital improvements, end-of-life demolition, and paying off any revolving or subordinate loans. The Waterfall can be likened to a forced savings plan.

The Waterfall conceptually contains eight cascading buckets of different funds. The first bucket/fund is filled with Excess Revenue from the Stadium Authority budget before the second bucket receives any funds. The second bucket must be filled before the third budget receives funds. The process continues until seven buckets are filled. The key point is that the Stadium Authority has no flexibility in the distribution of Excess Revenues until all the first seven buckets are filled. As of the release of this report, Buckets 1 through 6 are filled. Bucket 7, which requires \$70 million for the Stadium Demolition Fund, is approximately 50% filled.

Once Bucket 7 is filled, which could happen by the end of this decade, Stadium Authority leadership could have more latitude in deciding how to allocate Excess Revenue, including more diversions to the City’s General Fund. However, the Stadium is aging, and Capital Reserves will be nearly depleted in 2025, so additional Excess Revenues may be needed to fund capital improvement/renovation projects. Figure 7 uses information obtained by the Civil Grand Jury to demonstrate how funds are distributed throughout the Waterfall.



**Figure 7: Stadium Authority Excess Revenue Distribution Waterfall**

The rigidity of the Waterfall has frustrated some City officials, who have been vocal about wanting more of the Stadium/Stadium Authority revenue to reach the City’s General Fund. However, this same rigidity ensures the Stadium Authority’s long-term financial health and the Stadium’s continued financial viability by requiring the Stadium Authority to set aside sufficient funds for future needs, including long-term infrastructure maintenance and improvements.

The May 2024 settlement agreement allows for significant changes to how Waterfall Bucket 7, the Renovation/Demolition Fund, will receive Excess Revenues. Instead of receiving 100% of Excess Revenues, the Renovation/Demolition Fund will only receive 50% and the remaining 50% will go to StadCo to repay the outstanding PSC balance. Once the \$11.5 million PSC balance is paid off after the 50% allocation to the Renovation/Demolition Fund, the remaining amounts will flow to the Stadium Authority, with the option to distribute these funds to the City’s General Fund.

## **The Problem with PSCs**

The costliest and longest continuous dispute between the 49ers and the Stadium Authority has been over PSCs. The core of the dispute has been over a \$170,000 per-game Public Safety Cost Threshold (Threshold), or maximum value, originally specified under Measure J that the 49ers must pay for the cost of public safety services at NFL events. Measure J also provided a 4% annual increase to the Threshold. The Threshold could be renegotiated if the costs exceeded the Threshold for three consecutive years.

The Threshold was greatly underestimated; in fact, since the Stadium opened in 2014, PSCs have increased substantially and have been well over the Threshold for all games/seasons. Because of the complicated Performance Rent calculations (i.e., any dollar amount over the Threshold becomes an expense or “credit” taken out of Performance Rent revenue), the City has been the biggest loser in the PSC dispute.

### **Public Safety Staffing**

PSCs for Stadium events include all the costs of planning for safety at stadium events, safety equipment costs, and the full costs of public safety officers for controlling traffic and pedestrian flows, monitoring parking areas, monitoring stadium entrances/exits, monitoring adjacent residential neighborhoods, and providing backup support for any Stadium incidents. PSCs also include fire and public works services. PSCs for 49ers games are paid as follows:

- The City bills StadCo for PSCs for each 49er game.
- StadCo reimburses the City.
- The Stadium Authority reimburses the 49ers for all PSCs above the Threshold.

City Police Officers can be mandated to work at Stadium events when staffing and security needs dictate. Even with mandated overtime, the City must rely on officers from other jurisdictions, such as surrounding city police departments, the County Sheriff’s Office, and the California Highway Patrol. Normally, at least 200 badged officers are deployed for large events, and the total costs, including overtime and benefits, are included in the PSC bill from the City. It should be noted that the full security costs for Stadium events also include private security personnel hired by ManCo. Private security personnel are often in the range of 500-800 additional staff. These costs are separate and in addition to PSCs.

The Civil Grand Jury did not widely investigate safety costs and contracts at other comparable sports venues but learned that PSCs for Stadium events are among the highest for any stadium in the U.S. for a variety of reasons, including:

- The Bay Area is an expensive location, and pay rates for local police officers, including the Santa Clara Police Department (SCPD), can be among the highest in the nation.

- Venues like the Oakland-Alameda County Coliseum (Oakland) or Oracle Park (San Francisco) are in larger cities with larger police forces. These cities have more flexibility in assigning officers or getting volunteers to work at stadium events. The SCPD is not as large, and, per a 2021 Memorandum of Understanding (MOU) between the City and its Police Officers Association (POA), the City pays its officers double-overtime (2x regular pay rate) purportedly to incentivize enough officers to volunteer to work at 49ers games.
- Unlike some stadiums (e.g., Oakland-Alameda County Coliseum), the Stadium is located near suburban neighborhoods, not near major highway exits. It has access from multiple ingress points and a distributed parking footprint, which requires more traffic/pedestrian control officers than at other stadiums.

## Public Safety Cost History

Figure 8 below shows a history of PSCs from fiscal years 2014-2024 and what the payments entail based on information obtained from Stadium Authority financial records as referenced in the Methodology section of this report.

Row 8 shows how much over the Threshold the PSCs have been each year. Since the 2019-20 football season, the gap between actual PSCs and the Threshold value has been about \$3 million per year (except for the COVID-19-shortened 2020-21 season). Row 5 shows that PSC per game have more than doubled between the 2014-15 and 2023-24 seasons.

		All figures \$K, except for \$ football games										
		Actual 2014-15	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19	Actual 2019-20	Actual 2020-21	Actual 2021-22	Actual 2022-23	TBD 2023-24	Budget 2024-25
Public Safety Costs	1 Total PSCs	\$2,455	\$2,438	\$3,085	\$2,633	\$2,995	\$5,417	\$888	\$5,303	\$5,716	\$6,034	
	2 PSC adjustments (1)	\$0	\$0	\$0	\$4	\$8	\$790	\$128	\$308	\$94	\$0	
	3 Billable PSCs	\$2,455	\$2,438	\$3,085	\$2,637	\$3,003	\$6,207	\$1,016	\$5,611	\$5,810	\$6,034	
	4 # 49ers Games @ Levi's	10	10	10	10	10	12	5	10	12	12	
	5 PSCs per game	\$246	\$244	\$309	\$264	\$300	\$517	\$203	\$561	\$484	\$503	
	6 PSCs Threshold Per Game (+4%/yr)	\$170	\$177	\$184	\$191	\$199	\$207	\$215	\$224	\$233	\$242	\$360
	7 Allowable PSCs for season	\$1,700	\$1,768	\$1,839	\$1,912	\$1,989	\$2,482	\$1,076	\$2,237	\$2,792	\$2,904	
	8 PSCs Over Threshold	\$755	\$670	\$1,246	\$725	\$1,014	\$3,725	(\$60)	\$3,374	\$3,018	\$3,130	
Public Safety Payments	9 PSCs Paid by 49ers (StadCo)	\$1,257	\$1,478	\$1,557	\$1,680	\$1,671	\$2,006	\$890	\$1,814	\$2,241	\$0	
	10 PSCs Paid by Offsite Parking Fees	\$443	\$290	\$355	\$293	\$317	\$476	\$0	\$423	\$551	\$613	
	11 PSCs Paid by SCSA Discretionary Fund	\$755	\$670	\$1,173	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	12 PSCs Paid by 49ers pending litigation	\$0	\$0	\$0	\$664	\$1,013	\$3,664		\$3,165	\$2,856	\$3,632	
	13 Total PSCs Paid	\$2,455	\$2,438	\$3,085	\$2,637	\$3,001	\$6,146	\$890	\$5,402	\$5,648	\$4,245	
	14 Unpaid PSCs (contested depreciation)	\$0	\$0	\$0	\$0	\$1	\$61	\$126	\$209	\$162	\$0	

1. Includes Workers Comp & Depreciation adjustments

**Figure 8: History of PSCs, PSC Threshold, and PSCs Over the Threshold**

It is difficult to ascertain why the costs have increased so much. In general, the increase has been attributed to a revised safety plan to provide a heightened level of security; increases in Worker's

Compensation costs; the previously mentioned move to double-overtime pay for SCPD; an increase in the City-calculated overhead rates applied to all City staff working at the Stadium events; and general pay raises. All of these factors appear to have contributed to the increase; however, the Civil Grand Jury could not confirm that there was a definitive cause that accounted for the escalation.

### **History of the PSC Dispute**

Critical to the PSC dispute and ensuing litigation are the stipulations in Measure J and in the Stadium Lease regarding the Threshold limit; the relationship to Performance Rent; and the allowable three-year renegotiation of the Threshold.

The Stadium Lease states if the Stadium Authority cannot or will not reimburse StadCo for PSCs above the Threshold value, then StadCo can credit any unpaid PSCs against Performance Rent (from the profits of non-NFL events) owed by the Stadium Authority to the City's General Fund (Stadium Lease at Section 7.5.3(a), 2012). Additionally, if the Threshold is exceeded over a consecutive three-year period the amount can be renegotiated (Stadium Lease at Section 7.5.4(b), 2012).

In 2017, the Stadium Authority called for negotiations on the Threshold at the end of the third season. The Stadium Authority contends the 49ers did not negotiate in good faith, and the Threshold remained unchanged. Thereafter, the Stadium Authority stopped reimbursing StadCo for PSCs above the Threshold.


In 2018, StadCo contested payments to the City for PSC overages (Figure 8, Row 12), and they began to accumulate PSC overages as credits against Performance Rent. Income from non-NFL events was negligible from fiscal years 2018 through 22. Therefore, there was no Performance Rent, and StadCo's PSC credits had no impact. Income from non-NFL events for the past two seasons, however, has been good (via performances from the likes of Taylor Swift, Beyoncé, Ed Sheeran, etc.), but the Stadium Authority prudently put this income into litigation reserves instead of paying Performance Rent payments to the City.

The PSC dispute was settled in May 2024. The agreement includes:

- The 49ers allowed a one-time Threshold increase of \$108,000 to \$360,000 per game. The original 4% annual inflation adjustment stayed in place.
- The non-NFL ticket surcharge that attendees pay will double from \$4 to \$8, and this money will go towards paying the 49ers for PSCs over the new Threshold.
- The 49ers agreed to allow the Stadium Authority to pay unpaid PSCs from prior seasons (approximately \$11.5 million) by diverting 25% of excess revenues that flow through the Waterfall over the next several years.

Consistent with Measure J, the Stadium Lease gave sole discretion to the 49ers to approve any changes to the PSC Threshold (Stadium Lease 7.5.4(b), 2012). This has proven to be an expensive arrangement that gives StadCo control over determining the key element affecting Performance Rent.

### The Problem with the Management Agreement



“The Stadium Authority will be responsible for the management and operation of the Stadium for NFL Events, non-NFL Events and Civic Events, and 49ers Stadium Company will cooperate with the Stadium Authority in the operation of the Stadium.” (Measure J, Article 8)

As noted previously, the Management Agreement is a three-way agreement between the Stadium Authority, StadCo, and ManCo, which was signed in March 2012. It is a glaring example of the Stadium contract provisions that heavily favor the 49ers’ interests and something that was never anticipated by Measure J.

### The Stadium Authority Accepted a Conflicting Interest

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**Finding 4: The City/Stadium Authority agreed to use ManCo, an affiliate of the 49ers, with an inherent conflict of interest to handle the Stadium Authority’s financial interests in non-NFL events.**

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While Measure J contemplated that the Stadium Authority may contract with a Stadium management firm to oversee the day-to-day operations of the Stadium, Measure J made clear that the Stadium Authority was supposed to be responsible for managing the Stadium. (Measure J at Section 8.1(a), 2010). Measure J further states that StadCo is required to “cooperate” with the Stadium Authority in that regard. (Measure J at Section 8.1, 2010). That is not the reality of the current arrangement. The first problem began when the Stadium Authority agreed to use ManCo. The Civil Grand Jury learned that, during negotiations, the 49ers demanded that the Stadium Authority agree to hire ManCo, an affiliate of the 49ers, and it agreed. When the Stadium Authority agreed to use ManCo to provide management of Stadium Authority’s non-NFL events, it should have protected itself from risks associated with the inherent conflicts of interest in performing this role, particularly given StadCo’s competing financial interests in non-NFL events. Specifically, StadCo can earn revenues at the same non-NFL events for which ManCo is responsible for negotiating event terms on behalf of the Stadium Authority. The terms

negotiated by ManCo directly impact the profitability the Stadium Authority achieves at these events.

### **The Stadium Authority Agreed to a Lopsided Termination Provision**

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**Finding 5: The City/Stadium Authority failed to ensure that the Management Agreement included a fair termination clause.**

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The Management Agreement states that the Stadium Authority may terminate the agreement only by written notice upon the occurrence of any of the following (Management Agreement, Article 8.1.1, 2012):

1. Fraud or intentional and material misrepresentation by or at the direction of the ManCo in connection with this Agreement.
2. Misappropriation or conversion of any funds received pursuant to this Agreement by or at the direction for ManCo.
3. Willful misconduct of ManCo resulting in an Event of Default, which Event of Default is not cured in accordance with Article 11 of the Management Agreement.

It is notable that the contract termination bar is lower for both StadCo and ManCo, requiring only an occurrence of an Event of Default specified in Article 11 of the Management Agreement. An Event of Default is a failure to pay or failure to perform. The Stadium Authority, however, can only terminate in the Event of Default if they also demonstrate that the Event of Default is caused by “willful misconduct of ManCo.” This is a much harder standard to establish, typically requiring proof of intentional conduct done with the knowledge that the event will occur. Barring fraud, misappropriation of funds, or willful misconduct, the Stadium Authority can terminate the Management Agreement only if StadCo also gives approval.

This is a prime example of the superior negotiation position that StadCo and ManCo have established over the Stadium Authority, and it is/was a large shift from the cooperative spirit written under Measure J. The Civil Grand Jury also reviewed the termination clauses for the management agreements at Petco Park (San Diego), Golden 1 Center (Sacramento), and SAP Arena (San José) and found no similar termination language.



## Lack of Financial Transparency

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**Finding 6a: The City/Stadium Authority failed to ensure the Management Agreement provided the Stadium Authority with full access to financial records.**

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**Finding 6b: ManCo's financial transparency with the Stadium Authority has improved with the implementation in 2022 of a new financial management system.**

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**Finding 6c: Transaction-level testing generally supports ManCo's reporting of financial results for non-NFL events.**

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Compounding the fact that the Stadium Authority agreed to accept ManCo's conflicting interests, the Stadium Authority also failed to ensure the Management Agreement requires ManCo to provide the Stadium Authority with full access to financial records. The Stadium Authority conceded it should have done a better job with the agreement language.

The Civil Grand Jury learned that from the outset the 49ers were concerned about their information being subject to California Public Record Act requests. And over the years there have been numerous disputes between the Stadium Authority and ManCo over lack of transparency, lack of complete financial documents, and suspicions of inaccurate reporting. It appears that ManCo either did not understand or did not give importance to the type of transparency required for a public Stadium.

The Civil Grand Jury learned that for many years, when City/Stadium Authority finance staff requested financial source documents, they would have to physically go to the 49ers offices where they would be allowed to look at documents or spreadsheets; in that manner, City/Stadium Authority staff spent years attempting to verify financial records that belonged to the Stadium Authority. Much distrust and acrimony have stemmed from the fact that the Stadium Authority had to struggle to get access to complete source documents in order to authenticate revenues and expenditures. As noted earlier, this led to the Board initiating third-party audits over the last decade to verify ManCo records. It should be stressed that every one of those audits had



disclaimers noting that there had been insufficient underlying supporting documents. With respect to these audits, the Civil Grand Jury could not determine whether ManCo's earlier accounting system was deficient and, therefore, they were unable to supply source documentation, or whether ManCo was hiding something.

In a cover letter to the Adopted Fiscal Year 2019/20 Operating, Debt Service, and Capital Budget, presented to the Board, dated March 27, 2019, then-City Manager/Stadium Authority Executive Director explained the situation as follows:

Over the past years, [ManCo] has commingled its portion of the revenues and expenses of the Stadium Authority into its San Francisco 49ers financial management system. There has been dispute over possession of documents, access to financial information, and overall improved knowledge of the complete set of financial information pertaining to the Stadium Authority. [ManCo] now agrees to work with the Stadium Authority to establish a segregated financial management system for the Stadium Authority, where Stadium Authority staff has full access to the system, supporting documentation, and in real-time (not at the end of the fiscal year or on other terms that require the Stadium Authority to always look backwards to understand financial activity).

The financial management system was not put into place until April 2022. The Civil Grand Jury has learned that since then City/Stadium Authority staff has found it much easier to do their jobs and they feel more confident about ManCo's reporting.

In addition to basic source documents needed to verify accounts, the 49ers have insisted that other financial information is proprietary and must remain confidential. The 49ers have maintained a need to keep certain non-NFL financial information private because concert promoters and performers require it. Given that ManCo works for the Stadium Authority, these restrictions are untenable and should be unacceptable to the Stadium Authority. The management agreement anticipated that ManCo would have confidential and proprietary information and that those records would have to be audited, examined, or inspected by the Stadium Authority (Management Agreement at Section 15.2, 2012). Thus, it was expected that ManCo would provide these documents to the Stadium Authority.

Given the history of secrecy and the failed audits, the Civil Grand Jury was interested in understanding if ManCo was properly accounting revenue and expenses. The Grand Jury Expert undertook a sampling of ManCo records to assess the accuracy of ManCo's reported results. They reviewed samples of transaction-level records covering \$4.8 million of expenses for non-NFL events, both ticketed and non-ticketed, for the fiscal years 2017-2018, 2018-2019, 2019-2020, and 2022-2023. For each transaction, the Expert assessed whether expenses had adequate supporting documentation and if the transactions were recorded accurately in the accounting system.

The Civil Grand Jury Expert concluded that their transaction-level testing “generally supported” ManCo’s reporting of financial results for non-NFL events. Further, the Civil Grand Jury learned that the detail and timeliness of financial records provided by ManCo to the Stadium Authority has improved over the past two years since the implementation of a new financial management system, which can be accessed by Stadium Authority finance staff.

### **Stadium Authority’s Lack of Input on Non-NFL Bookings**

Compounding the fact that Stadium Authority agreed to accept ManCo’s conflicting interests, it also failed to ensure the Management Agreement provides the Stadium Authority with sufficient input on booking non-NFL events.

Under Measure J, the Stadium Authority was supposed to be responsible for managing the Stadium, and it was StadCo that was supposed to “cooperate” with the Stadium Authority. Now, the Stadium finds itself in competing different power dynamics. First, under the Management Agreement, ManCo has the sole authority to book events on behalf of the Stadium Authority and negotiate all terms with promoters/artists. As such, ManCo has all the power, but none of the risk if events are not profitable for the Stadium Authority. Conversely, the Stadium Authority has all the risks associated with ticketed non-NFL events but does not have any role in decision-making. Amendment 1 to the contract further clarified that ManCo has “sole” authority to book and negotiate. The Civil Grand Jury learned that the 49ers demanded this, and the Stadium Authority went along.

Second, the Stadium Authority has failed to sufficiently exercise the little input in booking non-NFL events the contract provides. Section 4.10 of the Management Agreement requires a marketing plan that details ManCo’s plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL events for the Stadium Authority, and the plan should be mutually agreed upon by ManCo and the Stadium Authority.

According to ManCo, it develops non-NFL event marketing plans annually and indicated that the Stadium Authority is generally not involved in the process. While the Stadium Authority could not provide evidence that it attempted to formally provide ManCo with input and feedback on the plans, the Board is aware of Stadium Authority staff’s dissatisfaction with ManCo’s marketing plans. For example, during a March 2, 2021, meeting, the Stadium Authority informed the Board that it had not agreed with the 2019 and 2020 marketing plans developed by ManCo because the plans lacked sufficient detail.

According to Section 3.3.1 of the Management Agreement, if the Stadium Authority is unhappy with the results of the marketing plan after attempting to work with ManCo to improve it, the

Stadium Authority can require that ManCo subcontract management services as long as both parties agree on the contractor; otherwise, the Stadium Authority and ManCo must work through a dispute resolution process.

As an initial step toward pursuing a formal dispute resolution process, the Stadium Authority hired a consultant to prepare an assessment of ManCo's marketing plans and sought the assistance of the Board to make the assessment available to ManCo for review and adoption to address its concerns. On February 22, 2022, the consultant presented Board members with their assessment of ManCo's annual Levi's Stadium Events Marketing Plans (Marketing Plan) for 2020 and 2021, but Board members disagreed on whether there was a need to give the consultant-prepared assessment to ManCo for consideration. Ultimately after debate, the Board passed a motion that referred the assessment to ManCo for their review and directed ManCo to return to the Board with an updated Marketing Plan for 2022. On March 15, 2022, ManCo sent a letter to the Board rejecting the assessment and consultant and refusing to spend any more time working with the consultant updating the Marketing Plan. On the same day, the Board passed a motion denying a contract amendment that would have continued using the consultant's services assessing the Marketing Plans and denying a motion that would have required ManCo to return with an updated 2022 Marketing Plan.

Because all these efforts were halted, the Stadium Authority failed to take any steps toward initiating a formal dispute resolution process despite some members verbally discussing their dissatisfaction with the Marketing Plans. In this way, the Stadium Authority ultimately failed to exercise its right to opine on the Marketing Plan.

## The Stadium Authority Does Not Hold ManCo Accountable for Successful Non-NFL Events

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**Finding 7a:** The City/Stadium Authority failed to ensure that the original Management Agreement and the 2022 settlement agreement contained sufficient language requiring specific items or methods and performance metrics to prioritize Stadium Authority revenue generation. This has resulted in a failure to hold ManCo accountable for the success of non-NFL events.

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**Finding 7b:** Stadium Authority failed to use the prescribed Marketing Correction Plan per Article 3.3.1 of the Management Agreement process to hold ManCo accountable for unsuccessful non-NFL event bookings.

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Compounding the fact that Stadium Authority agreed to accept ManCo's conflicting interests and sole authority, it also failed to ensure the Management Agreement adequately holds ManCo accountable for the success of non-NFL events.

### Non-NFL Ticketed Events

Figure 9 reflects the Stadium Authority's profitability for non-NFL ticketed events for the four fiscal years between April 1, 2017, and March 30, 2023, as reported by ManCo. Fiscal years 2020-21 and 2021-22 were excluded due to COVID-19. (Note: the Stadium Authority's fiscal year is April 1 – March 30<sup>th</sup> and the City's fiscal year is July 1 – June 30<sup>th</sup>. The Civil Grand Jury's investigation described in this report accounted for these schedules.)

FY 2022-23	FY 2019-20	FY 2018-19	FY 2017-18
\$6,521,092	\$(3,005,464)	\$(2,333,932)	\$1,623,598

**Figure 9: Stadium Authority Profit/Loss for Non-NFL Ticketed Events For Selected Years. Data from ManCo General Ledger.**

The fiscal years 2018-19 and 2019-20 reflected overall losses for the Stadium Authority's non-NFL ticketed events before rebounding in the fiscal year 2022-23. It should be noted that the losses occurring in fiscal years 2018-19 and 2019-20 were before the onset of the COVID-19 pandemic.

The Civil Grand Jury, with the assistance of the Grand Jury Expert, sought to investigate ManCo's processes for ensuring non-NFL ticketed event success and to identify the factors contributing to or detracting from the profitability of specific events for the Stadium Authority. For the four years identified in Figure 9, the Civil Grand Jury endeavored to examine the following information:

- Non-NFL ticketed event profitability goals or success measures for ManCo to meet, and/or consequences for failing to ensure events are profitable for the Stadium Authority.
- Non-NFL event Marketing Plans.
- All policies and procedures that guide the solicitation, negotiation, scheduling, and calendaring processes for non-NFL events.

The Civil Grand Jury also identified the universe of ticketed non-NFL events that were held during the four years. Of the 38 ticketed non-NFL events held, the Civil Grand Jury selected ten for detailed review to assess if adequate processes were in place to maximize potential event profit. Selection ensured a range of events were selected representing different types of events (concerts, football, soccer) and varying net revenue amounts. For each selected ticketed event, the Civil Grand Jury endeavored to review detailed records for all revenue and expense activity.

The Civil Grand Jury was unable to determine or conclude whether ManCo had adequate processes in place to maximize ticketed event profit for the Stadium Authority because documents provided by ManCo did not demonstrate support of said efforts. Specifically, the Civil Grand Jury learned that ManCo staff involved with booking ticketed events since fiscal year 2022-23, the only measure of success is to ensure that each non-NFL event is profitable (even making a single dollar would be considered a success) or that in total, the events held during the year made more net-revenue than the previous year. Also, the annual Marketing Plan is the sole document guiding how it approaches soliciting and negotiating non-NFL events. However, the Marketing Plans provided lacked sufficient detail to determine how ManCo executes the processes and do not demonstrate evidence of ManCo's methodologies employed to ensure profitable non-NFL events. Moreover, the documents ManCo did provide were insufficient to provide evidence that ManCo had adequate processes in place to maximize Stadium Authority profit.

Nonetheless, the Civil Grand Jury was able to identify several key reasons at a high level why the Stadium Authority experienced losses in fiscal years 2018-19 and 2019-20. Largely, reasons for the losses were attributed to continuing to book Pac-12 events when these events continually resulted in losses, particularly due to promoter guarantees exceeding the revenues generated. According to ManCo, it was required to book Pac-12 events due to long-term contracts covering multiple years. However, starting in fiscal year 2022-23, ManCo stopped booking Pac-12 events due to past losses, which resulted in more Stadium Authority profit that year.

ManCo also indicated that another reason for the losses was the City's curfew, which affected the ability to host nighttime non-NFL ticketed events during the week. However, a comparison of non-NFL ticketed events held during both profitable and non-profitable years reflected in Figure 9 showed no significant difference in the number or ratio of events held on weeknights versus weekends.

### Non-NFL Special Events

Figure 10 reflects the Stadium Authority's profitability for non-NFL special events for the four fiscal years between April 1, 2017, and March 30, 2023, as reported by ManCo. Fiscal years 2020-2021 and 2021-2022 were excluded due to COVID-19.

FY 2022-23	FY 2019-20	FY 2018-19	FY 2017-18
\$2,055,959	\$1,492,330	\$2,415,445	\$3,580,351

**Figure 10: Stadium Authority Profit/Loss for Non-NFL Special Events For Selected Years. Data from ManCo General Ledger**

Non-NFL special events were generally profitable for the Stadium Authority during this time period.

Similar to the non-NFL ticketed event analysis, the Civil Grand Jury attempted to evaluate ManCo's processes for ensuring non-NFL special event success and to identify the factors contributing to or detracting from the profitability of specific events for the Stadium Authority. To do this, the Civil Grand Jury sought to review, for the four years identified in Figure 10, non-NFL special event profitability goals or success measures for ManCo to meet or consequences for failing to ensure events are profitable for the Stadium Authority. The Civil Grand Jury also identified the universe of non-NFL special events that were held during the four years. Out of 359 non-ticketed events across the four years, the Civil Grand Jury selected 16 for detailed review to assess if adequate processes were in place to maximize potential event profit. Selection ensured a range of events were selected representing different types of events (businesses, high school, college, sports) and varying net revenue amounts.

Again, the documentation provided by ManCo was insufficient to determine whether adequate processes were in place to maximize non-NFL special event profit for the Stadium Authority. Though non-NFL special events were generally profitable as reflected in Figure 10, without support showing that ManCo's processes were robust, there is no assurance that the profits earned maximized the potential.

## **The Stadium Authority Failed to Ensure ManCo Staff is Incentivized to Prioritize Stadium Authority Success**

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**Finding 8a: There is no evidence showing that ManCo is negotiating to maximize Stadium Authority profits for non-NFL events.**

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**Finding 8b: The Stadium Authority has failed to ensure the Management Agreement requires ManCo to incentivize its staff to prioritize the Stadium Authority's success. There is no evidence that there are employee sales goals, metrics, or consequences related to unprofitable non-NFL events.**

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The Management Agreement contains a provision that calls for the development of a marketing and booking fee incentive. (Management Agreement at Section 7.3, 2012). Over the period reviewed by the Civil Grand Jury, ManCo earned \$150,000 in these fees, of which \$90,000 was earned for fiscal year 2022-23 when revenues were the highest for the Stadium Authority in years. This small marketing and booking incentive fee in the Management Agreement does not provide sufficient incentive for ManCo to prioritize Stadium Authority profitability over StadCo profitability associated with non-NFL events.

The Civil Grand Jury sought to understand the commission structure of ManCo employees who worked in the marketing team. The Civil Grand Jury sought documents detailing compensation structure including details regarding commissions of any employees involved in soliciting, negotiating, scheduling, and calendaring non-NFL ticketed events between fiscal years 2017-18 and 2022-23. ManCo provided summarized excerpts of some employees' commission structure, not the actual documents that detailed the structure. Without the original documents, the excerpts provided could not be verified or interpreted appropriately with the needed context. Thus, the Civil Grand Jury was unable to determine whether ManCo staff are incentivized to book non-NFL events to prioritize Stadium Authority profitability.

In any case, for special events, commissions do not appear to incentivize ManCo staff to prioritize Stadium Authority profitability. According to ManCo, it pays its special event staff commission based on the contract amount with the event host, rather than commission based on the profitability of the event. No documents were provided to validate this statement.



## **The Stadium Authority Fails to Exercise the Remaining Power it Has in the Management of the Stadium**

ManCo's responsibilities include all day-to-day operations of the Stadium. ManCo also has exclusive authority for booking, marketing, and promoting all non-NFL stadium events. Under Article 2.9 of the Stadium Management Agreement, one of ManCo's key goals is maximizing the Stadium Authority's operating revenue by booking successful non-NFL events. This responsibility was further reinforced under the August 2022 settlement agreement.

Under Articles 2.1 and 2.2, ManCo is required to meet periodically with Stadium Authority officials to coordinate Stadium activities and event scheduling to support the goal of successful non-NFL events. ManCo must also maintain an official calendar system showing all scheduled events. The Civil Grand Jury learned that scheduling meetings are infrequent, the calendar system is no longer used, and Stadium Authority officials often learn of newly scheduled non-NFL events only when these events are publicly announced.

Another component to the already problematic Marketing Plan is performance. If the Stadium Authority believes that ManCo has materially failed to meet the provisions of Article 4.10 of the Management Agreement, and this adversely affects bookings and/or net income revenue for non-NFL events, ManCo must submit to the Stadium Authority a Correction Plan per Article 3.3.1 of the agreement. If, after two years of operating under this Correction Plan, ManCo does not achieve these provisions, the Stadium Authority has the right to direct ManCo to hire a mutually agreed upon third-party provider to perform these services.

To this end, on March 10, 2021, Stadium Authority authorized hiring outside experts, Stone Planning LLC and the Rooney Sports & Entertainment Group, LLC, to assess Marketing Plans for 2021 and 2022). They presented their assessment report (Stone Assessment) to the Board at its February 22, 2022, meeting (City of Santa Clara, 2022). The Board discussed referring the Stone Assessment to ManCo for a response, with an expected response of returning to the Board with an updated Marketing Plan. At the March 15, 2022, Board meeting, all further action on the Stone Assessment ended with a 4-to-3 Board vote. The Board effectively relinquished its prerogative to change ManCo's Marketing Plans via a Correction Plan prescribed in the Management Agreement. This is an example of the Stadium Authority's failure to hold ManCo accountable and its failure to use one of the few available contractually prescribed levers to influence ManCo's performance.



## Management Agreement Termination, Litigation, and Settlements

The 49ers have proven to be an aggressive and litigious Stadium tenant. The litigation and disputes poisoned the relationship between the City/Stadium Authority and the 49ers.

### Management Agreement Litigation

The most complicated legal dispute between the Stadium Authority and the 49ers has been over the Stadium Authority's efforts to hold ManCo accountable and terminate ManCo's contract for stadium management services. On November 23, 2016, the Stadium Authority sent a letter to ManCo alleging a potential breach of the Management Agreement Articles 11.1.2, 11.3, and 11.4 and threatening to terminate the Management Agreement with ManCo. The two sides traded correspondence regarding these issues, with the last occurring on December 23, 2016, with no resolution. On January 6, 2017, ManCo and StadCo filed a civil lawsuit against the Stadium Authority, *Forty Niners Stadium Management Company LLC, et al. vs. Santa Clara Stadium Authority, et al.* (Superior Court of California, County of Santa Clara, Case No. 17-CV-304903) seeking a declaration to prevent the Stadium Authority from terminating the Management Agreement.

On February 22, 2017, the Stadium Authority filed a cross-complaint to the action filed by ManCo, citing failure to produce the required documentation supporting the Harvey Rose Audit. During the discovery process for that lawsuit, the Stadium Authority discovered additional potential breaches relating to procurement processes and the non-payment of prevailing wages, which they attempted to add to the cross-complaint. On August 6, 2018, ManCo dismissed their complaint, as the dispute shifted from termination of the management agreement to these other issues. The Stadium Authority's cross-complaint continued before the trial court.

On September 17, 2019, after an abysmal year of non-NFL events (zero profits) in 2018-19 and a forecast for losses in 2019-20, a special Board meeting was called to try to regain the Stadium Authority controls delegated to ManCo. The Board voted to start the process of terminating the management contract with ManCo for the six-month Stadium Authority season. In addition, the Board approved changes in the delegation of contract approval authority to ManCo. Going forward, all contracts, regardless of value, would need the Board's approval. Previously, ManCo could approve contracts up to \$250,000 without Board approval.

ManCo responded on September 20, 2019, with *Forty Niners Stadium Management, LLC, et al. vs. City of Santa Clara, et al.* (Superior Court of California, County of Santa Clara, Case No. 19-CV-355432) seeking a declaration relief to prevent partial termination of the management agreement. Following this, the Stadium Authority amended its complaint to terminate the entire Management Agreement for both non-NFL and NFL events.

Since June 2019, StadCo, ManCo, and Stadium Authority have filed different arbitration claims against each other pertaining to various disputes. These arbitration claims were consolidated under JAMS Mediation, Arbitration and ADR Services Case No. 1110024318. These claims included:

- Procurement Ordinance Arbitration.
- Buffet Arbitration.
- PSC Arbitration.
- ManCo use of the revolving credit agreement (RCA).
- Shared Stadium Expenses (SSE).

The entire legal history related to the efforts by the Stadium Authority to enforce contract provisions and/or terminate ManCo is summarized by the Civil Grand Jury below in Figure 11.

Item	Date	Legal Filings
1	Nov. 23, 2016	Stadium Authority alleges a breach of the Management agreement and threatens to terminate ManCo.
2	Jan. 6, 2017	49ers (ManCo and StadCo) files Case No. 17CV304903 seeking Declaratory Relief to prevent termination of the Management Agreement.
3	Feb. 22, 2017	Stadium Authority files cross-suit alleging ManCo has failed to produce documents to support Harvey Rose audit of non-NFL event financials.
4	Feb. 2017 onward	Based upon discovery for Case No. 17CV304903 Stadium Authority finds additional issues and tries to amend cross-suit to add alleged violations of Procurement policies and failure to pay Prevailing Wages, this is denied.
5	Aug. 6, 2018	ManCo dismisses their complaint. Stadium Authority cross-complaint continues in Santa Clara County Superior Court.
6	Sept. 17, 2019	Stadium Authority Board votes to start ManCo termination process for only Stadium Authority season and requires ManCo to obtain Stadium Authority Board approval for all new contracts.
7	Sept. 20, 2019	ManCo files Case No. 19CV355432 to prevent termination of the Management Agreement.
8	Feb. 28, 2020	Stadium Authority files cross-complaint and two cases are consolidated with 17CV304903 as the lead case. These cases continue in Superior Court.
9	June 2019 onward	Stadium Authority, StadCo and ManCo additional issues discovered sent to arbitration JAMS Case No. 1110024318.
10	June 14, 2022	The Court orders all parties for consolidated case to complete meditation by September 29, 2022.
11	August 30, 2022	Stadium Authority Board (City Council) approves a settlement agreement with ManCo and StadCo by a vote of 4-0 (wth three members absent). PSCs and Buffet costs are excluded.
12	October 7, 2022	Cases 17CV304903 and 19CV355432 and all cross-complaints were dismissed with prejudice.
13	May 23, 2024	Stadium Authority Board approves an agreement with ManCo and StadCo resolving issues related to payment of Buffet Costs and Public Safety Costs.

**Figure 11: History of Legal Filings Related to the Management Agreement**

### August 2022 Legal Settlement Agreement

On August 31, 2022, a settlement agreement was signed between ManCo, StadCo, and Stadium Authority, resolving the outstanding issues from Superior Court litigation Case No. 17-CV-304903 (and, by way of prior case consolidation, also resolved issues related to Superior Court Case No. 19-CV-355432) and many of the JAMS arbitration items, including procurement, use of the revolving loan, and shared stadium expenses. Highlights of this agreement include:

- The City received a one-time settlement payment of \$1.7 million from the 49ers.

- The 49ers consented to the Stadium Authority transferring (under the Stadium Lease at Section 12.1) up to \$650,000 from the Stadium Authority's Discretionary Fund to the City's General Fund.
- The Stadium Authority withdrew its termination notices issued to ManCo.
- ManCo procurement contract limits increased to \$100,000 without Board approval.
- Default interest under the Management Agreement was waived by all parties.
- The defense of all prevailing wage claims against the Stadium Authority was assigned to ManCo.
- ManCo agreed to comply with all applicable conflict of interest laws and to separate sponsorship and advertising agreements for StadCo and the Stadium Authority assets.
- ManCo agreed to select, prioritize, emphasize, and negotiate contracts for non-NFL events to maximize Stadium Authority revenues.
- The two most costly arbitrations over PSCs and buffets were excluded from the August 2022 settlement. These were both settled in the recent May 23, 2024, settlement.

There are three primary themes from this settlement agreement. One, the Stadium Authority clearly has a very limited ability to terminate and/or influence the performance of its stadium management contractor, ManCo. Two, ManCo agreed to “do better” on various fronts, including non-NFL events, without specific performance metrics. Third, the agreement immediately triggered (on September 1, 2022) over \$700,000 in payments by 49ers PACs to support certain City Council and mayoral candidates. By election day, the total 49ers PACs contributions for these candidates reached \$4.5 million. So, if the PAC contributions are any indication of what the 49ers organization thinks about the settlement, once again, the 49ers win.

The Stadium Authority failed to ensure that the August 2022 settlement agreement between the Stadium Authority and ManCo included sufficient language to do more than provide an acknowledgment that ManCo needs to prioritize Stadium Authority revenue over StadCo revenue, but also include specific action items or methods—such as a contract amendment—to ensure ManCo does so following the formal acknowledgment.

### **May 2024 Settlement Agreement**

The May 23, 2024, settlement agreement concluded the two costly JAMS arbitration issues left outstanding from August 2022 - buffets and PSCs. The agreement states that Stadium Authority must pay for all PSCs above the Threshold and all future buffet costs. However, the settlement agreement went well beyond the scope of the arbitration issues and made important changes in the Stadium Lease that will benefit the City and may benefit the Stadium Authority.

The agreement on buffets is straightforward - the Stadium Authority agrees to pay \$90,000 per game, growing at 3% per year. All buffet amounts under dispute for prior years' expenses were

dismissed. The agreement on PSCs is also straightforward – the Stadium Authority must pay the 49ers for all PSCs above the Threshold for all years, past, present, and future. However, the underlying changes supporting the settlement agreement are more complicated as explained above in the “[The Problem with PSCs](#)” section.

As detailed above in the “[How the Money Flows and Does Not Flow to the Stadium Authority](#)” section of this report, PSCs and Performance Rent are intertwined, and the settlement agreement directly impacts Performance Rent paid by the Stadium Authority to the City. Accumulated credits for unpaid past PSCs have negated profits from non-NFL events. The agreement eliminates these credits and moves them all to the new \$11.5 million PSC outstanding balance. Eliminating PSC credits frees up \$7.1 million of Performance Rent payments to the City for the 2022-23 and 2023-24 lease years. If the Stadium Authority can pay all future PSC obligations, the City should see more Performance Rent payments in future years. Funding for the \$7.1 million payment to the City will come from liquidating the Stadium Authority’s litigation reserve accounts.

Some media reports on the settlement described large sums, current and future, flowing to the City’s General Fund (up to \$20 million over two years). What is not always made clear in media reports is that all the money flowing to the City will come from Stadium Authority-owned funds. None of it comes from the 49ers/StadCo. Unsurprisingly, the 49ers are the clear winners as they will get reimbursed an additional several million dollars each year for PSCs and buffets, and installment payments on the \$11.5 million outstanding balance for past PSCs.

The longer-term impact of the settlement agreement on the financial health of the Stadium Authority and the Stadium is uncertain and possibly negative. The agreement slows the required funding of Waterfall buckets by diverting half of Excess Revenues toward paying the PSC outstanding balance to StadCo. At the same time, Excess Revenues flowing into the Waterfall are declining because of reduced future SBL revenues, and the Waterfall’s capital funds will need to be replenished as the Stadium ages. Basically, the money flowing into the Waterfall is going down while commitments on the Waterfall funds are increasing. The settlement agreement gives the Board/City Council new flexibility to divert revenue from the Stadium Authority to the City. The long-term financial health of the Stadium and the Stadium Authority could depend on the financial discipline of City/Stadium Authority leaders.

### **Measure J Promise for City Revenue: The Problems with the Luxury Suites, Stadium Exclusive Areas, and Non-NFL Events**

The 49ers own the Stadium’s 174 luxury suites. They own the suites year-round and all the revenues associated with them for NFL and non-NFL events flow to StadCo, with the exception

of a \$4 per ticket surcharge for non-NFL events and Suite Ticket revenues associated with some luxury suites. This was stipulated in Measure J and all subsequent agreements between the Stadium Authority and the 49ers entities. Because of their year-round ownership of the luxury suites and many other Stadium “exclusive areas,” the 49ers can profit from non-NFL events, regardless of whether the events are profitable for the Stadium Authority.

In fiscal years 2018-2020, The Civil Grand Jury learned that ManCo booked many money-losing non-NFL events, both college football and concerts, which led to zero Performance Rent. The Civil Grand Jury learned that college football was a draw for suite owners who invested hundreds of thousands of dollars into suite ownership. ManCo booked college football to satisfy suite owners regardless of whether the events would be profitable for the Stadium Authority. This is another example of why it is imperative for the Stadium Authority to have a strong negotiating presence in the Marketing Plan.

The Stadium Authority had to absorb financial losses from these ManCo-negotiated events while the 49ers likely made money on these same events from renting luxury suites. This arrangement, which allows the 49ers to profit from non-NFL events even when Stadium Authority does not, calls into question whether ManCo, Stadium Authority’s Stadium management company, shares Stadium Authority’s priorities and motivations when booking non-NFL events.

The Grand Jury Expert also reviewed extensive information and agreements regarding revenue from non-NFL events and how the Stadium Authority’s \$4 per ticket non-NFL event is not uniformly applied.

### **Measure J and the Stadium Lease Gave StadCo Control Over the Suites, Which StadCo Has Successfully Marketed in a Manner that Further Bolsters StadCo/ManCo Revenue**

Measure J anticipated that the suites were intended to be for the exclusive use of StadCo. (Measure J at Article 10, Section 10.9.) Per Measure J, StadCo also has the exclusive right to market the suites at non-NFL events (Measure J at Article 10, Section 10.10). The Stadium Lease provides that the Stadium’s luxury suites are StadCo’s “Tenant Exclusive Facilities,” which memorialized Measure J and allows StadCo to market and lease the suites. StadCo’s Stadium luxury suite leases provide leaseholders with a valuable enticement to enter into the agreement, such as:

- Special access to all ticketed non-NFL events held at the Stadium.
- Executive Annual Suite Lease Holders—these leaseholders have the first right to rent their suite and purchase tickets for an additional charge before the suite is offered to the public for rent.
- Trophy Suite Lease Holders—these leaseholders may “opt-in” to attend all ticketed non-NFL events in their suite at no additional charge.



- Owner’s Club Lease Holders—these leaseholders automatically are given the right to attend all ticketed non-NFL events in their suite at no additional charge.

Offering access perks to non-NFL events enhances StadCo’s ability to lease its expensive luxury suites. Specifically, while the Civil Grand Jury does not know the dollar value of the leases, according to the Stadium website, individual luxury suites range in price from \$10,000-\$50,000 per event depending on the event, suite availability, and suite type. As such, the *value* of the suites during non-NFL events can be significant. In comparison, for the ten events reviewed by the Civil Grand Jury with the assistance of the Grand Jury Expert, tickets distributed to the 712 luxury suites associated with the event contributed just \$1,112,324 (Figures 15 and 16) in suite ticket revenue and \$13,328 (Figure 13) in suite ticket surcharges.

### **The Stadium Authority Is Supposed to Receive Non-NFL Ticket Surcharges**

Measure J and the Lease Agreement Section 12.1 state that the Stadium Authority is entitled to the \$4 non-NFL event ticket surcharge on tickets that are “sold or otherwise offered to the general public.” StadCo/ManCo interprets Section 12.1 to require the surcharge to be applied to several non-NFL event ticket categories, including general admission tickets and tickets associated with certain types of luxury suites. As detailed below, there are several ticket categories that StadCo/ManCo interprets the Lease Agreement as not requiring the surcharge.

Most tickets associated with non-NFL events are sold to the public for general admission to the Stadium’s “Seating Bowl.” These tickets are automatically assessed the \$4 surcharge when purchased through various ticketing platforms and the surcharges collected are remitted to the Stadium Authority. Figure 12 reflects the number of Seating Bowl tickets sold by event and the \$1.7 million in ticket surcharges StadCo/ManCo remitted to the Stadium Authority for the 10 sampled non-NFL events.

# of Tickets Sold	Surcharges Remitted to SA
433,119	\$1,732,476

**Figure 12: Seating Bowl Sold Ticket Surcharges Remitted to Stadium Authority**

In addition to Seating Bowl tickets, StadCo/ManCo interprets tickets associated with certain luxury suites to also fall under the Stadium Lease’s definition of “sold or otherwise offered to the general public” requiring the surcharge. For example, the Stadium Authority receives surcharges on tickets associated with “Rental Suites” tickets. The surcharges on these tickets are automatically assessed when purchased through StadCo/ManCo’s suites ticketing system. According to StadCo/ManCo, a key feature of why tickets associated with rental suites are assessed the surcharge is that these tickets are sold to guests for specific events, producing additional incremental revenue.

The Stadium Authority also receives ticket surcharges associated with certain suite tickets that are not considered sold or offered to the public but are bundled within a suite owner's lease. Specifically, StadCo/ManCo provides "Trophy Suite" guests with complimentary tickets for each individual non-NFL event that the lease owner opts to attend in their suite. According to StadCo/ManCo, surcharges for Trophy Suite tickets are only remitted to the Stadium Authority on tickets that are scanned—meaning the ticketholder attended the event. It is not clear why StadCo/ManCo interprets the Lease Agreement to require the surcharge be remitted on these tickets as StadCo/ManCo does not consider the tickets to be sold or otherwise offered to the public and no additional incremental revenue generated. Figure 13 reflects the \$13,328 in surcharges StadCo/ManCo remitted to the Stadium Authority associated with Rental and Trophy Suite tickets for the ten sampled events.

Rental Suites			Trophy Suites			Total Surcharge Remitted to SA
# of Suites	# of Tickets	Surcharge	# of Suites	# of Tickets	Surcharge	
284	5,797	\$7,360	233	4,270	\$5,968	\$13,328

**Figure 13: Rental and Trophy Suite Ticket Surcharges Remitted to Stadium Authority (Note: Number of suites and tickets were estimated for events that did not have surcharge data)**

With respect to Figure 13 above, the numbers are estimates as a result of the data available not being disaggregated by suite type or event.

StadCo/ManCo failed to adhere to its own understanding of the surcharge obligations outlined in the Lease Agreement by not submitting surcharges to the Stadium Authority on all Rental and Trophy Suite tickets associated with 6 of the 10 sampled non-NFL events. Specifically, ManCo did not remit about \$27,000 in surcharges on tickets associated with:

- Rental Suites. Based on best available ticket data, the \$4 surcharge applied to 5,797 tickets distributed to rental suites equates to about \$23,188 in required surcharges, but StadCo only remitted \$7,360, a difference of \$15,828.
- Trophy Suites. Based on best available ticket data, the \$4 surcharge should have applied to about 4,270 tickets which equates to about \$17,080, but StadCo/ManCo only remitted \$5,968, a difference of \$11,112.



According to StadCo/ManCo, prior to 2019, the \$4 non-NFL event ticket surcharge was not applied to any tickets associated with any luxury suites due to its past incorrect interpretation of the Lease Agreement and the process has subsequently been changed to submit surcharges on all non-NFL event tickets associated with Rental and Trophy suite tickets. However, StadCo/ManCo specifically did not state which Lease Agreement provisions were misinterpreted or the specific change that resulted in the modified surcharge application process.

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**Finding 9a: StadCo/ManCo interprets the Stadium Lease to require non-NFL ticket surcharges be applied to tickets associated with Rental and Trophy Luxury Suites, but failed to remit all corresponding surcharges to the Stadium Authority.**

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**Finding 9b: StadCo/ManCo interprets the Stadium Lease to not require non-NFL ticket surcharges to be applied to Seating Bowl complimentary tickets and Owners Club Luxury Suite tickets.**

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**Finding 9c: Suite ticket revenue submitted to the Stadium Authority does not account for suite ticket revenue for certain suite attendees.**

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### **The Stadium Authority Receipt of Non-NFL Ticket Surcharge “Exemptions”**

Measure J noted that the Stadium Authority intended to raise funds through a surcharge on non-NFL event tickets. Measure J simply stated that a \$4 surcharge “per ticket” would be imposed. (Measure J, Article 13 at 13.5.) Neither Measure J nor the Stadium Lease specifically exempts *any* ticket categories from being assessed the non-NFL event ticket surcharge that must be remitted to the Stadium Authority. Rather, only the Stadium Lease describes when the surcharge is applicable, which is on tickets that are “sold or otherwise offered to the general public.” Due to the absence of specific exclusions, StadCo/ManCo interpreted that the surcharge requirements did not apply to complimentary tickets, potentially reducing surcharge revenue the Stadium Authority may be entitled to receive under the Stadium Lease.

According to StadCo/ManCo's interpretation of Lease Agreement Section 12.1, the Stadium Authority is not eligible to receive the \$4 non-NFL event ticket surcharge on complimentary tickets provided to guests, which include:

- Seating Bowl Complimentary Tickets—provided to guests attending the event in the general area of the stadium.
- Owner's Club Suite Tickets—provided to StadCo's Owner's Club leaseholders where tickets to all non-NFL events are bundled in the suite lease.

However, StadCo/ManCo's perspective that the Stadium Authority is not entitled to receive surcharges on Seating Bowl Complimentary tickets seems to conflict with Stadium Lease 12.1 specifying that, beyond applying to sold tickets, the non-NFL event ticket surcharge extends to tickets "otherwise offered to the general public." Because the Lease Agreement specifically identified and listed "sold" tickets from "otherwise offered to the general public" tickets, one could reasonably argue that the lease provisions would apply to complimentary tickets "offered" or made available to the public as guests attending the event in the Seating Bowl.

Additionally, StadCo/ManCo offered several reasons why the Stadium Authority ticket surcharge does not apply to Owner's Club suite tickets. First, StadCo/ManCo asserts that the tickets issued to Owner's Club suite leaseholders are not sold or available to the public, making the surcharge not applicable. Second, StadCo/ManCo also asserts that Lease Agreement Section 4.3.1 permits Owner's Club Suite leaseholders to access their suite during Stadium Authority events through "credentials" rather than a ticket. However, these reasons contradict the Lease Agreement language and are inconsistent with its own implemented practices for several reasons. Although StadCo/ManCo may perceive Owner's Club Suite tickets as not being "sold" because they are bundled as part of the initial paid lease; non-NFL event tickets are included as part of the Owner's Club Suite lease agreements that contribute to the value of the overall lease when initially sold. Thus, when one or more of the bundled tickets are distributed for the non-NFL events, it could be argued that the tickets were "offered to the public" and subject to the surcharge.

In addition, StadCo/ManCo's belief that the surcharge does not apply to Owner's Club Suite tickets contradicts its own interpretation and practice that the surcharge does apply to its Trophy Suite tickets, especially considering that neither type of ticket is sold individually, and both are linked to tickets bundled with leases. Moreover, Lease Agreement Sections 4.8.1 and 12.8 stipulate that suite licensees have the right to occupy suites during non-NFL events upon purchasing tickets, suggesting that the leaseholders, including Owner's Club, must purchase tickets, which should be considered as a "sale", rendering the surcharge applicable. Further, the Stadium Authority did not ensure the Lease Agreement limits the number of tickets StadCo can provide to its employees and guests without having to remit any surcharges to the Stadium Authority.

For these reasons, StadCo/ManCo’s interpretation that the Stadium Authority is not entitled to receive surcharges on various ticket categories is inconsistent with Measure J and with other provisions of the Lease Agreement. Figure 14 reflects the nearly 80,000 tickets where Stadium Authority did not receive the \$4 ticket surcharge associated with the ten sampled events for a total of more than \$300,000 but may have been entitled to that surcharge.

Seating Bowl	Owner’s Club Suites		Tickets
# of Tickets	# of Suites	# of Tickets	
75,408	195	3,795	79,203

**Figure 14: Estimated Complimentary Tickets and Owner’s Club Suite Tickets Where Stadium Authority Did Not Receive Surcharge (Note: Number of Owner’s Club suites and tickets are estimates. Exact figures were not available for analysis because data provided by ManCo were not disaggregated by suite type and by event.)**

## Rental Suite Ticket Revenue

According to Lease Agreement Section 4.3.1, the Stadium’s 174 luxury suites are considered StadCo’s exclusive facilities and provides StadCo with the right to use and operate the suites. For the Owner’s Club and Trophy Suites, StadCo has leases that allow the lease owners to attend all non-NFL events with event tickets bundled within the Lease Agreement. In other words, these lease owners do not have to purchase individual tickets on an event-by-event basis to attend. StadCo also rents some suites on an individual event-by-event basis where tickets must be purchased by the renter for each individual non-NFL event.

According to Lease Agreement Section 12.8:

- StadCo may authorize the right for individuals to occupy luxury suites during non-NFL events upon the purchase of tickets for the event. This means every person must purchase a ticket to enter and use a luxury suite at a non-NFL event.
- Amounts paid to occupy the suites above the cost of the tickets constitute StadCo revenue. This means the ticket portion, or “Suite Ticket Revenue”, belongs to the Stadium Authority.

Rental suites involve tickets that are sold to guests for specific non-NFL events, which makes the Suite Ticket Revenue amount determination relatively simple. As reflected in Figure 15, StadCo remitted \$635,553 in Rental Suite Ticket Revenue to the Stadium Authority associated with rental suites for the ten sampled events.

Rental Suites		
# of Suites	# of Tickets	Suite Ticket Revenue
284	5,797	\$635,553

**Figure 15: Rental Suite Ticket Revenue Remitted to Stadium Authority (Note: Average ticket prices used to calculate suite ticket revenue are estimates)**

However, because some non-NFL event tickets associated with other luxury suites, such as Trophy Suites, are not individually purchased, but are bundled within agreements with suite leaseholders, it is more complicated to determine the Suite Ticket Revenue due to the Stadium Authority. To address this, Lease Agreement Section 4.8.1 explains how Suite Ticket Revenue associated with these suites is determined. Specifically, the maximum ticket price cannot exceed the weighted average selling price of all other tickets for the event. In practice, according to StadCo/ManCo, the average ticket price in a specific location of the Stadium is used to calculate the portion of suite sales attributable to Suite Ticket Revenue.

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**Finding 10a: Most revenue from non-NFL events goes to the promoter, which is typical. StadCo can make money on luxury suites regardless of the event's profitability for the Stadium Authority.**

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**Finding 10b: The Stadium Authority is unaware of the market revenue potential for non-NFL events at the Stadium. The Stadium Authority does not know what net revenues should be expected for non-NFL, ticketed and non-ticketed, events.**

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As reflected in Figure 16, StadCo/ManCo remitted \$476,711 in Trophy Suite Ticket Revenue to Stadium Authority associated with the ten sampled events.

Trophy Suites		
# of Suites	# of Tickets	Suite Ticket Revenue
233	4,270	\$476,771

**Figure 16: Trophy Suite Ticket Revenue Remitted to Stadium Authority (Note: Number of suites and tickets are estimates. Exact figures were not available for analysis because data provided by ManCo were not disaggregated by suite type and by event.)**

While StadCo/ManCo interprets the Lease Agreement to require Suite Ticket Revenue associated with Rental and Trophy Suites to be remitted to the Stadium Authority, it interprets the Lease Agreement to not require this ticket revenue associated with other types of luxury suites. Specifically, according to StadCo, tickets associated with Owner's Club are not considered sold or offered to the public and as such, Suite Ticket Revenue does not have to be remitted to the Stadium Authority, the same reasons given that the ticket surcharge is also not assessed related to these suites, as discussed in the previous section. StadCo/ManCo's interpretation that tickets associated with these suites are not considered sold seems to conflict with Lease Agreement Section 12.8 which states that tickets must be purchased to occupy a suite, as described earlier.

StadCo/ManCo's interpretation that the Stadium Authority is not entitled to receive Suite Ticket Revenues associated with Owner's Club suites requires further examination by the Stadium Authority. Figure 17 reflects an estimate of more than \$400,000 in Suite Ticket Revenue (associated with the ten sampled events) that the Stadium Authority did not receive, but may have been entitled to, based on the average ticket price of Trophy Suite Tickets reflected in Figure 17.

Owner's Club Suites		
# of Suites	# of Tickets Comped	Estimated Value of Tickets Comped
195	3,795	\$432,382

**Figure 17: Estimated Owner's Club Suite Tickets Where Stadium Authority Did Not Receive Suite Ticket Revenue. (Note: Figures are estimates. Exact figures were not available for analysis because data provided by ManCo were not disaggregated by suite type and by event.)**

## Measure J Promise to Generate City Revenue: The Problem with Buffet Costs

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**Finding 11:** Per the Stadium Lease, the Stadium Authority failed to negotiate pertinent details about buffet costs in the contract, such as parameters on cost thresholds and alcohol. The Stadium Authority accepted responsibility for buffet costs but failed to follow up when the expense was omitted from ManCo's budgets.

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The Stadium Authority owns the SBLs and all associated revenues. SBL sales were a major source of money for financing the Stadium's construction. There are 942 "Legacy" SBL holders that originally paid at least \$80,000 for their seat licenses, and they were promised forty years of

complimentary buffets at 49ers games. The Stadium Authority does not dispute that it is responsible for these costs. The buffet cost per season was approximately \$1 million.

Since the Stadium opened in 2014, ManCo has been responsible for providing a buffet amenity to these SBL holders. However, ManCo did not bill the Stadium Authority for the buffet costs for the first four years of the Stadium operations, and buffet costs were not included in the annual budgets submitted to the Stadium Authority for approval. If buffet costs had been budgeted, these costs would presumably have been included in the rent re-set arbitration.

A legal dispute started in 2019 when ManCo billed the Stadium Authority for over \$4 million for buffet costs for the fiscal years covering 2014-2018. The Stadium Authority leaders do not dispute they are responsible to pay for the costs of buffets. The dispute over the \$4 million invoice has occurred for several reasons. The bills were all submitted after the budget years had concluded; the most delinquent invoice was four years old. During the annual budget process, ManCo failed to include the buffet costs in the annual Stadium operations budgets. When finally submitted, the invoices provided insufficient details to support the more than \$4 million of expenses.

The information on the invoices often included an expense incurred for alcoholic beverages served at the expense of the Stadium Authority, a public entity. When City staff became aware that the Stadium Authority was expected to cover the cost of alcohol, they were surprised. Almost all of the invoices charge for the same number of guests for every single game during a particular season, with no variation. The invoices lacked any details regarding what kind of food was served and lacked any supporting documentation. The lack of information makes it difficult to know how StadCo determines the number of guests served.

This legal dispute over expensive high-end buffets appears to be another example of a naïve or uninformed contract negotiating position by City/Stadium Authority leaders. The Stadium Lease clearly says that the Stadium Authority will provide buffets for high-end SBL holders. However, the Stadium Authority failed to ensure the Stadium Lease, until now, had any limitations on buffet costs (like a PSC Threshold), and it had/has no clarity about whether alcoholic beverages are covered under buffet costs. This dispute was settled under the May 2024 settlement agreement key elements include:

- The Stadium Authority must pay all costs for all future buffets for the 942 “Legacy” SBL holders for all 49ers games.
- The cost per game is, for the first time, capped at \$90,000 per game with a 3% annual inflation adjustment.
- All claims by StadCo for payment of buffet costs for all prior years, from 2014 forward, are dismissed.

## Community Promises Not Fulfilled

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**Finding 12: A Multi-Use Community Facility at the Stadium was one of Measure J's original promises and was memorialized in the Stadium Lease. The current designated space for the Community Room at the Stadium is not easily accessible nor is it pragmatic for most civic events.**

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In a letter dated January 10, 2012, from 49er CEO Jed York to Santa Clara Youth Soccer League Executive Board Members, the 49ers stated that they were cognizant that “NFL game day traffic will make trips to the [Youth Soccer] park more complicated.” The letter further stated:

To demonstrate our commitment to our community’s young soccer players and their families we are proposing that the 49ers underwrite several regulation-sized additional soccer fields in Santa Clara. These fields would be dedicated and maintained for the use of the Santa Clara Youth Soccer League during NFL game days...We have been part of the Santa Clara community for 22 years and we are committed to remaining a good neighbor to the soccer community.

Instead of following through with the above-stated intentions, the 49ers spent years trying to gain access to the 10.8 acres of fields near the Stadium to use as parking during NFL events, including a complicated offer in 2015 where the 49ers would lease the fields year-round, with the promise of eventually underwriting the construction of new fields. The offer died at a City Council meeting packed with angry soccer parents (City of Santa Clara, 2015).

Since 2017 (excluding 2020), half of the 49ers’ 44 weekend home games overlap with soccer matches at the Santa Clara Youth Soccer Park (SCYSP), which means children and their families have to get special passes to access roads and deal with rowdy fans who think they can cut through the SCYSP parking lot to get to the Stadium (Simon, 2024).

In addition to failing to exhibit goodwill towards their neighbors by not following through on promises made to SCYSP, the 49ers have failed to provide a usable space as a Community Room within the Stadium. Measure J promoted the idea of the Stadium as a Community Facility and in the Stadium Lease, the 49ers agreed to provide a meeting space, as outlined in the Stadium Plans, for community groups and non-profits. The Stadium Authority could schedule Civic Events at any time but would need approval from StadCo during the NFL Season. (Stadium Lease, Amended, Section 4.7.2, 2013).



The Stadium Authority has been negotiating for access to a suitable room since 2012; at one point the 49ers offered the Stadium Authority a space being used as a storage area. The peak negotiations occurred in 2017 and 2018, during which time the Stadium Authority developed a reservation process and policy in anticipation of getting a space. Rental of the room includes a minimum four-hour commitment; the associated costs include, at a minimum, security, Guest Services/Engineering, Janitorial, and Room Logistics (set up and tear down of room). If the civic group requires any of the following, the cost is extra: catering (only Stadium concessionaire), furniture rental, AV rental, and IT support (City of Santa Clara, Council Meeting, 2017). Based on all of these factors, the use of the Community Room is likely very costly and has proven to not be very pragmatic.

Although there is currently a space called the “Community Room” in the Stadium, it has been used exclusively by the 49ers Foundation primarily to host the 49ers STEAM (Science, Technology, Engineering, Arts and Math) Education program. The room is currently located on the field level of the Stadium, in a service area, lacks windows, and has a maximum occupancy of 225 people. Even if the Stadium Authority had full access to that particular room, escorts are required to enter and leave the Stadium; this is an issue if a civic event is in the evening. Functions at night require additional staff including security, and some staff require a four-hour minimum for a booked event. Additionally, it is a 15-minute walk from the parking lot and there is a fee.

To date, the promise of the Community Room for civic events has not come to fruition.

### **FIFA – World Cup Soccer 2026**

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**Finding 13: The FIFA World Cup commitments for the City and the Stadium Authority were made without consultation with the City/Stadium Authority.**

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The City and the Stadium will host six FIFA World Cup games in 2026. Selection as a host city/site is a prestigious recognition for the City, the Bay Area, and the Stadium as a world-class venue. Beyond the recognition, the games are expected to provide economic benefits for many City and Bay Area businesses from an influx of out-of-town visitors.

The World Cup bid was negotiated and controlled by ManCo and the Bay Area Host Committee (BAHC), without any initial input from City staff or the Stadium Authority. The BAHC is a local



organization that was initially created in preparation for Super Bowl 50. Recently it has restructured itself and now works to attract major sporting events to the Bay Area. The President of the 49ers, and ManCo, Al Guido, was also the President of the BAHC when he signed agreements relating to FIFA on behalf of the Stadium Authority. Many consider his multiple roles representing the Stadium's management company and the BAHC a conflict of interest.

Until recently, City/Stadium Authority leaders had no information about the obligations and costs that they had been committed to. The Civil Grand Jury learned that the City/Stadium Authority requested documents relating to their host obligations from the 49ers, BAHC, and FIFA before February 2023 and they were initially denied. Since then, City/Stadium Authority staff have negotiated access to some documents and successfully made redacted copies available via the City's public website.. Additionally, City/Stadium Authority staff is working on an Assignment and Assumption Agreement and other agreements with ManCo and the BAHC, which will outline all of the services that will be required from the City including public safety commitments. The Civil Grand Jury learned that City officials are counting on the BAHC to raise the funds that will be needed to pay for all of the PSCs for the World Cup.

Recent media reporting has stated that the City Attorney has informed the City Council that the Stadium Authority could face multimillion-dollar losses, as much as \$38 million, from hosting the World Cup (Williams and Kroichick, 2024). Other large cities hosting World Cup games, such as Vancouver, Toronto, and Los Angeles, each estimate hosting costs of over \$100 million.


The World Cup matches are not expected to make any money for the Stadium Authority or contribute any money to the City's General Fund, and extensive efforts to prepare the Stadium for World Cup matches will limit opportunities for other large non-NFL events in 2026. So, while many area businesses will profit from having World Cup events at the Stadium, the Stadium Authority may be financially penalized. The 49ers/ManCo are supposed to make every effort to maximize the Stadium Authority non-NFL events income, but by successfully bidding for the World Cup without consulting with the Stadium Authority officials, the 49ers/ManCo will likely drive down 2026 Stadium Authority income and Performance Rent for the City.

### **Stadium Authority Staff**

As noted previously, City directors have a dual role as Stadium Authority officers. The lack of a separate Stadium Authority department structure requires staff to divide their time between City business and Stadium Authority business. The relationship between the City, Stadium Authority, and the various 49er entities is complex, but an added dimension has been the difficult partner the 49ers have proven to be.

The Civil Grand Jury wants to point out that many of the problems detailed above were the work of City and Stadium Authority staff who are no longer with the organization. The City and Stadium Authority has recently brought in new leadership. The Civil Grand Jury acknowledges that the City/Stadium Authority staff were responsive to the Civil Grand Jury investigation and cooperative. While it remains unclear whether new staff can hold StadCo/ManCo accountable because that will also take the willingness of the City Council/Board, the Civil Grand Jury is encouraged by knowledgeable and professional staff.

## CONCLUSION

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Rick Eckstein, a Villanova University sociology professor who co-wrote a book about public financing of stadiums, said that sports teams are typically much more sophisticated than the cities and counties with whom they negotiate stadium deals. “The teams are always about two or three steps ahead of the municipalities in being clever,” Eckstein said. (Weider, 2019)

Ten years after the Stadium opened, this report provides a critical retrospective on the promises of Measure J and the resulting contracts between the 49ers, the City, and the Stadium Authority. With the benefit of hindsight, it is clear that some important aspects of Measure J have gone well, especially the taxpayer protections for the City and its residents. For other benefits promised under Measure J, the results, as detailed in this report, are decidedly mixed. While many of Measure J's promises have been fulfilled, the voters anticipated greater benefits.

City leaders were excited to entice a major sports franchise with the prospect of a new world-class stadium, and they were impatient to finalize negotiations on contractual terms and conditions for the Stadium. The City appeared to be outmatched by the expertise of the 49ers' negotiators. City staff understood then that many of the terms in the agreements strongly favored the interests of the 49ers, and some of the staff even understood that the 49ers had sophisticated long-term goals that would significantly favor 49er interests. The resulting Stadium contracts are complicated and intricately interwoven.

At the heart of the relationship between the 49ers and Stadium Authority, there is an imbalance of power. The Stadium Authority and City negotiators bear great responsibility for this imbalance. Stadium contracts ceded control and important benefits to the 49ers. Since then, while the 49ers have been difficult partners/tenants, the 49ers were emboldened by the agreements, and the Stadium Authority has historically failed to assert its remaining limited rights and controls. This report has a number of Findings that fault the Stadium Authority's actions. Sadly, there are fewer Recommendations, as many of the Findings relate to poor Board decisions made for over a decade that cannot easily be undone. The City and the Stadium Authority were clearly outplayed by the San Francisco 49ers.

## FINDINGS AND RECOMMENDATIONS

### Finding 1

From the beginning, the City was impatient and overmatched in its negotiation posture with the 49ers to the long-term detriment of the City/Stadium Authority.

### Recommendation 1

Given the long-term nature of the various agreements, the 49ers' sophistication, and the history of past disputes, the City/Stadium Authority should engage advisors with specialized knowledge to determine options to level the playing field.

### Finding 2

The City has not studied the actual economic impact of the Stadium. The 49ers have produced their own studies, which they use to tout long-term unverified benefits and frame all discussions surrounding the success of the Stadium.

### Recommendation 2

The City should commission its own report to determine the Stadium's actual economic impact over the last decade. This recommendation should be implemented by July 1, 2025.

### Finding 3

Measure J's promise to protect the City's General Fund has been realized. The funding structure from the Stadium Lease has successfully allowed the Stadium Authority to pay off Stadium construction loans and fund required Waterfall reserves faster than originally planned.

### Recommendation 3

The May 2024 settlement agreement gives the Board/City Council new flexibility to divert Excess Revenue from the Stadium Authority to the City's General Fund. When diverting Excess Revenue, the Board/City Council should be mindful of the long-term financial health of the Stadium Authority and request the Treasurer to produce a long-term plan for funding all required Stadium reserves, including reserves for capital improvements. This recommendation should be implemented by October 31, 2024.

### Finding 4

The City/Stadium Authority agreed to use ManCo, an affiliate of the 49ers, with an inherent conflict of interest to handle the Stadium Authority's financial interests in non-NFL events.

## **Recommendation 4**

None

## **Finding 5**

The City/Stadium Authority failed to ensure that the Management Agreement included a fair termination clause.

## **Recommendation 5**

None

## **Finding 6a**

The City/Stadium Authority failed to ensure the Management Agreement provided the Stadium Authority with full access to financial records.

## **Finding 6b**

ManCo's financial transparency with the Stadium Authority has improved with the implementation in 2022 of a new financial management system.

## **Finding 6c**

Transaction-level testing generally supports ManCo's reporting of financial results for non-NFL events.

## **Recommendations 6a, 6b and 6c**

None

## **Finding 7a**

The City/Stadium Authority failed to ensure that the original Management Agreement and the 2022 settlement agreement contained sufficient language requiring specific items or methods and performance metrics to prioritize Stadium Authority revenue generation. This has resulted in a failure to hold ManCo accountable for the success of non-NFL events.

## **Finding 7b**

The Stadium Authority failed to use the prescribed Marketing Correction Plan per Article 3.3.1 of the Management Agreement process to hold ManCo accountable for unsuccessful non-NFL event bookings.

## **Recommendation 7**

The Stadium Authority should retain the expertise needed to meaningfully weigh in on ManCo's Marketing Plan to ensure that the Stadium Authority's profitability is maximized. The Stadium

Authority should also establish a yearly audit procedure to measure and analyze each season's Marketing Plan against its outcomes, updating future plans based on this analysis. This recommendation should be implemented by December 31, 2024.

### **Finding 8a**

There is no evidence showing that ManCo is negotiating to maximize Stadium Authority profits for non-NFL events.

### **Finding 8b**

The Stadium Authority has failed to ensure the Management Agreement requires ManCo to incentivize its staff to prioritize the Stadium Authority's success. There is no evidence that there are employee sales goals, metrics, or consequences related to unprofitable non-NFL events.

### **Recommendation 8**

As part of the Marketing Plan, Stadium Authority should require that ManCo produce a marketing plan that maximizes profits for the Stadium Authority and incentivizes ManCo marketing staff to prioritize the profitability of the Stadium Authority. This recommendation should be implemented by December 31, 2024.

### **Finding 9a**

StadCo/ManCo interprets the Stadium Lease to require non-NFL ticket surcharges be applied to tickets associated with Rental and Trophy Luxury Suites, but failed to remit all corresponding surcharges to the Stadium Authority.

### **Finding 9b**

StadCo/ManCo interprets the Stadium Lease to not require non-NFL ticket surcharges to be applied to Seating Bowl complimentary tickets and Owners Club Luxury Suite tickets.

### **Finding 9c**

Suite ticket revenue submitted to the Stadium Authority does not account for suite ticket revenue for certain suite attendees.

### **Recommendation 9**

The Stadium Authority should review and ensure that it receives all a) non-NFL event ticket surcharges for all event attendees, and b) ticket revenue for all suite attendees owed to the Stadium Authority. This recommendation should be implemented by October 31, 2024.

## Finding 10a

Most revenue from non-NFL events goes to the promoter, which is typical. StadCo can make money on luxury suites regardless of the event's profitability for the Stadium Authority.

## Finding 10b

The Stadium Authority is unaware of the market revenue potential for non-NFL events at the Stadium. The Stadium Authority does not know what net revenues should be expected for non-NFL, ticketed and non-ticketed, events.

## Recommendation 10

The Stadium Authority should hire a professional third-party consultant, not affiliated with the 49ers, to analyze the reasonable expectations for non-NFL events such as:

- An analysis of the market revenue potential for non-NFL events at the Stadium.
- An analysis of ManCo's Marketing Plans, comparing successful (FY 2022-23) and unsuccessful (FY 2017-18) bookings to potential market revenue.
- A plan with measurable objectives and incentives for ManCo to achieve these results.

This recommendation should be implemented by December 31, 2024.

## Finding 11

Per the Stadium Lease, the Stadium Authority failed to negotiate pertinent details about buffet costs in the contract, such as parameters on cost thresholds and alcohol. The Stadium Authority accepted responsibility for buffet costs but failed to follow up when the expense was omitted from ManCo's budgets.

## Recommendation 11

None

## Finding 12

A Multi-Use Community Facility at the Stadium was one of Measure J's original promises and was memorialized in the Stadium Lease. The current designated space for the Community Room at the Stadium is not easily accessible nor is it pragmatic for most civic events.

## Recommendation 12

The Stadium is not an appropriate location for a Community Facility. The Stadium Authority should work with the 49ers to identify and procure an alternative space for community needs. This recommendation should be implemented by June 30, 2025.

## **Finding 13**

The FIFA World Cup commitments for the City and the Stadium Authority were made without consultation with the City/Stadium Authority.

## **Recommendation 13**

The Stadium Authority should insist on consultation and prior notice before any major Stadium event commitments are made. This recommendation should be implemented by December 31, 2024.



## REQUIRED RESPONSES

Pursuant to California Penal Code section 933(b) et seq. and California Penal Code section 933.05, the 2023-24 Santa Clara County Civil Grand Jury requests responses from the following governing body:

Responding Agency	Findings	Recommendations
City of Santa Clara/Stadium Authority	1, 2, 3, 4, 5, 6a, 6b, 6c, 7a, 7b, 8a, 8b, 9a, 9b, 9c, 10a, 10b, 11, 12, 13	1, 2, 3, 4, 5, 7a, 7b, 8, 9, 10, 11, 12, 13

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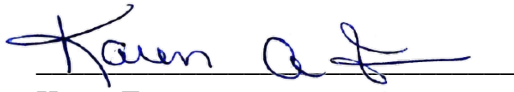
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## OUTPLAYED

This report was **ADOPTED** by the 2023-24 Santa Clara County Civil Grand Jury on this 13<sup>th</sup> day of June, 2024.

A handwritten signature in blue ink, appearing to read "Karen af", is written over a horizontal line.

Karen Enzensperger  
Foreperson