SCSA
SANTA CLARA STADIUM AUTHORITY

February 1, 2021

Via email
rziegler@rzieglerlaw.com

Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
Suite 300, #427
Sacramento, CA 95821

RE: Your January 29, 2021 Letter disputing Consultant designation of 49ers Stadium Management Company officials

Dear Ms. Ziegler:

Your January 29, 2021 letter to me (delivered via email at 4:45 pm) completely side-steps answering the central question at hand: whether Al Guido, President of the Forty-Niners Stadium Management Company LLC, is subject to California conflict of interest law (the "Political Reform Act or "Act" and FPPC Regulations), and secondarily whether he is properly designated as a Consultant under the Stadium Authority's Conflict of Interest Code.

The basic rule and guide to the Conflict of Interest Regulations is set forth in subsection (a) of Section 18700 of the FPPC Regulations (2 Cal. Code Regs. Sec. 18700):

> A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103).

Under subsection (c) of Section 18700, public official includes consultants of a local government agency such as the Stadium Authority.

As you correctly cite, Section 18700.3 provides the guidance as to whether a particular officer of a consultant company in contract with a public agency is acting as a consultant within the meaning of the Act. A simple reading of subsections (D) and (E) must lead one to the conclusion that Mr. Guido is indeed acting as a public official in that he is both authorizing the booking of event contracts and executing sponsorship revenue

agreements on behalf of the Stadium Authority, such as the Title Sponsorship Agreement for the Redbox Bowl signed by Mr. Guido as Management Company President and Mr. Schoeb as VP, Corporate Partnerships.

The statement in your letter that I "rejected our (the 49ers') position that Mr. Schoeb was a consultant and our position that Mr. Guido was not" is simply incorrect. In my May 5, 2020 email I stated:

> Can you please explain how you determined that Mr. Schoeb is a consultant as defined by defined by FPPC Regulation 18700.3? Also please explain how Mr. Guido, who was impliedly identified by Hannah Gordon as being subject to state conflict of interest law (see attached letter), was determined by you not to be a consultant as defined by FPPC Regulation 18700.3. Please provide copies of all records by which you made those determinations.

By requesting your rationale for accepting the Stadium Authority's designation of Mr. Schoeb as a consultant under Section 18700.3 when the evidence for that was that he had signed the Redbox Bowl sponsorship agreement, I was trying to determine the basis for your refusal to recognize the designation of Mr. Guido as a consultant given that he co-signed the same agreement. Both were acting in the same capacity.

Perhaps more relevant to the question of which Management Company officers are subject to state conflict of interest law is subsection (a)(2) of Section 18700.3 which you also cite in your letter. Under that subsection a consultant includes an individual who, pursuant to a contract with a local agency:

> Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

As you are aware, the Management Agreement and its amendments delegated an extraordinary degree of governmental decision-making authority from the Stadium Authority to Management Company. The Board delegated virtually all of its authority to book non-NFL events and receive sponsorship revenue and charge expenses for those events to Management Company. Thus, Management Company officials who exercise that delegated authority are both making governmental decisions and performing the same or substantially all the same duties for the agency as agency officials. For this reason as well, Mr. Guido is properly designated as a consultant under the Stadium Authority's Conflict of Interest Code.

Ms. Gordon's letter explaining Mr. Guido's divestiture of his position in KORE Software Holdings, LLC that contracted for Stadium Authority non-NFL customer relationship services is further acknowledgement of Mr. Guido's status as being subject to conflict of

interest law. If Mr. Guido were not subject to conflict law, why would he have had to undo his financial arrangement with KORE?[1]

Another instance in which Management Company officials have been making governmental decisions and performing substantially the same duties as agency officials is with regard to the Stadium Authority budget. Management Company Chief Financial Officer Scott Sabatino has consistently asserted his authority to override direction from the Stadium Authority Treasurer with regard to myriad budgetary decisions such as the allocation of Shared Expenses including expenditures to third party contractors and vendors, allocation of payroll time of Management Company employees between NFL activities and non-NFL activities, setting of commission structures for Management Company employees who book non-NFL events, allocation of non-NFL revenue to Stadium Company for advertising and "rental" of equipment and space. But most of all, it is Mr. Sabatino's more recent usurpation of the Stadium Authority ***Board's*** budget approval process, to the degree that he issues Stadium Authority debt in the form of Revolving Loan draws and repayments, that requires us to conclude that he making governmental decisions and acting in a Stadium Authority staff capacity. Mr. Sabatino cannot both usurp the Stadium Authority's governmental power and deny that that usurpation does not subject him to the legally mandated ethical standards that go along with the exercise of that power.

Likewise, Management Company's General Counsel, and for that matter Deputy General Counsel, have usurped the role of Authority Counsel. They have provided legal advice contrary to my clear direction not just with regard to the actions taken by Mr. Guido and Mr. Sabatino with regard to the governmental decisions that they are making and the extent of their authority as agents acting in the role of Stadium Authority officials; they have directly refused to follow clear legal guidance with respect to the Stadium Authority's contractual and financial records. They have against the advice and direction of the Authority's Counsel prevented the Authority from possessing its own records. Again, Management Company's General Counsel and Deputy General Counsel cannot now disavow the state laws governing exercise of the power of agency authority that they have usurped.

Although not relevant to the issue of the Stadium Authority Board's consideration of consultant designation under Santa Clara's Conflict of Interest Code, I will address a few other statements in your letter.

You state that the delegation of authority to Executive Director for determining Form 700 filing requirement is inconsistent with Government Code section 87306. However, the FPPC itself advises local agencies to take this approach. See slide 27 of the FPPC's training to local agencies: https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Training-and-Outreach/Local_Agency_Code_Video.pdf.

[1] This is another question which you have side-stepped in your belated response to my May 5, 2020 email.

Additionally, your letter raises the issue of timing of an inquiry into the issue of which Management Company officials are subject to state conflict of interest law. You imply that no one bothered to consider the issue until I entered the stage in 2017. I cannot explain why the 49ers' attorneys who drafted the Management Agreement failed in their responsibilities to perform due diligence on whether the delegated authority that they were building into to the public-private arrangement would require adherence to conflict of interest regulations. But I was certainly not alone in identifying the defect. In his testimony at the Tax Appeals Board, Mr. Frank Wisehart identified the potential conflict of interests inherent in how the Agreement had been set up. Regardless of when or how it finally dawned on Management Company that these laws applied to the performance of the contract, the individuals who were subject to the law were subject to it from the time they began exercising the public decision-making authority.

The experience with Ms. Gordon and Ms. Ingalls refusing to even respond to my invitation to discuss the matter, resulted in my having to seek an advice letter from the FPPC which found no difficulty in arriving at the conclusion that I had come to a year earlier.

The date upon which individuals must file an Assuming Office Statement of Financial Interest is set at 30 days from the date of assumption. The Stadium Authority amended its Conflict of Interest Code to include the Consultant designation on February 27, 2018. The reason that Santa Clara's Clerk initially notified only Mr. Mercurio that he was required to file a Form 700 was because he was the only individual identified by Ms. Gordan as exercising the delegated authority that would make him subject to the Code. You will recall that the 49ers have fiercely defended their position of not releasing copies of contracts and other financial records relating to non-NFL revenue and expenses to the Stadium Authority. For this reason, Stadium Authority staff was not able to identify the other individuals who should have also been subject to the Conflict of Interest Code.

I should note here that in my more than 30 years in the practice of municipal law, I have never encountered a consultant who so actively thwarted a good faith, open discussion of designation as a Form 700 filer. In my experience, this has always been a routine matter that results in a common understanding. As a recent example, the designated officials of the City's Convention Center manager have been regularly filing their Form 700's.

In many ways the detail into which the proposed resolution goes in amending the Stadium Authority's Conflict of Interest Code in specifically identifying individuals who are subject to the Code is overkill because the law already requires consultants like the 49ers to comply with the Act. However, in an effort to ensure that 49ers officials comply with the law, the Stadium Authority is being forced by the 49ers' obstinance to expressly identify individuals who are subject to the Code. It should be pointed out that the City has not had to go to this extent because no other consultants – unlike the 49ers - have been so uncooperative in fulfilling their obligations to comply with state law.

One advantage in the 49ers' having so strenuously resisted being subjected to the law is that the public can clearly see that the 49ers are not committed to transparently demonstrating the ethical handling public finances.

I will make myself available to have a meaningful discussion with you of any lingering questions that you have.

Sincerely,

Brian Doyle
Stadium Authority Counsel

cc: Board Chair and Boardmembers
Deanna Santana, Executive Director
Hannah Gordon, General Counsel, Management Company