

**From:** [Mercurio, Jim](#)  
**To:** [Christine Jung](#); [Compliance Manager](#)  
**Cc:** [Deanna Santana](#); [Brian Doyle](#); [Ruth Shikada](#); [Kenn Lee](#)  
**Subject:** Re: Field Seats and Levy Agreement  
**Date:** Tuesday, May 18, 2021 6:33:17 AM  
**Attachments:** [image002.png](#)  
[image005.png](#)  
[image001.png](#)

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Hi Christine

No, we have not pre-sold any field seats for the 2021 season at this time.

Jim

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**From:** Christine Jung <CJung@SantaClaraCA.gov>  
**Sent:** Monday, May 17, 2021 3:45 PM  
**To:** Mercurio, Jim; Compliance Manager  
**Cc:** Deanna Santana; Brian Doyle; Ruth Shikada; Kenn Lee  
**Subject:** RE: Field Seats and Levy Agreement

Hi Jim,

Thanks for sending the letter.

We have an additional follow up question regarding the field seats. Has the Stadium Manager pre-sold any of the field seats?

Please let us know, thank you.

Christine

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**From:** Mercurio, Jim <jim.mercurio@49ers.com>  
**Sent:** Monday, May 17, 2021 10:20 AM  
**To:** Christine Jung <CJung@SantaClaraCA.gov>; Compliance Manager <compliance@49ers-smc.com>  
**Cc:** Deanna Santana <DSantana@SantaClaraCA.gov>; Brian Doyle <BDoyle@SantaClaraCA.gov>; Ruth Shikada <RShikada@SantaClaraCA.gov>; Kenn Lee <KLee@SantaClaraCA.gov>  
**Subject:** RE: Field Seats and Levy Agreement

Christine:

Attached is the letter Mr. Beauchman sent in August 2019.

Thanks,

JIM

**JIM MERCURIO**

Executive Vice President & General Manager  
**Forty Niners Stadium Management Company**  
T 408.562-4944 | M 650 642-4909  
Levi's® Stadium  
4900 Marie P. DeBartolo Way  
Santa Clara, CA 95054



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**[49ers.com](http://49ers.com)**

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**From:** Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>  
**Sent:** Sunday, May 16, 2021 4:53 PM  
**To:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>; Compliance Manager <[compliancemanager@49ers-smc.com](mailto:compliancemanager@49ers-smc.com)>  
**Cc:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Brian Doyle <[BDoyle@SantaClaraCA.gov](mailto:BDoyle@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>; Kenn Lee <[KLee@SantaClaraCA.gov](mailto:KLee@SantaClaraCA.gov)>  
**Subject:** RE: Field Seats and Levy Agreement

Hi Jim,

Your email below refers to an attached letter from Mr. Beauchman, which was not included in the email thread. Please send a copy.

Thank you,  
Christine

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**From:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>  
**Sent:** Thursday, May 13, 2021 9:56 AM  
**To:** Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>; Compliance Manager <[compliancemanager@49ers-smc.com](mailto:compliancemanager@49ers-smc.com)>  
**Cc:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Brian Doyle <[BDoyle@SantaClaraCA.gov](mailto:BDoyle@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>; Kenn Lee <[KLee@SantaClaraCA.gov](mailto:KLee@SantaClaraCA.gov)>  
**Subject:** RE: Field Seats and Levy Agreement

Hi Christine. Below are the responses to your questions (***bold & italic***).

Hi Jim,

Thanks for sending the two requests along with corresponding documentation. We are still in the process of

reviewing the Levy agreement amendment but wanted to share the following questions regarding the field seat proposal as soon as possible so that both sides have time to respond and we have enough information to prepare the corresponding agenda report:

- On May 12, 2020, the Board directed the Stadium Manager to continue to develop a “similar instrument” proposal that addresses the Stadium Authority’s concerns (similar instrument goals: maximizes revenue, addresses the required annual NFL approvals, removes the burden to make the SBL Holder whole if the NFL did not approve the seats, and removes the sale of a product, that by nature is temporary, and amortized over 30 years). How has the Stadium Manager implemented the Board’s May 12, 2020 direction when the issue was last brought up before the Board for consideration?

***As explained in Mr. Beauchman’s letter dated 8.20.2019 (attached), the SCSA’s desire to create a new “seat license” product for these temporary seats -- with no customer refunds if the seats are removed -- is a dead-end.***

***The SBL Agreement grants the consumer rights to their seats for the “Life of the Stadium”, and includes a provision for a prorated refund to the consumer if those seats are removed. This is an important consumer protection included in every single SBL that has been sold for Levi’s Stadium. Your request to “remove the (SCSA’s) burden to make the SBL holder whole” would eliminate this protection from the SBL Agreement, and the consumer would be rightly concerned that they would purchase an SBL for a specific seat, and that seat could simply be eliminated next year with no refund to the consumer. If the SCSA doesn’t want to commit to consumer refunds as is required under the SBL Agreement, then it should simply not sell SBLs for temporary seats.***

***As background, we explained to the SCSA in 2019 that we don’t think it is prudent to require SBLs for these particular seats because they are temporary seats that have the potential for being eliminated for NFL games in the future (as was the case for the 2020 season). However, we have attempted to accommodate your request for an SBL plan for these seats in order to prevent this matter from becoming another issue that needs to be sorted out by an arbitrator.***

***There was a discussion in the City Staff’s report to the Board dated 5.12.2020 that suggested creating a “year to year” SBL product. That is not an SBL or a similar instrument. That is a season ticket.***

- This year’s SBL revenue chart assumes that SCSA will receive SBL revenue in 2021 but the Stadium Operations Agreement allows StadCo, as the Tenant, to sell tickets for seats that don’t have SBLs by May 31 of each calendar year for the immediately following NFL Season. Any SBL Agreement applicable to such seats entered into after May 31 of any calendar year shall be effective only for Non-NFL Events and, unless the Parties otherwise agree, subsequent NFL Seasons. Will the Stadium Manager be willing to sell SBLs for the field seats beyond the May 31 cutoff for this upcoming 2021 NFL Season?

***Yes. As a showing of good faith, the Stadium Manager will commit to ensuring that SBLs for field seats sold through June 30 will have access to the full slate of tickets for the upcoming 2021 NFL Season. We believe that this additional 30-day exclusive window will allow the SBL sales team to achieve the revenue figures contained in our projections, subject to pricing and NFL approval prior to June 1. Beginning July 1, the tickets for unsold field seats will be made available to the public on a first-come, first-served basis.***

- This year's SBL revenue chart shows SCSA's ticket revenue surcharge stopping at Year 18 (2038) with a total of \$262,242. It is unclear why there is this stop when last year's ticket revenue surcharge stopped at Year 30 (2049) and had a much higher projected ticket revenue (\$539,559). Please explain the stop at Year 18 for this year's revenue chart vs. Year 30 for last year's chart, and the significant difference between the projected ticket revenue surcharge amounts.

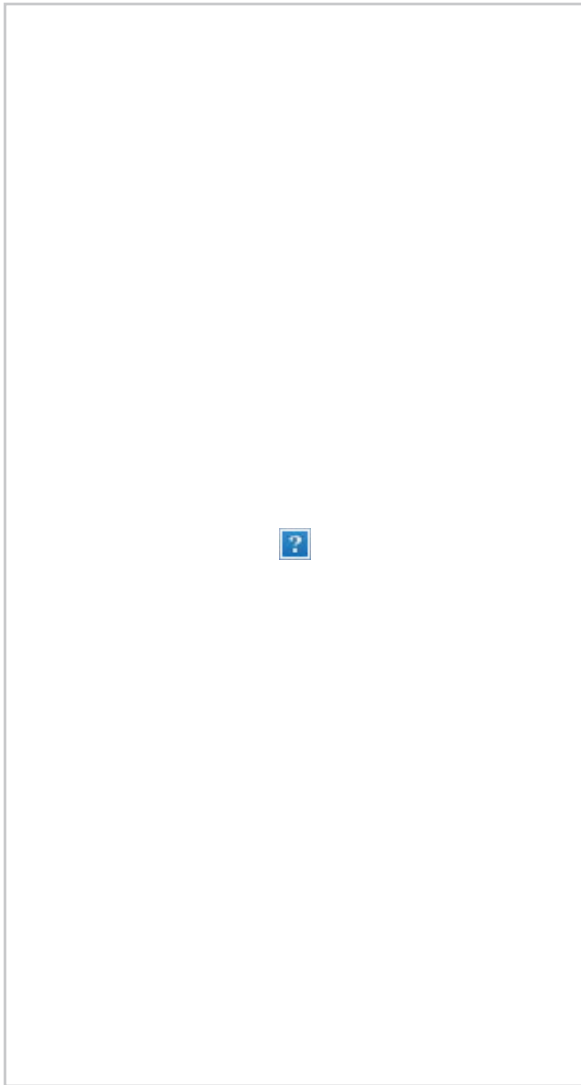
***The NFL Ticket Surcharge is collected on the Stadium Authority's behalf during the "Surcharge Term" as defined in the Non-Relocation Agreement between the Team and the Stadium Authority. The Surcharge Term expires following the 2038 NFL Season, or as otherwise provided in the Non-Relocation Agreement.***

- Please confirm that the ticket price for a seat is equal to "Ticket Revenue" divided by "Sold Seats". Ex. For Year 1: \$112,000 Ticket Revenue / 64 seats = \$1,750. Is \$1,750 the actual ticket price and SCSA receives \$175 as the 10% ticket surcharge?

***The NFL Ticket Surcharge is computed in accordance with Section 5.1 of the Non-Relocation Agreement, which expressly excludes StadCo "premium" revenues. In other words, there are two components to the pricing for NFL premium seating (including these Field Seats): The "ticket" portion, which is subject to the 10% surcharge, and "premium" portion, which is not subject to the 10% surcharge. Total ticket pricing will be finalized following SBL pricing approval, but is likely to be in line with pricing in previous seasons.***

- Last year, SCSA requested a report of the total revenue generated from the ticket sales related to these seats in recent years, which we have not yet received. Please submit the requested report.

***Here is the detail of ticket revenue (excluding premium) from the Field Seats since 2018, which is the first year they were installed:***



*In your 5.2020 staff report it appears that you developed your own estimate of the “premium” charges associated with the tickets for these seats (i.e. the portion of the price that is excluded from the calculation of Ticket Receipts and the NFL Ticket Surcharge). The details of those premium revenues are confidential tenant financial information, but your estimates appeared fairly reasonable to us based on publicly available information.*

JIM

**JIM MERCURIO**

Executive Vice President & General Manager

**Forty Niners Stadium Management Company**

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Levi's® Stadium

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**From:** Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>

**Sent:** Tuesday, May 11, 2021 3:13 PM

**To:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>; Compliance Manager <[compliancemanager@49ers-smc.com](mailto:compliancemanager@49ers-smc.com)>

**Cc:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Brian Doyle <[BDoyle@SantaClaraCA.gov](mailto:BDoyle@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>; Kenn Lee <[KLee@SantaClaraCA.gov](mailto:KLee@SantaClaraCA.gov)>

**Subject:** RE: Field Seats and Levy Agreement

Hi Jim,

Thanks for sending the two requests along with corresponding documentation. We are still in the process of reviewing the Levy agreement amendment but wanted to share the following questions regarding the field seat proposal as soon as possible so that both sides have time to respond and we have enough information to prepare the corresponding agenda report:

- On May 12, 2020, the Board directed the Stadium Manager to continue to develop a “similar instrument” proposal that addresses the Stadium Authority’s concerns (similar instrument goals: maximizes revenue, addresses the required annual NFL approvals, removes the burden to make the SBL Holder whole if the NFL did not approve the seats, and removes the sale of a product, that by nature is temporary, and amortized over 30 years). How has the Stadium Manager implemented the Board’s May 12, 2020 direction when the issue was last brought up before the Board for consideration?
- This year’s SBL revenue chart assumes that SCSA will receive SBL revenue in 2021 but the Stadium Operations Agreement allows StadCo, as the Tenant, to sell tickets for seats that don’t have SBLs by May 31 of each calendar year for the immediately following NFL Season. Any SBL Agreement applicable to such seats entered into after May 31 of any calendar year shall be effective only for Non-NFL Events and, unless the Parties otherwise agree, subsequent NFL Seasons. Will the Stadium Manager be willing to sell SBLs for the field seats beyond the May 31 cutoff for this upcoming 2021 NFL Season?
- This year’s SBL revenue chart shows SCSA’s ticket revenue surcharge stopping at Year 18 (2038) with a total of \$262,242. It is unclear why there is this stop when last year’s ticket revenue surcharge stopped at Year 30 (2049) and had a much higher projected ticket revenue (\$539,559). Please explain the stop at Year 18 for this year’s revenue chart vs. Year 30 for last year’s chart, and the significant difference between the projected ticket revenue surcharge amounts.
- Please confirm that the ticket price for a seat is equal to “Ticket Revenue” divided by “Sold Seats”. Ex. For Year 1: \$112,000 Ticket Revenue / 64 seats = \$1,750. Is \$1,750 the actual ticket price and SCSA receives

\$175 as the 10% ticket surcharge?

- Last year, SCSA requested a report of the total revenue generated from the ticket sales related to these seats in recent years, which we have not yet received. Please submit the requested report.

Please provide the Stadium Manager's responses to these questions and the requested report as soon as possible but no later than 10am this Thursday, May 13 so that we can prepare the agenda report.

**Thank you,**

**Christine Jung | Assistant to the Executive Director**

1500 Warburton Avenue | Santa Clara, CA 95050

D: 408.615.2218 | [www.santaclaraca.gov/scsa](http://www.santaclaraca.gov/scsa)



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**From:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>

**Sent:** Monday, May 10, 2021 5:43 PM

**To:** Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>; Compliance Manager <[compliancemanager@49ers-smc.com](mailto:compliancemanager@49ers-smc.com)>; Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>

**Cc:** Brian Doyle <[BDoyle@SantaClaraCA.gov](mailto:BDoyle@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>

**Subject:** RE: Field Seats and Levy Agreement

Deanna:

As we discussed in our most recent quarterly meeting, Stadium Manager is seeking approval from the SCSA of (1) the setting of SBL pricing for field seating in the north and south endzones of Levi's Stadium and (2) an amendment to the Stadium's Concessions Agreement as a result fewer than 8 games being played at Levi's Stadium during the 2020 NFL season.

For the Field Seats, these seats continue to be popular with fans and present a significant financial opportunity to drive additional revenue directly to the SCSA. Although we have not yet received final approval for the seats from the NFL for the 2021 season, we would like to proceed with finalizing the price point so that when approval is received, we are prepared to go to market with the seats.

While in the past we have presented multiple options for pricing, we believe that the optimal price point for these seats is an SBL of \$10,000 per seat. At this price level, we anticipate full sell-through of the field seating within 18 months, generating a projected \$1,172,980.00 in total revenue to the SCSA over the life of the seats.

Further, as we discussed in the quarterly meeting, the 49ers have committed to covering any food and beverage credits associated with these SBLs. Thus, the SCSA will not be obligated to fund any buffets associated with the seats.

I have attached our revenue projections for the seats to this email. The projections assume pricing

approval at the May 25 SCSA Board meeting, and approval from the NFL prior to June 1.

The other item that requires approval at the May 25 SCSA Board meeting is the attached First Amendment to the Stadium's Concessions Agreement. Under Section 3.3 of the original Concessions Agreement, the parties agreed to the extension of the term of the agreement by one year in the event that fewer than 8 home games are played at the Stadium in any fiscal year. Because only 5 home games were played in Levi's Stadium during the 2020 NFL season, the parties are obligated to extend the term for one additional year.

In addition to extending the term of the agreement, the attached amendment contains limited financial housekeeping to ensure Levi's back-end accounting aligns with their investment commitment and the new 13-year term. These modifications have no impact on the revenues or costs to the SCSA.

We are happy to answer any additional questions that you or your staff may have ahead of the May 25 meeting.

Thanks,

JIM

**JIM MERCURIO**

Executive Vice President & General Manager  
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Santa Clara, CA 95054



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**From:** Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>

**Sent:** Thursday, April 29, 2021 9:04 AM

**To:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>; Compliance Manager <[compliancemanager@49ers-smc.com](mailto:compliancemanager@49ers-smc.com)>

**Cc:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Brian Doyle <[BDoyle@SantaClaraCA.gov](mailto:BDoyle@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>; Kenn Lee <[KLee@SantaClaraCA.gov](mailto:KLee@SantaClaraCA.gov)>

**Subject:** Field Seats and Levy Agreement

Hi Jim,



We have not yet received any information from the Stadium Manager on the proposed field seats and amendment to the Levy agreement which were discussed during our April 15 staff meeting. At this point, the Stadium Authority will not have sufficient time to review and analyze information the Stadium Manager submits and draft corresponding agenda reports on its behalf for the May 11 Stadium Authority Board meeting.

We can plan on bringing these two items forward for the Board's consideration at the May 25 meeting if the Stadium Manager is able to submit the written requests and supporting information/documentation by Monday, May 10, 2021. As requested during our April 15 meeting, we ask that the Stadium Manager send whatever information it currently has on the two items as soon as possible so that staff can start preparing the agenda reports and plug in the missing information/documents when received (e.g., NFL approval of the field seats).

**Thank you,**

**Christine Jung | Assistant to the Executive Director**

1500 Warburton Avenue | Santa Clara, CA 95050

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**FORTY NINERS**  
**SC STADIUM**  
**COMPANY LLC**

August 21, 2019

Via Email

Executive Director Deanna Santana  
Santa Clara Stadium Authority  
1500 Warburton Ave.  
Santa Clara, CA 95050

Re: Temporary Field Seats for 49ers Games

Dear Executive Director Santana:

I am responding to your August 20, 2019 letter on this subject. In sum, I disagree with your factual assertions, and the Forty Niners will not agree to pay amounts that they are not legally obligated to pay.

The permit request for that design for field seats is hereby withdrawn. We do not expect to re-submit a permit for the field seats as previously designed for the current 2019 season or in future NFL seasons. For the 2019 season only, we will utilize modified temporary seats on gamedays that are not subject to your approval. Following the season, we intend re-evaluate the nature of seating in that area and will consider other options available to Tenant. As a result of your actions, the Authority will forgo over one million dollars of revenue.

In addition, I disagree with the assertions in your August 20 letter. I first contacted you on July 22 to discuss any remaining, outstanding issues on the field seats. You did not respond. I made additional requests for discussion on August 2 and August 13. You finally responded on August 20, and listed four reasons why you have been unwilling to respond. None of them is correct.

1. You state that the “District Attorney’s Office confirmed [field seat] tickets were being conditionally sold pending Stadium Authority Board approval.” I addressed this directly in my July 22 email, but will repeat it here: we have not sold tickets to these seats for the 2019 season. If you have any evidence of a sale for tickets in these seats for the 2019 season, please provide it.
2. Your letter asserts that I should provide you with written legal advice. The Authority is already represented by counsel. For its part, Stadium Manager would not recommend incorporating additional language to restrict refunds for field seating because it is anti-consumer, and not consistent with the market realities within which stadiums like this one operate. However, the issue is moot, because the permit has been withdrawn and SBLs will not be sold.
3. You contend that I have not provided you with updated revenue projections. Please note that updated projections were attached to my July 22 email. As I noted at that time, the expected lifetime cash flow from SBL sales at the \$20K price level was \$1,176,332.00. This is the projected revenue that Stadium Authority will forgo as a direct result of your actions.
4. You contend that we have not acted in good faith by conditioning disclosure of confidential Tenant information. We offered to provide information the Authority is not entitled to receive – if the Authority actually intended to sell SBLs. There is no other reason why the Authority would

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have a need to see confidential information. I have nevertheless been available to discuss this issue with you at any time during the past month, so it is surprising that you are now accusing me of bad faith.

Finally, there are two points from your July 15 email that I wanted to address directly as they pertain to your more recent assertion that we have not responded to the Board's requests.

First, you requested confidential 49ers revenue information for the field seats from 2018 and demanded the Forty Niners pay a portion of that revenue to the Stadium Authority. In exchange for that payment, Stadium Authority would purportedly allow the City's Building Department to process the routine permit for the field seats. But processing the permit application is a ministerial task that the Building Department is supposed to perform, in exchange for a set fee. It is not a task that the Stadium Authority can block, subject to the Forty Niners' agreement to pay additional fees, not charged to any other applicant.

Second, you continue to use the term "other instrument" in quotes without any context. Such term does not appear in the Lease. Section 4.6.1 of the Lease reserves the Stadium Authority's right to sell "SBLs and *similar* instruments." This right does not allow the Stadium Authority (or require Tenant) to devise a new tax on San Francisco 49ers season tickets, which is not in any way similar to an SBL. The San Francisco 49ers maintains complete control over the pricing of its tickets, and will not agree to the Stadium Authority asserting any revenue rights not expressly granted by contract.

Nothing herein is intended to waive any rights Tenant may have to pursue other legal action concerning this matter.

Sincerely,

Jihad Beauchman  
Vice President, Deputy General Counsel

Cc: Brian Doyle

Attachments: July 22 email  
August 2 email  
August 13 email