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Sent: Tuesday, September 24, 2024 10:44 AM
To: Clerk <Clerk@santaclaraca.gov>
Cc: Mayor and Council <MAYORANDCOUNCIL@SantaClaraCA.gov>; manager@santaclaraca.gov
Subject: 9.24.2024 Agenda - Item Public presentation

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09.24.2024 Presentation: Request to agendaize Study Session on Staff compliance with Council direction on negotiations for 2026 World Cup and Super Bowl events

The purpose of this presentation is to provide a more comprehensive comment on staff's World Cup and Super Bowl "update" on August 27. At the beginning of the August 27 meeting I requested a continuance of the item because staff was still withholding the record of Al Guido's interactions with FIFA. To date, staff persists in refusing to provide the unredacted copies of the documents that Mr. Guido signed.

Nevertheless, I reviewed staff's discussion of the very serious risks that Mr. Guido has subjected Santa Clara to. Staff has amplified these risks by their weak negotiation strategy. First, they have failed to comply with Measure J in that they have been expending City funds on Stadium operations in the form of uncompensated staff time and expenses on Super Bowl and World Cup. Staff have failed to follow Council direction to recover **all** costs with respect to the planning and the support of the World Cup events.

Where did the idea of an assignment come from?

The idea that the Stadium Lease could be amended through an assignment of a money losing event first came up in 2018 when the City learned of Al Guido's booking of the College Football Championship Game at a tremendous loss to the Stadium Authority.

Before I had arrived as City Attorney, the 49ers had managed to get Levi's Stadium awarded as the site for the College Football Championship Game. It should be noted that unlike NFL football games, college football games are considered non-NFL events under the Stadium Lease. The revenue and expenses of non-NFL events belong to the Stadium Authority and not to the 49ers. As managers for the purpose of booking non-NFL events, the 49ers are acting as agents for a public entity and have a duty to maximize revenue and minimize expenses.

About a year before the game was to take place, there was a meeting where ManCo's senior management, including Al Guido, made a presentation to Stadium Authority staff about the bid that they had submitted and was awarded. It was one of those slick but fluffy slide shows about how great it would be. We all waited for the punchline: the financials.

When we got to the financials bottom line slide, the event was presented as a \$12 million loss! This was the first time that the Stadium Authority had heard what the 49ers had agreed to. In so many words, we told them that there was absolutely no way that we could support a recommendation to the Board to approve moving forward. As I said to Al Guido: "Why would Santa Clara pay \$12 million to have a bunch of people from Alabama stay in hotel rooms in San Jose?" He didn't have an answer.

Considering that contracts with the NCAA and the location of the game had already been announced, canceling the event would have been a major blow-up. Facing this prospect, the 49ers agreed that we could assign the money-losing event to the Bay Area Host Committee, the nonprofit that had worked on marshaling regional resources for big events like the Super Bowl, and the 49ers would backfill the loss out of their own pocket. The assignment also called for there to be an audit of the event, to ensure that the 49ers did not somehow turn the event into a profitable one for them.

The National Championship Game occurred during a period of time that ManCo was strenuously resisting giving the Stadium Authority access to the Authority's own financial records that related to non-NFL events. As the Stadium Authority learned more about what ManCo had been doing, it became clear that the reason for the withholding of the records was because ManCo had been engaging in serious self-dealing.

On September 17, 2019, the City Council voted 6-0-1 (Mahan absent) to terminate the Management Agreement based on failure to follow state labor laws on prevailing wages, self-dealing and breach of their duty to book revenue-positive non-NFL events .

Even after the Management Agreement had been terminated, Al Guido, ManCo president, continued to engage with FIFA in order to grant them the right to conduct a series of World Cup matches in conjunction with two dozen other municipalities in the USA, Canada and Mexico.

On November 16, 2021, I presented a "030" request for the Council to consider Al Guido's apparent conflict of interest which stated:

On September 17, 2019, the Stadium Authority Board terminated the Stadium Management Agreement with the San Francisco 49ers. Although the 49ers sued the Stadium Authority in an attempt to prevent the termination, the litigation has still not been resolved. The 49ers' breaches which gave grounds for the termination are serious and remain without remedy. They involve self dealing, breach of fiduciary duty, and violation of conflict of interest laws. Without the Management Agreement, the 49ers have absolutely no right to book non-NFL events.

Despite the fact that he has no right to obligate the Stadium Authority, Al Guido has been representing to FIFA that they will be able to use Levi's Stadium as a venue for the 2026 World Cup matches. Despite the fact that the Management Agreement has been terminated, Mr. Guido has never consulted the Stadium Authority Board about whether he is authorized to grant a license to use the publicly-owned Levi's Stadium.

I hereby request that the City Council and Stadium Authority Board place an item on a future agenda to explain to the public how Mr. Guido can proceed with misrepresenting his authority to FIFA officials.

The report to the Board should include answers to the following questions:

1. Has Mr. Guido informed the FIFA officials that the Stadium Authority Board has terminated the Management Agreement, and that therefore he may not be legally authorized to book World Cup matches at Levi's Stadium?
2. Have Mr. Guido's negotiations included potential deals that would benefit entities in which Mr. Guido has an interest?
3. What conversations have any Board Members engaged in about use of Levi's Stadium for the 2026 World Cup, and under what authority have these conversations occurred?

The Clerk noted the Council's action on my request as follows:

A motion was made by Councilmember Becker, seconded by Vice Mayor Chahal, to deny the Written Petition request. Becker's motion passed on a 5-2 vote, with Mayor Gillmor and Councilmember Watanabe voting no.

On February 22, 2022, Councilmember Hardy presented a resolution to support FIFA coming to Santa Clara. At that meeting City Manager Deanna Santana and Chief Assistant City Attorney Su Reuter identified potential conflict of interest issues with Al Guido's participation in negotiating agreements with FIFA on behalf of Santa Clara. The video of the discussion can be found at: https://santaclaragranicus.com/player/clip/1683?view_id=1&meta_id=143445&redirect=true

Two days later on February 24, 2022, Council agreed to the City Manager's termination.

On June 13, 2022, Al Guido signed an Addendum agreement with FIFA on behalf of the Stadium Authority as ManCo's CEO and also signed as CEO of the Bay Area Host Committee. Mr. Guido never informed the Stadium Authority of any of the terms that he was proposing to FIFA, not even the logistical obligations that he was representing that the City of Santa Clara would necessarily have to provide. He hid the details of this Addendum from the Stadium Authority during the same time that ManCo was negotiating a restoration of the Management Agreement. As explained below, Mr. Guido's participation in the making of the Addendum agreement was in fact a serious violation of state conflict of interest laws. His shielding of his illegal activity was serious material omission that gives apparent grounds for the Stadium Authority not only to declare the FIFA Addendum void, but to rescind the Settlement Agreement as having been obtained through fraud.

Al Guido clearly had a duty not to violation conflict of interest law

The Stadium is owned by the Santa Clara Stadium Authority which leases it to the Santa Clara Stadium Company which in turn leases the Stadium to the San Francisco 49ers to play NFL games. A copy of the Lease can be found at <https://www.santaclaraca.gov/home/showpublisheddocument/46687/636071428735770000>. Under Article 13 of the Lease, the FORTY NINERS SC STADIUM COMPANY LLC (StadCo) receives revenue from non-NFL events in the form of Suite revenue and other revenue sources. StadCo is a source of income to Mr. Guido.

The Stadium Authority also signed a separate Management Agreement with a 49ers entity known as the Santa Clara Stadium Management Company. The Management Agreement can be found at <https://www.santaclaraca.gov/home/showpublisheddocument/46731/636071429908830000>. Under

section 3.2.1 the Stadium Authority delegated authority to book “non-NFL” events at the stadium to the Stadium Manager.

On February 9, 2021, the City Clerk and I brought forward amendments to the Stadium Authority Conflict of Interest Code to the Stadium Authority Board to enact requirements for 49er personnel to file financial disclosure statements as “consultants” to the Stadium Authority. This last effort was vigorously opposed by the 49ers, leading to one board member (Chahal) refusing to approve by abstaining in the vote to approve the action that was obviously required under state law. A record of the Board’s action can be found at:

<https://santaclaralegistar.com/LegislationDetail.aspx?ID=4775196&GUID=7CBC1499-B062-4330-8E10-A0DB31AB161C&Options=&Search=>

As a StadCo officer Mr. Guido has a financial interest in the Stadium suites revenue and other revenue that a non-NFL event would produce for StadCo. Although under the Lease non-NFL event revenue and expenses belong to the Stadium Authority, revenue related to the Stadium suites from non-NFL events still belongs to the 49ers. Because the StadCo’s revenue is a source of income to Mr. Guido, state law prohibits him from participating in the making of a decision regarding the booking of non-NFL events, including negotiations to bring FIFA World Cup events to Levi’s Stadium.

Mr. Guido was also the CEO of the Bay Area Host Committee at the time he signed the FIFA Addendum. The Bay Area Host Committee (4097051) was formed on January 8, 2018 as a California nonprofit mutual benefit corporation with Al Guido as its Chief Executive Officer and its business address the same as that for the 49ers organizations including ManCo and StadCo. According to BAHC’s Statement of Information filed on March 2, 2022 with the California Secretary of State, Al Guido continued in his role as CEO.

On January 3, 2024, the California Attorney General determined that the BAHC was not required to register as a charity “because it is organized and operated primarily as a mutual benefit corporation that does not solicit or hold assets for charitable purposes.”

On February 22, 2024, the 49ers formed a second nonprofit called the Bay Area Host Committee Foundation (6097413). This new 501 (c)(3) entity was formed as a California nonprofit public benefit corporation with Zaileen Janmohamed as its Chief Executive Officer.

On May 1, 2024, the original Bay Area Host Committee (4097051) replaced Al Guido with Zaileen Janmohamed as its Chief Executive Officer.

Apparently, Mr. Guido made representations to FIFA with respect to holding World Cup matches at Levi’s Stadium both an agreement between the Management Company and the Host Committee, but the Stadium Authority had never authorized such a joint agreement. Government Code section 1090 prohibited Mr. Guido from entering into any such agreements, and renders the agreements void and unenforceable. The Political Reform Act and FPPC regulations prohibit Mr. Guido from even participating in the making of such decisions on behalf of the Stadium Authority. If Mr. Guido represented to FIFA that he had the authority to enter into such an agreement, he would have made serious misrepresentations to FIFA officials as agent of the Stadium Authority because he was prohibited from participating in making that decision.

Mr. Guido has to date not revealed the terms of the bid that he submitted on behalf of the Stadium Authority, nor has he revealed what transactions the Host Committee has engaged in with the Stadium Authority or with the 49ers.

On August 27, 2022, Council on 4-0 vote (Becker, Jain, Hardy and Park) approved a settlement agreement that awarded Management Agreement back to ManCo without resolving the conflict of interest issues. In fact, the Settlement Agreement magnified the conflict issues.

Section 8 of the Settlement Agreement appears to be in conflict with the requirements of the Political Reform Act and FPPC regulations. Under the Stadium Authority's Conflict of Interest Code Stadium Manager's officers, including Al Guido, are designated as "Consultants" who have a duty to recuse himself when he has a financial interest in a potential transaction. Each of these Consultants also receive income from StadCo.

8. CONFLICT OF INTEREST.

a. SCSA acknowledges that Manager has provided SCSA with its adopted policies and procedures concerning conflict of interest laws. Manager acknowledges that it will comply with all applicable conflict of interest laws.

b. Manager agrees that it shall not execute sponsorship or advertising agreements that concern both StadCo and SCSA assets. Rather, where a potential sponsor seeks to acquire assets owned by StadCo, and assets owned by SCSA, Manager shall execute one contract on behalf of SCSA, and a second contract on behalf of StadCo, each of which will concern that Party's assets.

c. Manager warrants that when booking, selecting, and negotiating contracts for Non-NFL Events, it shall maximize Stadium revenues, and focus on and emphasize SCSA revenues, and: it shall not prioritize StadCo net revenues from that event over SCSA Non-NFL Net Revenues from that event. Manager further warrants that it will use commercially reasonable efforts to book, select, and negotiate such contracts, in a manner consistent with relevant industry standards.

Subsection b appears to set up the opportunity for the Manager to solicit sponsorship or advertising funding from the same sponsor and funnel some money to StadCo which it has a financial interest in through one contract and other money to the Stadium Authority through another contract. Doesn't this violate the Political Reform Act and FPPC regulations prohibitions on participating in a decision in which a consultant has financial interest? This provision would appear to allow a kickback as long as it is done through a separate contract.

Subsection c appears equally flawed. Under the Lease the revenue and expenses of non-NFL events are all public finances. Anyone booking those events is prohibited from participating in making any decision in which they have financial interests. Rather than requiring recusal, Section 8c appears to allow for participation with a duty to "prefer" the public agency's interest.

How is this problem solved by requiring them to not prioritize StadCo's interest over the Stadium Authorities interest? There is no FPPC rule that would allow someone to participate in a decision simply by agreeing to prioritize the public entity's interest over their own.

Apparently, sometime in 2023 ManCo gave a copy of the FIFA Addendum to the City Attorney that revealed that Al Guido signed on behalf of both ManCo and the BAHC. To date the City Attorney has failed to explain why Mr. Guido had not engaged in serious conflict of interest violations that rendered that Addendum void. Instead, the City Attorney agreed to keep much of the contents of the Addendum hidden from the public, making it more difficult to enforce conflict of interest violations.

Aside from the 1090 violation created by Al Guido signing on behalf of both ManCo and BAHC, he appears to have violated both the PRA and the lesser standard contained in the Settlement Agreement. By signing the Addendum with FIFA and the BAHC he knew that he would be trying to assign the rent from FIFA to a third party, thus depriving the Stadium Authority of any profit on the events while at the same time knowing that he would be enriching himself with StadCo as his source of income. StadCo owns dozens of suites which it apparently intends to sell at tremendous profit during the World Cup. The 49ers have issued press releases touting \$200 M in Stadium upgrades in anticipation of the World Cup and Super Bowl. They would not be borrowing this amount of money without some expectation of a return as a source to repay the debt. Clearly booking an event which at the time they knew would be of no financial benefit to the Stadium Authority and would direct financial benefit to the 49ers was both a violation of the Political Reform Act and a breach of Section 8 of the 2022 Settlement Agreement.

Due Diligence

In their August 27, 2024 presentation staff did not make clear which nonprofit host committee corporation that they have been negotiating with. Nor have staff provided any information about whether they have engaged in any due diligence in determining why Mr. Guido was switched out and what the financial viability of the entity is, despite the fact that it is recommending a contract involving tens of millions of dollars in obligations to the City and Stadium Authority.

Staff has also never explained what contract it is proposing an “assumption and assignment” of, nor have they explained why they are proposing to make a contract with the Host Committee. It is important to understand that the Stadium Lease makes no provisions for assignments. Thus, the changes to the Stadium Authority’s legal rights and obligations vis-a-vis the FIFA events are essentially an amendment to the Lease, especially considering the magnitude of the financial consequences for the 2025 and 2025 Fiscal Years.

It is not clear which Bay Area Host Committee staff is negotiating with to raise revenue to offset the expenses of bringing World Cup matches to Levi’s Stadium. Is it the “new” committee which has a link here: <https://new.bayareahostcommittee.com/>? This Committee has a substantial staff that would seem to require a substantial amount of revenue to sustain. Is staff proposing to assign the Stadium Authority’s revenue to this entity? Is this a good use of the revenue given that the Host Committee will need to pay substantial amounts back to the City to pay for security and other operational costs of holding the events? Why not hold on to whatever rent amounts will be necessary to pay the City?

Backwards Negotiation

In their report on August 27, 2024, staff stated that on May 23, 2023, City Council and Stadium Authority Board voted in favor of a resolution to adopt the Santa Clara City Council Guiding Principles

for FWC26 which included direction to **Attain reimbursement of all event costs, including public safety (pre- and post-event costs).**

Yet, in the course of their presentation at that meeting staff admitted that they had not attained much of the pre-event costs! Their excuse was that they viewed some of the City's costs as not being subject to Measure J prohibitions because the Stadium Authority could pay them. Council's guiding principle that there must be reimbursement of pre-event costs does not distinguish between City and Stadium Authority costs. If staff had believed that Council was not including the Stadium Authority's costs in its directive to attain reimbursement, then staff should have sought Council direction.

Staff's backward approach to negotiations has resulted in the City and Stadium Authority being behind the eight ball. Staff now have to negotiate to get back money that they already spent. They should stop negotiating until all this money has been paid.

They should not re-start negotiating until they include all financial losses that the City and Stadium will suffer as the result of assigning the World Cup event. Stadium non-NFL revenue is used to pay for NFL public safety costs that exceed the cap; loss of net revenue will result in a shortfall in the ability to make these payments. In addition, any lost revenue that comes from assigning the FIFA rent reduces performance rent for that year, a portion of which is necessary for the City to receive fair market value for use of the land on which the Stadium sits.

If the Stadium Authority doesn't get reimbursed for its costs that went toward an event to be assigned then the public is subsidizing the StadCo who will benefit from the event. This would be a violation of state conflict of interest law and the Management Agreement. It also would just violate plain common sense. I offer the following parable as an illustration.

Imagine you and your partner own an event hall. You've divided it into the luxury boxes which he owns and the cheap seats which you can sell. He tells you he's gonna book a great international event with really rich people that will use the hall. He wines and dines these high rollers, going off to Switzerland and having events at the hall to show it off, but keeps all of the financial terms from you.

He then tells you: "good news and bad news" Good news is we got the event. The bad news is that these guys drove a hard bargain and the event is going to be a net loss. But don't worry, I'll get some of the local supporters to pitch in and help pay expenses, but you're going to have to let me keep all of the revenue.

Then you ask him: "What about all of OUR money you spent to get the event? And all of OUR money that you want to spend to get the hall ready for the event? And what about all of the income that we would have made in profitable events if you hadn't booked this loser?"

He just says in response: "when did I ever say that you wouldn't have to pay this?" As the event moves forward, you find out that he plans on making millions of dollars selling tickets to the luxury seats that he keeps. And you never get reimbursed for all the money that he spent getting the hall ready for him to make all the money for himself.

How City staff that has been negotiating this deal cannot see how they are being taken is beyond me. Maybe they have been drinking the same 49er Kool aid that certain council members have been on for the last 6 or 7 years.

What is the path forward? Stop looking at this as an assignment of a contract that is clearly void. Al Guido has violated Government Code Section 1090, California conflict of interest law and the Management Agreement. The City and the Stadium Authority have causes of action against ManCo for all of these violations and breaches. The agreement that staff should be working on to save the World Cup in Santa Clara is a settlement agreement that would require ManCo to repay all of the Stadium Authority expenditures made in anticipation of booking the World Cup and to pay all expenses and lost revenues resulting from their breach.

As stated above, the City Council adopted a set of negotiating principles that included a statement that the City should not pay any of the costs for these events.

What does that include?

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- Hard costs would include City staff time to work at the events. It should also include
- staff costs for all the planning and negotiations of the agreements themselves.
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- Costs should also include all of the lost revenue from essentially giving up the 2026
- non-NFL season. If the Stadium Authority loses most of its net revenue from non-NFL events, where will the payment for the NFL public safety costs over the cap come from? Will the City have to pay for these out of the discretionary fund?
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- What about the annual management costs that under the lease are split between the Stadium
- Authority and the City? If Santa Clara is essentially losing its entire 2026 non NFL season, why should it get charged the management costs, including management costs?
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- What about all the marketing costs, travel and entertainment of FIFA and NFL executives, visiting previous events? Why should the Stadium Authority have to pay expenses to bring an event that will not benefit it at all?
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The Stadium Authority and the City should never have paid any of these costs in the first place without having received a statement by Al Guido under penalty of perjury that he had not violated 1090:

Government Code Section 1094 provides:

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who wilfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

Did staff require that Mr. Guido sign and file an affidavit required by this statute before releasing payment of ManCo's management fee?

Staff has got a lot of explaining to do.

Please agendize a special study session to give the public a clear picture of what is going on. Mr. Guido and the Host Committee's executives should be required to attend the next public meeting to answer any Council questions.

No more pre-election rush to ink another give-away to the 49ers!

