

# Santa Clara Stadium Authority

Action on Amendment No. 2 to the Ground Lease and Amendment No. 1 to the Restated and Amended Stadium Lease to Implement the **Settlement Agreement and Mutual Release (Buffet and Public Safety Cost Arbitration) with Forty Niners SC Stadium Company LLC and Forty Niners Stadium Management Company LLC**

**May 28, 2024, #24-578**



1

## Presenters

- **Jōvan Grogan**
  - City Manager / Executive Director, Santa Clara Stadium Authority
- **Glen Googins**
  - City Attorney / Authority Counsel, Santa Clara Stadium Authority
- **Kenn Lee**
  - Finance Director / Treasurer, Santa Clara Stadium Authority



2

2

**POST MEETING MATERIAL**

## Agenda

- Executive Summary
- Stadium-Related Agreements
- Stadium Economics
- 49ers & Stadium Authority Litigation Disputes
- Funds Held in Litigation Reserve
- Public Safety Cost Dispute (NFL events)
- Buffet Costs Dispute
- Settlement Agreement and Implementing Leases —*Agendized for Action Tonight*
  - Summary
  - PSC
  - Buffet Costs
  - Additional Revenues
- Fiscal Impact
- Staff Recommendation
- Next Steps Tonight



3

3

## Executive Summary



4

4

## Executive Summary

### Key Issues in Dispute

- **Public Safety Costs:** Measure J and Stadium Lease provide a Public Safety Costs Threshold for NFL Games; 49ers (StadCo) pays City public safety costs, but Stadium Authority must reimburse StadCo for costs above the Threshold
  - Initial Threshold too low
  - 49ers disputed Stadium Authority's efforts to increase the Threshold
- **Buffet Costs:** Stadium Lease obligates Stadium Authority to reimburse StadCo for the complimentary buffets provided to Legacy seat license holders (~942)
  - No Facility Rent to cover costs or cap on costs or controls on costs in the original Stadium Lease



5

5

## Executive Summary

### Beneficial Aspects of Original Agreements

- State-of-the-art billion-dollar Stadium, financed without money from the City's General Fund or City Utility Enterprises
- Stadium Events generate economic activity in Santa Clara and revenue for local businesses
- Enhanced Cultural, Entertainment, and Economic Vitality of Santa Clara
- City receives guaranteed Ground Rent for 40 years
- City receives supplemental revenue for Senior and Youth Programs
- City receives Performance-Based Rent payments
- Once Stadium Authority's Reserve Accounts are full, City's General Fund will receive year-end excess revenues, every year
- City's General Fund is not used and not responsible for any Stadium expenses, debt or liability
- If City wants the Stadium demolished at end of the Lease terms, demolition funds have already been set aside in a Reserve Fund, and the 49ers/StadCo responsible for additional demolition costs



6

6

### Key Aspects of the Settlement Agreement

## Executive Summary

- Resolves long-standing disputes between Santa Clara Stadium Authority and the 49ers
- Addresses the 49ers \$22.3 million claim against the Stadium Authority of owed *buffet and public safety reimbursements which Authority stopped making in 2018*
  - Reduces balance to \$14.8 million and provides a structured reimbursement plan with no interest
- Amends reimbursement obligations for buffet costs, and public safety costs, as well as creates new Authority revenues, accelerates funds to the City's General Fund, and other items
- Various terms less than desirable to SCSA from the original deal, such as performance-based rent formula, waterfall/excess revenue process, escalator on Senior and Youth fee, etc. also addressed



7

7

### Additional Benefits of Settlement

## Executive Summary (cont.)

- Settlement avoids costs and uncertainty of a fully "litigated" arbitration proceeding
- Even if Authority prevailed in the Arbitration, the Arbitration would be solely focused on Public Safety and Buffet costs disputes and will not provide enhancements related to...
  - Cap on Stadium Authority's Buffet Costs
  - New ticket surcharge revenue
  - New PSC credit Carryforward terms to ensure the City receives at least 50% of Performance Based-Rent
  - Restructured Waterfall flow of funds to the General Fund
  - Increase to the Senior / Youth Fee to the City
  - Use of the Litigation Reserve to fund a Performance-Based Rent payment to the City



8

8



## Executive Summary (cont.)

### Settlement Terms and Proposed Lease Amendments DO NOT...

- Alter 49ers/StadCo obligations to pay the City of Santa Clara "actual and reasonable" public safety costs
- Impact the Santa Clara Police Department's ability or authority to determine the public safety needs and make deployment decisions for Levi's Stadium, the surrounding neighborhoods or any other area within their jurisdiction

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9

9

## Executive Summary (cont.)



### Tonight's Action:

--Lease Amendments

--Budget Amendments

- Necessary to implement key terms of the Settlement Agreement
- First amendment: Stadium Lease between Stadium Authority and "StadCo" (49ers entity)
- Second amendment: Ground Lease between Stadium Authority and the City (owner of Stadium property)
- Approval sought for delegation to Executive Director/City Manager to amend other required agreements
- Request for approval of related budget amendments

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10

10

## Executive Summary (cont.)

### Next Up...

- Brief history and summary of Levi's Stadium development and operations terms provided
- Overview of buffet costs and public safety costs disputes
- Summary of terms in Settlement Agreement resolving disputes
- Presentation of terms for required lease amendments and budgetary actions



11

11

## Stadium-Related Agreements



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12

## Measure J

- Approved by Santa Clara voters on June 8, 2010
- Permits development of a professional football stadium on City property
- Established Santa Clara Stadium Authority, a joint powers authority



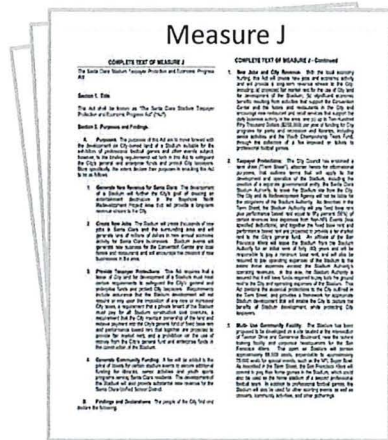
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13

13

## Key Terms



- The City of Santa Clara is prohibited from using its general fund or enterprise funds for the stadium's development
- The ground lease mandates fixed base rent payments totaling \$40,875,000 over 40 years, starting from the first year of stadium operations and increasing annually to a minimum of \$1,000,000 from the 11th year onwards
- Performance-based rent formula: sharing revenues less expenses of non-NFL events, to provide fair market rent to the City
- Neither City nor its Redevelopment Agency is liable for Stadium Authority obligations

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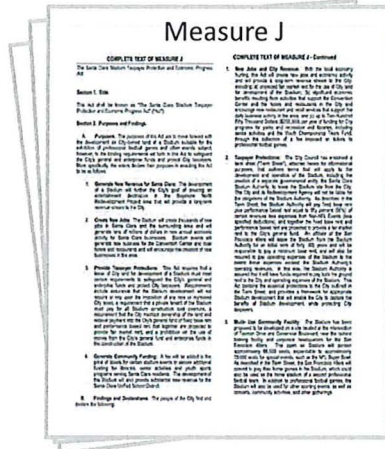
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14

14



## Key Terms (cont.)



- Lease requires payment to the Stadium Authority, covering ground rent and stadium operating and maintenance expenses
- Initial NFL game seasons incur Public Safety Costs with a \$170,000/game threshold, increasing annually by 4%.  
**Excess costs are reimbursed by the Stadium Authority from its Discretionary Fund or through reducing Performance-Based Rent payments**
- If NFL game-related Public Safety Costs exceed the threshold for three consecutive seasons, negotiations may occur for a possible threshold increase, **though the 49ers are not obligated to agree**
- Ground lease stipulates a fee of \$0.35 per ticket for professional football games, capped at \$250,000 annually, allocated for parks, recreation, and library programs, for seniors and youth activities



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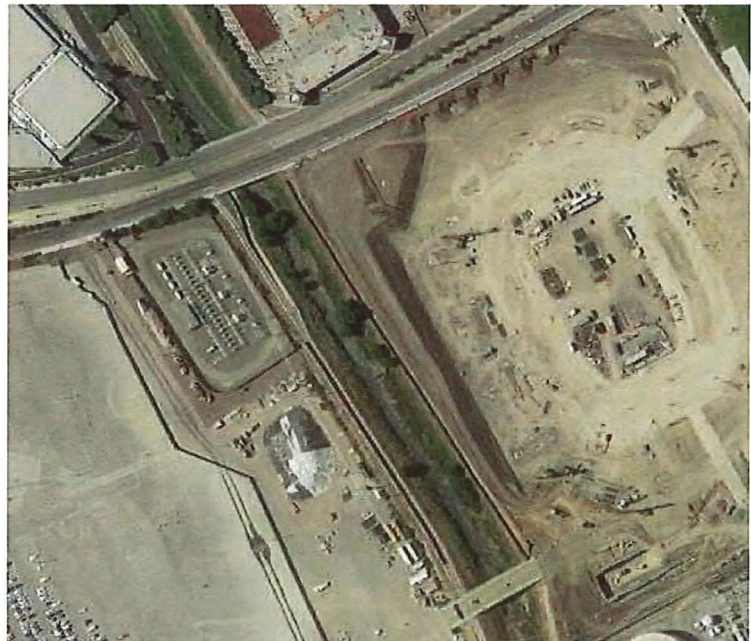
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## Ground Lease

On March 28, 2012, the City and Stadium Authority signed a Ground Lease

Grants Stadium Authority exclusive rights to the Stadium Site for 40 years

Stadium Authority to make Fixed Ground Rent and Performance-Based Rent payments to the City



16

16



## Stadium Lease

On June 19, 2013, Stadium Authority signed a Reinstated and Amended Stadium Lease Agreement with StadCo

40 yr lease for NFL operations

Leases the stadium for half of each fiscal year

StadCo responsible for the Stadium Manager's operating expenses during the lease



17

17

## Other Agreements (cont.)

### Stadium Management Agreement (Management Agreement)

- Stadium Authority and StadCo engaged Forty Niners Stadium Management Company LLC as Stadium Manager
- Responsibilities include day-to-day operations and maintenance per the Stadium Lease
- Stadium Manager handles marketing and booking of Non-NFL Events on behalf of Stadium Authority

### Stadium Operations Agreement

- Outlines operational terms in addition to the Management Agreement
- Covers procedures for scheduling Stadium events
- Includes preparation and approval of annual plans and budgets
- Provides procurement guidelines
- Specifies rules for access by Suite licensees and Premium Stadium Areas



18

18

# Stadium Entities & Roles

**City of Santa Clara**

- Owns the land.
- Ground leases the land to Authority.

**Santa Clara Stadium Authority (Authority)**

- Owns the Stadium.
- Leases to StadCo for NFL Season (6 months).
- Receives net revenues from Non-NFL events.

**49ers Football Company (TeamCo)**

- Owns and operates 49ers Football team.
- Not a party to City or Authority contracts.

**49ers Stadium Company (StadCo)**

- Tenant of the Stadium for NFL Season (6 months).
- Lease with Authority.
- Sub-leases the Stadium to TeamCo.

**49ers Management Company (ManCo)**

- Management Agreement w/StadCo and Authority.
- Manages the Stadium, year-round for both NFL and non-NFL events.



# Stadium Economics



## Stadium Authority Budget Flowchart



21

21

## Excess Revenues Distribution (cont.)

### Excess Revenue Cash Reserves Summary

Reserve Category	FY 2022/23 Actual	FY 2023/24 Projected	FY 2024/25 Budget
Capital Expenditure Reserve	\$22.5M	\$18.2M	\$3.4M
Operating Reserve	\$25.4M	\$26.1M	\$26.9M
Renovation/Demolition Reserve	\$5.3M	\$24.1M	\$35.5M
<b>Total</b>	<b>\$53.2M</b>	<b>\$68.4M</b>	<b>\$65.8M</b>

22

22



## Stadium Authority Operating Budget (cont.)

### Revenues:

Facility Rent	\$ 24,762,000
NFL Ticket Surcharge	13,700,000
Naming Rights	7,830,000
Non-NFL Event Net Revenue	6,000,000
SBL Proceeds	5,057,000
Interest	3,534,000
Non-NFL Event Ticket Surcharge	1,149,000
Sponsorship Revenue (STR)	519,000
Senior & Youth Program Fees	233,000
<b>Total Revenues</b>	<b>\$62,784,000</b>

23

23

## Stadium Authority Operating Budget (cont.)

### Expenses:

Shared Stadium Manager Expenses	\$13,554,000
Stadium Authority General & Administrative	4,188,000
SBL Sales and Service	2,448,000
Utilities	1,488,000
Ground Rent	1,000,000
Performance Rent *	0
Other Expenses	748,000
Discretionary Fund Expense	250,000
Senior and Youth Program Fees	233,000
Use of StadCo Tenant Improvements	151,000
Naming Rights Expenses	136,000
<b>Subtotal Expenses</b>	<b>\$24,196,000</b>

### Transfers Out:

Debt Service	\$17,471,000
Capital Expenditures Reserve	4,032,000
Capital Expenditures Reserve -- Levi's Naming Rights	1,575,000
<b>Subtotal Transfers Out</b>	<b>\$23,078,000</b>
<b>Total Use of Funds</b>	<b>\$47,274,000</b>

\* Pending resolution of litigation

Paid to the  
City's  
General  
Fund

24

24



## Stadium Authority Capital Budget

### Total Capital Budget of \$22.0 million

- Stadium Improvements: \$20.5 million
  - New Projects: \$8.4 million
    - Construction (\$7.2 million): Lighting Systems, Waterproofing/Caulk/Joint Replacements
    - Equipment (\$784,000): Stadium Camera Coverage Upgrade, Command Post Video Wall Upgrade
    - Contingency (\$400,000)
  - Carryover Projects: \$12.1 million
    - Construction (\$6.4 million): Naming Rights Signage, Aesthetic Improvements
    - Equipment (\$5.1 million): Street Signage, Replace Furniture in Club and Special Event Spaces
    - Contingency (\$573,000)
- Stadium Warranty-Related Construction: \$1.5 million
  - Part of the original Stadium Development/Construction Budget

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## Stadium Authority Operating Budget (cont.)

### Performance Based Rent Calculation

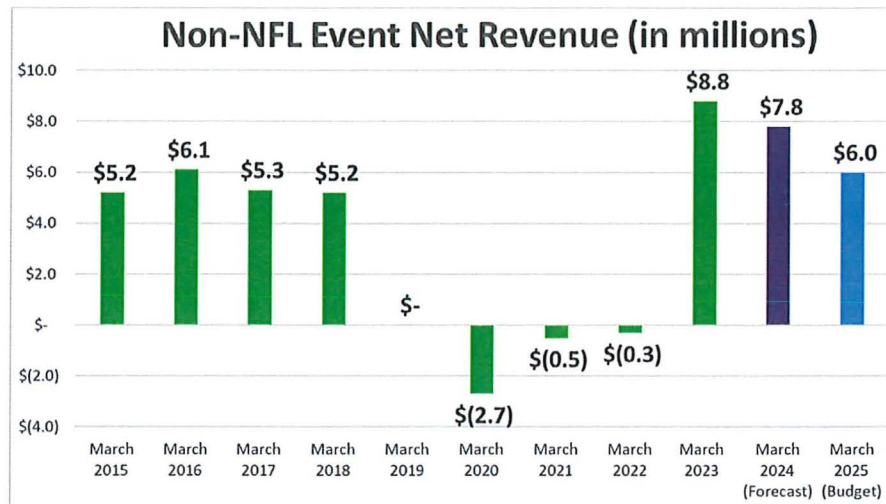
- Stadium Authority pays the City performance-based rent on top of the fixed ground rent
- Performance-based rent is equal to 50% of the net income from Non-NFL events less 50% of the ground rent and any credited public safety costs
- Credited public safety costs is the amount by which public safety costs exceed the public safety costs threshold
  - *Credited PSC that reduces Performance-Based Rent is capped in the Original Stadium Lease at 50% of net income from Non-NFL Events.*

26

26

## Stadium Authority Operating Budget (cont.)

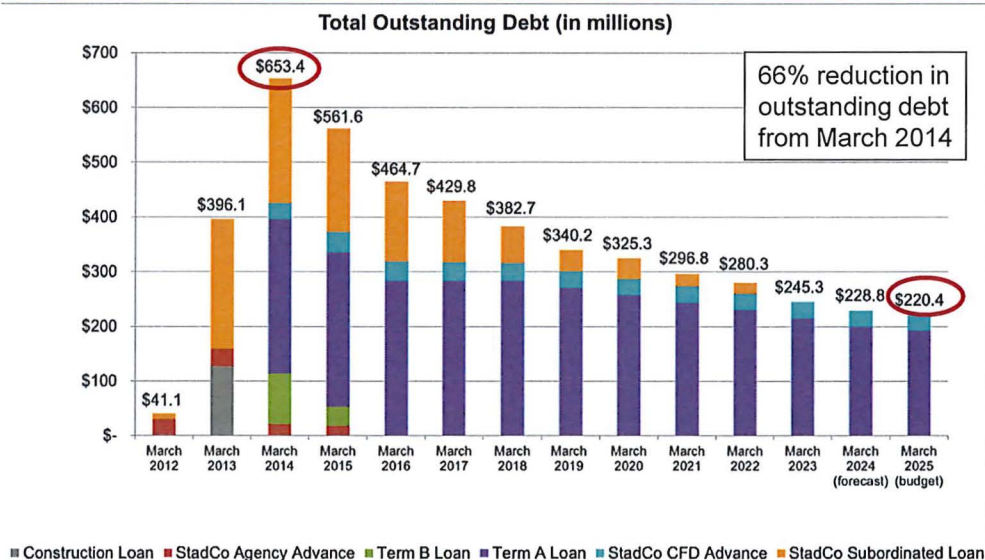
### Performance Rent Calculation (cont.)



27

27

## Stadium Authority Debt Service Budget (cont.)

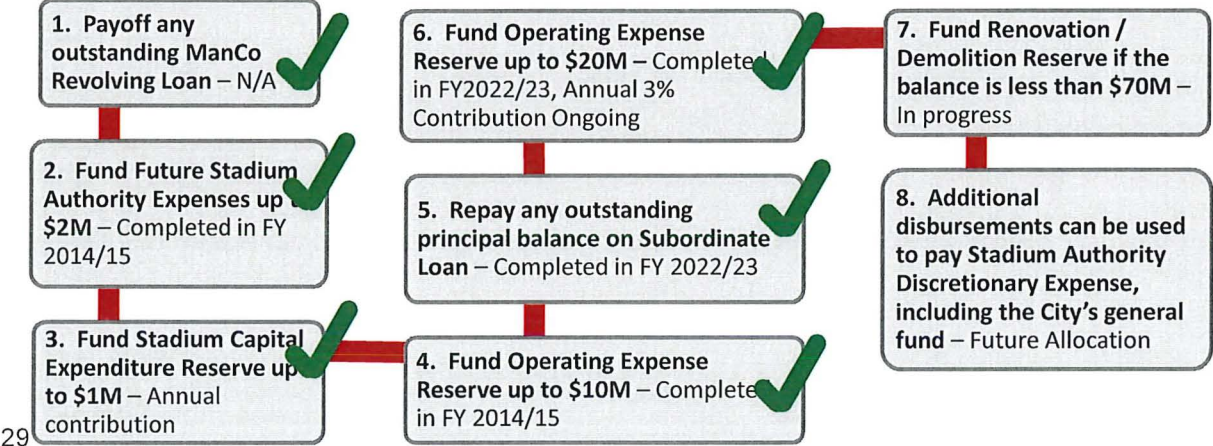


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28

# Waterfall: Excess Revenues Distribution

**Excess Revenues Distribution:** If revenues exceeds expenses in a lease year the Excess Revenues are required to be distributed in the order as set forth in Article 14 of the Stadium Lease agreement as shown below.



29

29

## 49ers & Stadium Authority Litigation Disputes

30



## Litigation / Arbitration Summary

- Disputes over stadium agreement terms and operations arose early on and continued through 2019
- Many issues disputed, including accounting transparency requirements, management standards for non-NFL events, conflicts of interest, reimbursement obligations, cost calculations
- In 2018, Stadium Authority stopped paying StadCo any Public Safety cost reimbursements StadCo claimed it was owed
- In March 2020, StadCo issued Stadium Authority its first invoice for buffet costs it claimed it was owed for Years 2014 through 2019; Stadium Authority declined to pay
- Litigation ensued



31

31

## Litigation / Arbitration Timeline

### PUBLIC SAFETY COSTS (PSC) ARBITRATION

StadCo initiated PSC arbitration

2019  
Jun



### BUFFET COSTS ARBITRATION

StadCo initiated buffet costs arbitration

2021  
Sep



### LITIGATION RESERVE

Stadium Authority begins setting aside funds to cover possible outcome of litigation in fiscal year 21/22. Current balance: \$11.1 million

2021/22  
Lease Year

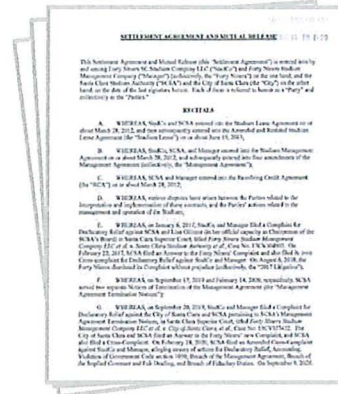


32



## 2022 Settlement & Stay

- On August 31, 2022, the City, Stadium Authority, StadCo, and Stadium Manager settled management and operational disputes from the 2019 lawsuit and arbitration claims
- Public Safety Costs and Buffet Costs disputes were not resolved and remain ongoing**
- Parties agreed to "stay" arbitration proceedings, discovery, and litigation to attempt resolution, with no interest accruing on claimed amounts



## Public Safety Cost Dispute (NFL events)

## Public Safety Costs (PSC) Overview

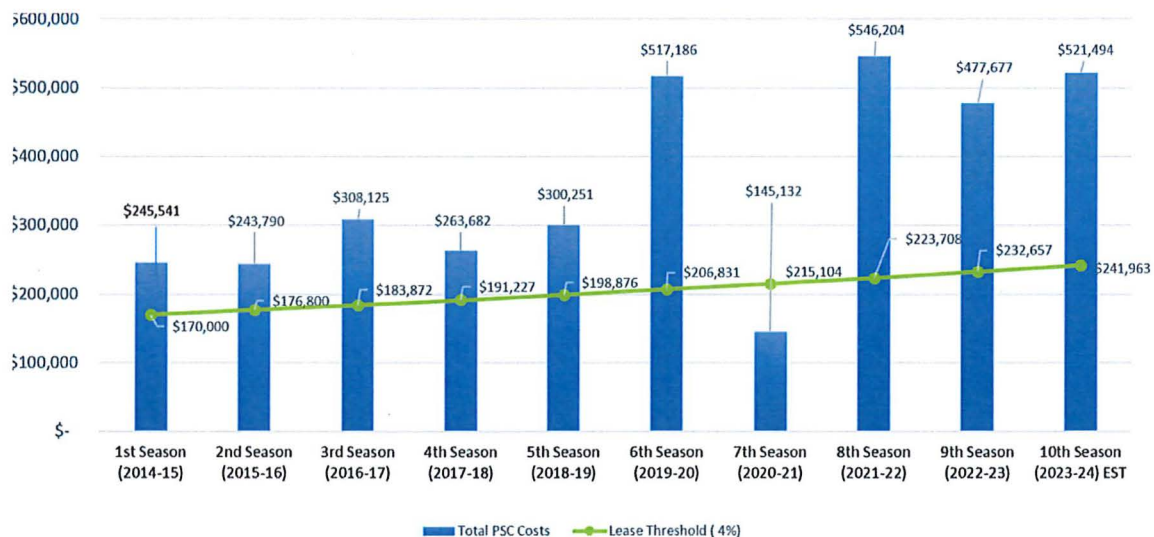
- City provides public safety services for stadium events
- StadCo reimburses the City for all **NFL event** Public Safety Costs (PSC), including police, fire, traffic management, and parking support
- As contemplated by Measure J, StadCo is reimbursed for public safety costs exceeding the contractual "threshold" by the Stadium Authority via payments from the Authority's "Discretionary Fund" or "Credits" against StadCo's Facility Rent Obligation
- Initial Threshold set at \$170,000/game in 2014-15, increasing 4% annually
- In the very first season, threshold exceeded by \$75,514/game
- PSC for each subsequent season (except 2020-21 for COVID) have also exceeded the threshold
- Estimated 2023-24 PSC are \$521,494/game, exceeding the threshold by \$299,531



35

35

## PSC Costs Over the Threshold



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## PSC Dispute Summary

- Stadium Lease allows threshold adjustment after three consecutive years of exceeding PSC thresholds; good faith negotiations required, with StadCo retaining sole discretion to approve any increase to the threshold
- Because PSC costs exceeded the PSC threshold for years 2014, 2015 and 2016, Stadium Authority initiated the PSC threshold adjustment process in 2017
- Disputes arose over the appropriate Year 4 threshold adjustment, with parties taking widely divergent positions
- In 2018, in light of the dispute, Authority stopped paying StadCo amounts in dispute over the threshold; StadCo continued to pay the City the full amount of PSC billed
- Due to these disputes, and uncertainty of outcome regarding the amount of PSC credits accrued, no Performance Based Rent has been paid to the City since 2021-22



37

37

## PSC Dispute – Bottom Line

The parties have been disputing the amount by which the PSC Threshold should be adjusted

- StadCo's claimed PSC owed for fiscal year 2017-18 through 2023-24 is approximately \$15.5 million and that going forward the threshold should be closer to the original contractual threshold
- Stadium Authority claimed PSC amount owed should be less and that PSC threshold going forward should be closer to actual costs.



38

38

## Buffet Costs Dispute



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## Buffet Costs Dispute Summary

- Stadium Authority sells Stadium Builders' Licenses (SBLs) for all stadium seats; all season ticket holders are SBL holders
- Some SBLs include a complimentary buffet
- For the 942 "Legacy SBLs," Stadium Authority is obligated to cover the costs of these buffets w/i 30 days of invoice from StadCo.
- SBL revenues are fixed, but buffet costs have no cap and are not controlled by the Stadium Authority; further StadCo's "facility rent" paid to Stadium Authority does not account for the buffet cost expenses.
- StadCo first invoiced buffet costs in 2020, totaling approximately \$4.39M
- In 2020, \$1.39M was paid for FY2019/20 buffet costs; in 2022, \$902.1k was paid for FY2021/22 buffet costs. Total accrued buffet costs currently stand at \$6.8M
- Projected buffet costs through the lease term could range from \$70M to over \$100M, posing significant financial risk to Stadium Authority.



40

40



## Accrued Buffet Costs

<u>Year</u>	<u>Season</u>	<u>Games</u>	<u>Buffet Costs</u>	<u>Paid</u>	<u>Avg/ Game</u>	<u>Balance Due</u>	<u>Litigation Contingency Reserve</u>
2014-15	1st	10	\$ 760,847	\$ -	\$ 76,085	\$ 760,847	
2015-16	2nd	10	\$ 766,070	\$ -	\$ 76,607	\$ 766,070	
2016-17	3rd	10	\$ 871,948	\$ -	\$ 87,195	\$ 871,948	
2017-18	4th	10	\$ 989,862	\$ -	\$ 98,986	\$ 989,862	
2018-19	5th	10	\$ 999,979	\$ -	\$ 99,998	\$ 999,979	
2019-20	6th	12	\$ 1,391,015	\$ 1,391,015	\$ 115,918	\$ -	
2020-21	7th	5	\$ -	\$ -	\$ -	\$ -	
2021-22	8th	10	\$ 902,081	\$ 902,081	\$ 90,208	\$ -	\$ 902,081
2022-23	9th	12	\$ 1,164,667	\$ -	\$ 97,056	\$ 1,164,667	\$ 1,164,667
2023-24	10th	12	\$ 1,254,367	\$ -	\$ 104,531	\$ 1,254,367	\$ 1,254,367
<b>TOTAL</b>		<b>101</b>	<b>\$ 9,100,836</b>	<b>\$ 2,293,096</b>	<b>\$ 846,583</b>	<b>\$ 6,807,740</b>	<b>\$ 3,321,115</b>

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41

41

## Buffet Costs Dispute – Bottom Line

The parties disputed the amount of buffet costs owed and the terms for payment going forward...

- StadCo claimed Stadium Authority should pay the entire \$6.8 million, with a continuing obligation to pay going forward
- Stadium Authority claimed Facility Rent should be adjusted to include buffet costs, and thereby offsetting amounts otherwise owed

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42

42

## Settlement Negotiations

- StadCo presented proposed settlement terms for these disputes at the end of 2022
- The parties agreed to wait for new City Manager and City Attorney to come on board and get up to speed to continue
- Over the last 6+ months the parties have been engaged in confidential settlement negotiations



43

43

## Settlement Agreement: Summary



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44

## Settlement Agreement Summary

*On May 20, 2024, the Stadium Authority Board and City Council authorized settlement of the disputes related to public safety and buffet costs and authorized Executive Director/City Manager to sign a settlement agreement, subject to legal approval as to form. The finalized agreement was executed and released to the public on May 23, 2024*

### Settlement Goals

- Aimed to resolve outstanding disputes
- Simultaneously aimed to boost revenue and financial stability for the City and Stadium Authority
- Negotiated terms directly addressed the disputes and extended beyond them to aspects outside of the issues that would be before the Arbitrator
- Many deal points require inclusion in amendments to Ground Lease and Stadium Lease



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45

## Settlement Agreement Summary (cont.)

### High-level Benefits

- Will generate \$20 million to the General Fund over the next two years
- Reduces the amount owed to 49ers from \$22.3 million to \$14.8 million
- PSC Threshold is initially increased to \$360k/game, up from \$251k/game
- Buffet Costs flat fee of \$90k/game vs. no limit (avg. is \$104.5k/game)
- Additional \$4 ticket surcharge on non-NFL events to offset over the threshold public safety costs
- Restructured waterfall to accelerate revenue to the City's General Fund
- Increase in Senior and Youth fee and higher funding cap
- Mutual release of specific liabilities

46



46



## Settlement Agreement: Public Safety Costs (PSC)



47

47

### Public Safety Costs: Payment of Reduced Balance to StadCo

**Settlement amount:** Claimed Amount of \$15.5M reduced to \$14.9M

- **Partial payment:** About \$3.4M from litigation contingency funds
- **Remaining balance:** \$11.5M redefined as *Stadium Lease for Public Safety Costs: 2024 Outstanding Balance*
- **Repayment method:** Remaining balance paid over-time, with no interest owed, out of excess revenues in restructured "waterfall" provisions

**Restructured "waterfall" provisions:** 50% of excess revenues to Demolition Reserve Fund, 25% to repay Public Safety Costs 2024 Balance, and 25% available for City's General Fund

- *Once outstanding balance is repaid, 50% of excess revenues to Demolition Reserve Fund and 50% to City's General Fund*

**Benefits:** Allows for PBR rent payments to City for Years 9 and 10; City's General Fund receives excess revenues sooner than previously projected; Deferred PSC cost balance owed to StadCo deferred with no interest



**Changes reflected in Amendments to Paragraphs 14.7 and 14.8 of the Stadium Lease**

48

48

## PSC Settlement – Threshold Adjustment

### Threshold Overview

- Initial threshold set at \$170K/game, increasing 4% annually, reaching \$251K/game by Year 11 (2024-25)
- StadCo has discretion to adjust the threshold after good faith negotiations.

### Negotiated Outcome

- Year 11 threshold increased from \$251K to \$360K/game.
- Increase of \$109K/game x 10 games = \$1.1M additional value per year compared to original contract threshold

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49

49

## PSC Settlement – Deployment / Safety

*The PSC Settlement Threshold Adjustment does not impact deployment of safety personnel and in no way changes or compromises the Police Department's ability to protect the facility*

### Current Deployment / Safety Model

- City of Santa Clara Police Department (SCPD) assesses the threat level per NFL event
- SCPD determines the appropriate deployment and coordinates with StadCo and Stadium Manager.
- SCPD makes the final decisions public safety and on deployment levels
- PSC Threshold level at \$251K/game does not currently impact deployment or safety levels

➔ **PSC Threshold level increase to \$360K/game, per the settlement, will not impact deployment or safety levels**

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50

## Increase in Non-NFL Ticket Surcharge

### Future PSC Costs

- Non-NFL ticket surcharge increased to **\$8/ticket**, with a \$1 escalator every 4 yrs
- Applies to events booked after settlement
- StadCo and Stadium Manager may consider further increases

### Additional Surcharge Revenue

- Revenue > \$4 per ticket used to reimburse PSC costs over threshold
- Revenue after reimbursement goes to stadium Cap Ex expenditure reserve fund (up to \$2M)
- Excess revenues after funding the reserve to be discussed for distribution.
- Estimated to generate an additional **\$1.35M/yr** based on 2024-25 budget

#### Note:

- \$4/ticket surplus generated approximately **\$1.3M/yr** over past 10 yrs



51

51

## Modification of Performance-Base Rent Credits Formula

*The Settlement Agreement also modifies the existing formula for the payment of Performance-Based Rent (PBR) to the City to make such payments more likely*

**Performance-Based Rent to City** = Non-NFL Events Net Revenue – Ground Rent Credit and PSC Credits

### Key Terms

- Under existing terms, the amount of the PSC Credits are capped at 50% of the Non-NFL Events Net Revenues.
- If PSC Credits are not paid in full, StadCo can be reimbursed in the next year by reducing its Facility Rent payments to the Authority.
  - Under existing terms, the reduction of Facility Rent is also capped at 50% of Non-NFL Events Net Revenues.
- Settlement Agreement reduces the PSC Credits cap from 50% to 25% of Non-NFL Net Revenues.
  - Reduced cap means: Less PSC Credits deducted from Non-NFL Events Net Revenue → Higher Performance-Based Rent for years with Non-NFL Events Net Revenue.
  - StadCo's Facility Rent reduction is also capped at 25% of Non-NFL Net Revenues. The remaining amounts due are deferred to next/later years.



52

52



## Modification of PBR Credits Formula (cont.)

*The Settlement Agreement also modifies the existing formula for the payment of Performance-Based Rent (PBR) to the City to make such payments more likely*

### ★ Amendments

#### ➔ Stadium Lease

Amendments to Paragraph 7.5.3 of the Stadium Lease and 1.94 of the Ground Lease reflect these changes.

#### ➔ Ground Lease

City/Stadium Authority agree to extend Facility Rent credit carryforward expiration date from 5 years to 10 years in Paragraph 1.95 of the Ground Lease



53

53

## Additional PSC Settlement Terms

- **Capital Expenditure (CapEx) depreciation expenses** on Non-NFL events will be corrected going back to 2017-18 and will not be deducted from net Non-NFL event cash moving forward to avoid double-charging
- **City will assess overhead calculation for double-badgers**, with findings and overhead charges at sole discretion of City and its consultants
  - **Reduction in overhead rates possible, only if concluded by the City**, becomes effective for 2024/25 Lease Year
- **StadCo agrees to pay cancellation fees** if included as public safety costs under Stadium lease



54

54

## Additional PSC Settlement Terms - Declaratory Relief

- **In 2021, the City and the POA / IAFF Associations entered into Memorandum of Understandings (effective through December 31, 2025)**
  - The MOUs provided 1.5X overtime rates for Non-NFL Events. But 2.0X overtime rates for NFL Events.
  - City and Associations were aware of the pending PSC Arbitration and there were real questions regarding the sustainability of these rates in light of the arbitration.
  - Accordingly, the parties agreed to include specific terms in their MOUs to lower and reopen negotiations of the 2.0X overtime rates for NFL Events if the Arbitrator issued decisions regarding reimbursement obligations.



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## Additional PSC Settlement Terms - Declaratory Relief...

- **To address this, the Settlement Agreement includes of provision for the 49ers and Stadium Authority to pursue the Arbitrator's Decisions on PSC terms and Threshold reimbursement obligations**
  - The Settlement is not conditioned on any such decision and would remain in effect regardless of the Arbitrator's determination
- **We are several steps away from any actual impact on public safety rates paid**
  - First, the process to obtain Declaratory Relief findings are part of the confidential PSC Arbitration proceedings between 49ers and Stadium Authority.
  - Second, the process and terms with the City and POA/IAFF would only get started if the Arbitrator issues the decisions
  - The outcome of City negotiations with POA/IAFF are a separate and independent process and are not decided by the Settlement Agreement



56

56

# Settlement Agreement: Buffet Costs



57

57

## Buffet Costs Terms Summary

*The settlement of Buffet Costs claims has two parts: a) Resolving the accrued balance to date; and b) Setting a fixed payment for future buffet costs, limiting Stadium Authority's liability and establishing an accounting process. Part b requires an amendment to the Stadium Lease (Paragraph 4.6.1)*

### Key Details

- Stadium Authority didn't fully pay buffet costs due to pending litigation
- 49ers claim of **\$6.8M for accrued buffet costs are waived** in the settlement
- Obligation to reimburse buffet costs from FY 2018/19 to 2023/24 are completed
- Going forward, Authority will reimburse Legacy SBL buffet expenses to StadCo
- Stadium Lease lacks a cap or limit on Buffet Costs charged to Authority
- Starting FY 2024/25, buffet costs allocated to Authority will be fixed and limited, reducing financial liability
- Resulting from the settlement, Authority will pay a **flat fee of \$90k/game** for the buffet, with a 3% annual increase



58

58



# Buffet Cost Settlement – Financial Analysis

## Current Buffet Costs

- Recent average buffet cost: **\$104.5K/game**
- Total cost for a 12-game season: **\$1.2M**
- Buffet costs have exceeded \$90K/game in 6 of the last 9 years (excluding FY 2020-21 due to the pandemic)

## Flat Fee Impact

- New flat fee: **\$90K/game** with a 3% annual increase
- Cost for a 12-game season at the flat fee: **\$1.1M**
- Savings/game: **\$14.5K**
- Total annual savings: **\$174K**

## Predictable Budgeting

- The flat fee reduces financial exposure by capping buffet cost
- Provides predictable budgeting for the Stadium Authority
- Ensures ongoing cost savings compared to the previous terms in the Stadium lease



# Buffet Cost Settlement – Risk Analysis

*Negotiated terms ensure \$90k / game flat payment obligation is not > than actual costs*

- Starting Year 11, Stadium Authority will pay a flat buffet cost of \$90K/game with a 3% annual increase
- Stadium Authority can request a buffet accounting and has audit rights
- An additional 5% accounting fee is added to the fixed payment for that year if accounting is requested
- If actual buffet costs are less than the fixed payment, StadCo will refund the greater of the difference or the 5% accounting fee

### Example:

- Fixed payment = \$1M, accounting fee = \$50K
- Actual costs = \$975K, StadCo refunds \$50K
- Actual costs = \$900K, StadCo refunds \$100K



**Stadium Lease Amendment** in Paragraph 4.6.1 implements the \$90k/game flat payment increasing 3% annually, and the optional accounting process



## Settlement Agreement: Additional Revenues



61

61

## Excess Revenues – Restructured Waterfall

*As stated above, the Settlement Agreement provides for a restructured waterfall of the use of Stadium Authority's year-end excess revenues (Paragraph 14 of the Stadium Lease)*

- Key Details**
- Stadium Lease originally mandated excess revenues to fill the \$70M Renovation/Demolition Reserve Fund before flowing to the General Fund
  - Settlement Agreement restructures this, allowing excess revenues to fill the Reserve Fund at 50%, repay the Public Safety Costs 2024 Outstanding Balance to StadCo (25%), and release excess revenues to the City's General Fund (25%)
  - Once the balance is repaid, restructured waterfall allocates 50% of excess revenues to the Renovation/Demolition Reserve fund and 50% to the General Fund
  - Estimated to provide **\$3.1M to the City's General Fund by year-end** and expedite future funds by four or five years
- ★ Restructuring is reflected in Amendments to Paragraphs 14.7 and 14.8 of the Stadium Lease



62

62

## Senior and Youth Program Fee

- Increase from \$0.35 to \$0.40 per NFL game ticket; increases \$0.05 every decade
- Expected additional revenue: \$35-45K annually for the next decade, increasing by \$20-30K every ten years
- Minimum value over 30 years: **\$2M** additional funds to the City
- Cap is increased from \$250K to \$300K in 2024/25 with an increase of \$50K every ten years



## Summary of Lease Amendments

- **Key Changes to the Ground Lease between Stadium Authority and City:**
  - Performance-Based Rent:
    - Modify Performance Based Rent Credits (reducing cap on PSC credits) in Section 1.94
    - Extend Facility Rent credit carryforward expiration date from 5 years to 10 years in Section 1.95
  - Increase Senior/Youth Fee in Section 8.2
  - Provide for Additional non-NFL Ticket Surcharge Revenue in Sections 8.4 and 8.5
- **Key Changes to the Stadium Lease between Stadium Authority and StadCo:**
  - Buffet Cost Fixed Payment: Paragraph 4.6.1 implements the \$90k/game flat payment increasing 3% annually, and the optional accounting process.
  - Performance-Based Rent: Modifies the current formula to reduce deductions, Paragraph 7.5.3.
  - Sets the Year 11 PSC Threshold, Paragraph 7.5.3(b).
  - Provide for Additional non-NFL Ticket Surcharge Revenue in Paragraph 12.1.
  - Increase Senior / Youth Fee in Paragraph 12.2.
  - Waterfall Restructuring: Reflected in Amendments to Paragraphs 14.7 and 14.8.



## Fiscal Impact



65

65

## Fiscal Impact

### Public Safety Costs

- ~ Balance through FY2023/24: **\$15.5 million**
- StadCo waives **\$664,000** related to FY2017/18
- Remaining balance owed by Stadium Authority: **\$14.8 million**
- Payments to StadCo: \$3.4 million from Litigation Contingency Reserve, \$3.1 million from Excess Revenue

### Buffet Costs

- ~ Balance through FY2023/24: **\$6.8 million**
- Originally budgeted \$1.1 million for FY2024/25 SBL Complementary Buffet costs
- Funds were to be transferred into Legal Contingency Reserve
- Projected payment for these costs is now \$900,000
- Savings of \$200,000 will flow through Excess Revenue at the end of the year



66

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## Fiscal Impact (cont.)

### Legal Contingency Reserve

- Budgeted balance of \$14.7 million at the end of FY2024/25
- Settlement requires liquidation of these reserves
- Funds to be used for payments, planned expenditures, or Excess Revenue transfers at the end of the year

### Renovation/Demolition Reserve

- Projected balance of \$35.5 million at the end of FY2024/25
- Lease adjustments and liquidation of Legal Contingency Reserves result in a net decrease of \$5.3 million
- New projected balance: \$30.2 million



67

67

## Fiscal Impact (cont.)

### Excess Revenue Distribution

- Adjusted distribution in FY2024/25:
  - 50% to Renovation/Demolition Reserve
  - 25% to PSC 2024 Outstanding Balance
  - 25% to City's General Fund
  - Projected distribution: \$6.1 million to Renovation/Demolition Reserve, \$3.1 million to StadCo, \$3.1 million to General Fund

### Performance-Based Rent

- ~ Payment to City for FYs 2022/23 and 2023/24: \$7.1 million
- ~ Payment for FY2024/25: \$2.5 million

### Senior and Youth Program Fee

- Fee increases from \$0.35 to \$0.40 per NFL ticket in FY2024/25
- Projected additional revenue: \$35,000, paid to the City



68

68

## Estimated \$20M Payments to the City

### Base Rent (\$2 M)

- FY 2024/25 - \$1 M
- FY 2025/26 - \$1 M

### Year-End "Excess Revenue" (\$7.7 M)

- FY 2024/25 - \$3.1 M (est.)
- FY 2024/25 - \$1.0 M (G&A Savings)
- FY 2025/26 - \$3.6 M (est.)

### Performance-Based Rent (\$9.6 M)

- FY 2022/23 - \$4.2 M
- FY 2023/24 - \$2.9 M
- FY 2024/25 - \$2.5 M (est.)

### Senior and Youth Program Fees (\$0.6 M)

- FY 2024/25 - \$0.3 M (est.)
- FY 2025/26 - \$0.3 M (est.)



69

69

## ★ FY 2024/25 Budget Amendments

Description	Current	Increase/ Decrease	Revised
<b>Sources</b>			
Senior & Youth Program Fees	\$233,000	\$35,000	\$268,000
<b>Total Sources</b>	<b>\$233,000</b>	<b>\$35,000</b>	<b>\$268,000</b>
<b>Uses</b>			
<b>Expenses</b>			
Senior & Youth Program Fees (paid to City)	\$233,000	\$35,000	\$268,000
Performance Rent 2022/23 & 2023/24 (paid to City)	\$0	\$7,100,000	\$7,100,000
Performance Rent 2024/25 (paid to City)	\$0	\$2,500,000	\$2,500,000
Public Safety Costs (from Settlement)	\$0	\$3,400,000	\$3,400,000
Public Safety Costs (2024/25 Excess Revenues)	\$0	\$3,073,000	\$3,073,000
Transfer to City General Fund (2024/25 Excess Revenues)	\$0	\$3,073,000	\$3,073,000
SBL Complementary Buffet	\$0	\$900,000	\$900,000
<b>Ending Fund Balance</b>			
Legal Contingency Reserve – Buffet Costs	\$4,441,801	(\$4,441,801)	\$0
Legal Contingency Reserve – Public Safety Costs	\$10,305,725	(\$10,305,725)	\$0
Renovation/Demolition Reserve	\$35,476,705	(\$5,298,474)	\$30,178,231
<b>Total Uses</b>	<b>\$50,457,231</b>	<b>\$35,000</b>	<b>\$50,492,231</b>



70

70

## Staff Recommendation



71

71

## Staff Recommendation

1. Authorize the City Manager to execute a Second Amendment to the Ground Lease with the Santa Clara Stadium Authority
2. Authorize the Executive Director to execute a Second Amendment to the Ground Lease with the City of Santa Clara
3. Authorize the Executive Director to execute a First Amendment to the Amended and Restated Stadium Lease Agreement with Forty Niners SC Stadium Company, LLC
4. Approve the following FY 2024/25 net budget amendments in the Santa Clara Stadium Authority Operating Budget:
  - Increase the revenue estimate and payment to the City for Senior and Youth fees by \$35,000
  - Increase the Performance-Based Rent expense to the City by \$9,600,000, increase the Public Safety Cost expense by \$6,473,000, increase the transfer to the City's General Fund by \$3,073,000, increase the SBL Complementary Buffet expense by \$900,000, offset by the elimination of Legal Contingency Reserves, of \$14,747,526, and a decrease to the Renovation/Demolition Reserve by \$5,298,474



72

72

## Next Steps Tonight

- Council/Board Questions on Staff Presentation
- Public Comment
- Council/Board Deliberations
- Council/Board Action



73





**City of  
Santa Clara**  
The Center of What's Possible

Mayor and Council Office  
**Memorandum**

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**Date:** May 28, 2024

**To:** City Manager

**From:** Executive Assistant to the Mayor & City Council

**Subject:** Correspondence received regarding Item 24-578 on the May 28, 2024, Joint City Council and Authorities Concurrent & Santa Clara Stadium Authority Board meeting agenda.

Please find attached correspondence received on the following agenda item:

Agenda Item 24-578  
Action on Amendment No. 2 to the Ground Lease, and Amendment No. 1 to the Restated and Amended Stadium Lease, to Implement the Settlement Agreement and Mutual Release (Buffet and Public Safety Cost Arbitration) with Forty Niners SC Stadium Company LLC and Forty Niners Stadium Management Company LLC, and Approve Related Budget Amendments

**cc:** City Council

**POST MEETING MATERIAL**

5/28/2024

Item 24-578

RECEIVED

MAY 28 2024

MAYOR & COUNCIL OFFICES  
CITY OF SANTA CLARA

Steve Kelly  
DRE #01100262



RE: Agenda Item #24-578

Mayor Gilmore & Council Members,

*I want to thank you for your dedication to serving our great City of Santa Clara. In June 2010 Santa Clara's voted for more entertainment in the northern part of Santa Clara. Over the years, we have had many family fun events at Levi Stadium. Unfortunately, the current litigation and curfew has harmed our ability to get some of the best acts at Levi Stadium. I know we can find a compromise that addresses everyone's concerns. I think it is time to end the ongoing litigation. Each event is important to our economy and local businesses. Finally, I want the promise of entertainment at Levi, City Place, Mission College, Great America, and the surrounding area to continue. This can only happen through compromise, so let's rise to the challenge get it done for the residents of Santa Clara.*

Thank You!

Steve Kelly  
3093 Forbes Ave  
Santa Clara, CA 95051

**POST MEETING MATERIAL**



5/28/2024

Item 24-578

RECEIVED

May 27, 2024

MAY 28 2024

Santa Clara City Council  
1500 Warburton Ave  
Santa Clara, CA 95050

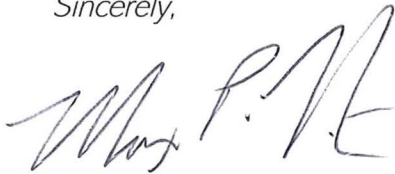
MAYOR & COUNCIL OFFICES  
CITY OF SANTA CLARA

RE: Agenda Item #24-578

Santa Clara City Council,

I am in support of ending the litigation with the 49ers. I love living in Santa Clara and one of the best things is the local entertainment at Levi stadium. It is well managed. I also work close to Levi Stadium at Cisco Systems. The traffic is manageable and there is not a noise problem. I think you should accept the proposed settlement agreement since it is best for everyone to resolve this issue. I know Santa Clara residents want & need more local entertainment.

Sincerely,



Max Tatum  
3093 Forbes Ave  
Santa Clara, CA 9051

POST MEETING MATERIAL



5/28/2024

Item 24-578

May 25, 2024

Santa Clara City Council  
1500 Warburton Ave  
Santa Clara, CA 95050

RECEIVED

MAY 28 2024

MAYOR & COUNCIL OFFICES  
CITY OF SANTA CLARA

RE: Agenda Item #24-578

Dear Council Members,

*I am in support of settling the litigation with the 49ers. My family and I have attended multiple events at Levi stadium. It is well managed. Unfortunately, there were only a few concerts at Levi the last few years! I have been told the litigation is making it hard to get the best performers as is the current curfew times. I would ask that you improve your working relationship with the 49ers. It is best for our community to have entertainment locally. It also means more sales tax revenue into our general fund for things like senior services. Finally, Additional events will speed up the day that the stadium is paid off and generating rent for the benefit of Santa Clara residents :O)*

Sincerely,

*Jeniffer Castillo*  
Jeniffer Castillo  
3097 Forbes Ave  
Santa Clara, CA 95051

POST MEETING MATERIAL



5/28/2024

Item 24-578

RECEIVED

MAY 28 2024

Santa Clara City Council  
1500 Warburton Ave  
Santa Clara, CA 95050

MAYOR & COUNCIL OFFICES  
CITY OF SANTA CLARA

RE: Agenda Item #24-578

Santa Clara City Council Members,

*I would ask you to work out a settlement with the 49ers. I want family fun events in our city. The litigation is making it difficult to get top performers to come here to Levi Stadium. Let's have a better working relationship with the 49ers. It helps our community through increased sales taxes revenue which funds city services.*

Thank You,

Dai 

Dai Nguyen  
2189 Calabazas Blvd  
Santa Clara, CA 9051

**POST MEETING MATERIAL**

5/28/2024

Item 24-578

RECEIVED

MAY 28 2024

Santa Clara City Council  
1500 Warburton Ave  
Santa Clara, CA 95050

MAYOR & CITY CLERK OFFICES  
CITY OF SANTA CLARA

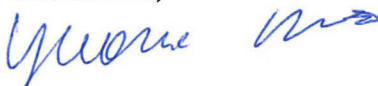
RE: Agenda Item #24-578

City Council Members,

*I know you have a difficult job. I would like to ask you to work out a settlement for Santa Clara residents with the 49ers. We have to improve our working relationship with the 49ers moving forward, so we can have more entertainment in our city for the benefit of residents and our local businesses. For instance, my daughter a few weeks ago went to the Luke Combs concert at Levi, stayed at a local hotel, and ate dinner at the hotel. Each event helps our local business and part of the tax revenue funds our city services!*

*Let's work it out an agreement with the 49ers, Santa Clara has a real need for family entertainment.*

Thank You,



Yvonne Nguyen  
2189 Calabazas Blvd  
Santa Clara, CA 9051

**POST MEETING MATERIAL**

5/28/2024

Flem 24-578

**Melissa Lee**

---

**From:** Richard Konda <rkonda@asianlawalliance.org>  
**Sent:** Tuesday, May 28, 2024 7:00 AM  
**To:** Mayor and Council  
**Subject:** settlement with SF 49ers

You don't often get email from rkonda@asianlawalliance.org. [Learn why this is important](#)

Dear Mayor Gilmor and members of the Santa Clara City Council:

I understand from news reports that a settlement proposal to end the ongoing litigation with the 49ers is before you. I urge you to continue to move forward in a collaborative spirit that will benefit all of the residents of the city of Santa Clara.

Continuing the legal dispute at this time of limited funding for essential city projects is not in the best interests of your constituents. The additional funds that will flow from the revenue generated by the stadium will help you to address your ongoing deficit.

Sincerely,

-----  
**Richard Konda (he/him/his)**  
Executive Director

**Phone:** (408) 287-9710  
**Email:** rkonda@asianlawalliance.org

991 W. Hedding Street, Ste. 202  
San Jose, CA 95126



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**POST MEETING MATERIAL**