



October 9, 2022

VIA ELECTRONIC MAIL

Ms. Britney Huelbig
Deputy Manager
Civil Grand Jury, Superior Court of California, County of Santa Clara
191 North First Street
San Jose, CA 95113

Re: Civil Grand Jury

Dear Deputy Manager Huelbig,

We sent you a copy of our letter to Mr. Batra on Friday afternoon (Exhibit A), pointing out several of the key misstatements and material errors in your draft report entitled “Unsportsmanlike Conduct.” I have since had an opportunity to review that report in further detail and wanted to provide you with some additional comments on your report. As I explained in my email to you Friday evening, it will be difficult for City Staff at Santa Clara to provide detailed comments on your report, since much of the institutional knowledge on Levi’s Stadium was lost following a wave of resignations under the former City Manager, Deanna Santana.

Accordingly, we thought it appropriate to provide you with some additional comments directly.

This is not an exhaustive list of the errors in the draft report – that will take some additional time.

Misunderstanding of the Stadium Contracts

There are several sections in your report that indicate a fundamental misunderstanding of the terms of the Stadium contracts, including the Ground Lease, the Stadium Lease, the Management Agreement, and the Stadium

Operations Agreement. All of those documents are available on the City's website. Here are a few of the areas that are incorrectly stated in your report:

- At Page 16 your report says: *“Pursuant to the agreements with ManCo, the Stadium Authority and ManCo share most expenses for non-NFL events 50/50.”*
 - That is incorrect. Pursuant to the Stadium lease, the Stadium Authority is responsible for 100% of the costs of Non-NFL Events. Here is the relevant excerpt from the Stadium Lease: "Stadium Authority Event Expenses" means all Non-NFL Event Expenses and the following, which shall constitute "Civic Event Expenses" for purposes of this Lease: (a) direct costs and expenses incurred in the conduct of Civic Events, including, without limitation, costs of Utilities, security, and public safety, and costs to install and remove temporary facilities, and (b) those direct costs and expenses incurred that exceed the costs and expenses that would have been incurred in operating the Stadium absent the hosting of NFL Events and Non-NFL Events..."
- It appears that you have confused Shared Stadium Expenses (defined in Section 8 of the Stadium Lease) with Non-NFL Event Expenses, and you have confused ManCo with StadCo.
 - Pursuant to Section 8 of the Stadium Lease, StadCo (not ManCo) is generally responsible for 50% of Shared Stadium Expenses, and neither ManCo or StadCo are responsible for expenses of Non-NFL Events.
- Page 16 of your report says: *“If the non-NFL event is profitable, ManCo owes the City/Stadium Authority Performance Rent.”*
 - That is incorrect. ManCo does not pay Performance Rent to either the City or the Stadium Authority.
 - Performance Rent is paid by the Stadium Authority to the City, after accounting for Non-NFL Event profits and Credits as detailed in Section 1.93 and 4.3.3 of the Ground Lease between the City (as lessor) and the Stadium Authority (as lessee). Here is the relevant language from Ground Lease:

1.93 "Performance Based Rent" means, for each Lease Year, the greater of (a) Zero Dollars (\$0.00), or (b) the following: (i) fifty percent (50%) of the Net Income from Non-NFL Events for such Lease Year, less (ii) the sum of the Performance-Based Rent

Credits (as defined in Section 1.93 below) applicable to such Lease Year.

"Performance Based Rent Credits" means, for any Lease Year, the sum of the following:

(a) Fifty percent (50%) of the Fixed Ground Rent (including the increase in Fixed Ground Rent specified in this Lease in the event that a Second Team plays and hosts NFL Home Games in the Stadium) payable for such Lease Year, plus

(b) The Credited Public Safety Costs (as defined in the Stadium Lease) for such Lease Year, plus

(c) Following the Tax Allocation Termination Date, the amount of the Received PIT, plus

(d) The amount of any credit for Disproportionate Taxes for such Lease Year, as provided in Section 4.7; plus

(e) Any Permitted Credits Carry-forward (as defined below) applicable to such Lease Year."

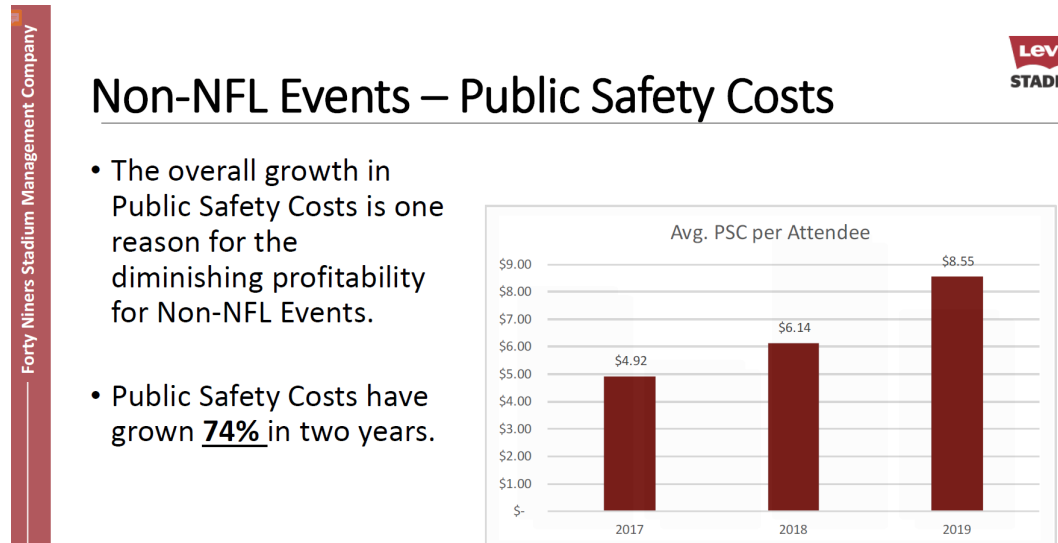
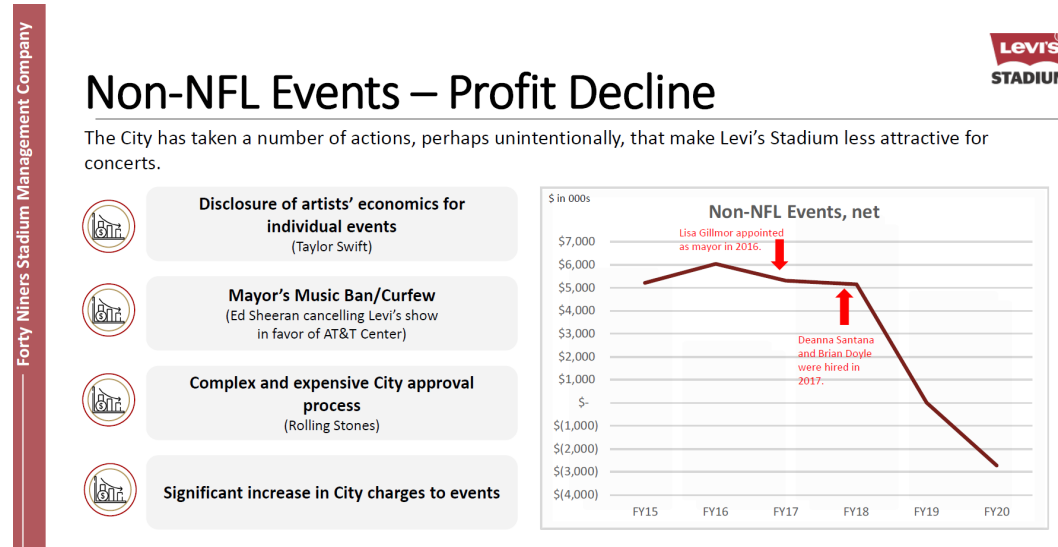
Non-NFL Event Profits

As noted in my October 7, 2022 letter to City Manager, Rajeev Batra, your draft report incorrectly states that the City does not receive detailed documentation on the revenue and expenses for Non-NFL Events (the Rolling Stones documentation was 628 pages). Your draft report goes on to make additional material misstatements regarding Non-NFL Events.

Your draft says: *"The City Council Voting Bloc is not holding ManCo accountable for its financial accounting deficiencies or **its inability to hold non-NFL events that create revenue for the City.**"*

- This comment is based on the false premise that ManCo is unable to book profitable Non-NFL Events.
- Your comment also fails to recognize that there was a significant change to the City's strategy in 2017, when the City took a number of actions calculated to reduce the revenues from Non-NFL Events. The former City Manager, Ms. Santana described this as the "nuclear option". The City decided to impose a 10PM curfew on concerts, released confidential financial information of the concert performers, increased the cost of public safety costs for events, and instructed the various departments under the City's control to make it more difficult for performers to obtain the permits necessary to host events.

- All of these actions by the City are well documented in the record and in the media, and the 49ers advised the City – in writing and repeatedly - that its strategy would result in lower profits from Non-NFL events. In fact in 2021 we attended a public Stadium Authority Board meeting to reiterate that point. Here are two slides we presented publicly on that topic:



- The Civil Grand Jury need not take the 49ers word on this topic. The Rolling Stones tour promoter sent a letter complaining about Manager Santana's nuclear option, stating: "... do you not want touring shows anymore? The impression I and many others in the industry have, is your facility is getting so restrictive and dysfunctional, it's no longer worth the effort to play there due to the myriad and random rule changes or sudden restrictions placed on a

tour.” I have attached as Exhibit B our letter to the Stadium Authority Board chronicling Ms. Santana’s attempts to interfere with the Rolling Stones show, including her well documented attempts to cover up her efforts when her actions were reported in the media.

- The assertion in your draft report that ManCo is unable to book profitable events is also contradicted by the data. Prior to the impact of Manager Santana’s “nuclear option”, Levi’s Stadium was one of the busiest concert venues on the West Coast, garnering multiple industry awards, and generating more than \$10M for the SCSA from concerts alone.
- It is true that there have been several College football events that have lost money – that is the nature of the ticketed event business (just as it is the nature of every other sort of business) – but the vast majority of Non-NFL Events at Levi’s Stadium have been highly profitable. Indeed, even the small number of events that lost money on a P&L basis ultimately delivered significant value to the City and the SCSA. For example, the College Football National Championship Game that was hosted at Levi’s Stadium in January 2019, was broadcast nationally by ESPN and drew more than 25M viewers across the country – these types of events are important for the value of the stadium’s naming rights (which yields \$7M for the Stadium Authority annually) and for the thousands of SBL holders who purchased seat licenses - and who pay the Stadium Authority \$25M annually.
- Major ticketed events at the stadium also benefit the City and its businesses in other ways:
 - They create thousands of local jobs – for example, each concert at the Stadium pays hundreds of thousands of dollars to union construction workers to create the elaborate stages required for major concert tours.
 - They bring thousands of new customers to local businesses.
 - They fill the local hotels, creating jobs for hotel workers and tax revenue for the City’s general fund. Here is a quote from the General Manager of the Santa Clara Marriott, the largest hotel in the City, in his email to the City Council in 2021.

“When Levi’s Stadium first opened, we were incredibly excited about the new venue that would attract hundreds of thousands of guests to Santa Clara each year. Initially, that was the case. High profile sporting events and concerts came to Levi’s Stadium in its first years, along with football games. Premier acts such as Beyonce, U2 and Coldplay all performed at Levi’s Stadium, and with them, thousands of fans who came to watch their shows. Many of those same fans stayed at our hotel following those events.”

However, the frequency in which these concerts came to Santa Clara abruptly changed in 2017 when the City began restricting weeknight shows. Unfortunately, we've seen high profile artists such as Ed Sheeran publicly state that they do not wish to perform in Santa Clara as a result of the 10:00pm curfew.

Hotels, such as the Santa Clara Marriott, have now missed out on millions in revenue from these types of events, in particular the big concerts that bring tens of thousands of new customers into our market. These concerts drive our room night revenue and support the hundreds of local workers that we employ. Not only do these events benefit the businesses and workers here in Santa Clara, they contribute significantly to the city's General Fund through the additional hotel and sales taxes they generate for the city."

- The Assessment Appeals Board – a county entity comprised of three appointed hearing officials – held a lengthy hearing in 2018 about the Forty Niners. The County claimed that ManCo was acting in a biased way, and favoring the Forty Niners' interests over the City. The Board heard from several experts (including the County's forensic accountant) during 21 days of witness testimony. It concluded:

"After careful consideration of the evidence presented and testimony taken from the Assessor's office, the Assessor's expert witness and the president of the management company for Stadco and SCSA, the Board concludes that the Forty Niners affiliate (ManCo) managed the Stadium on behalf of StadCo and SCSA in a fair and impartial manner."

In addition, it appears that the Civil Grand Jury does not understand how Public Safety Costs for NFL games impact the calculation of Performance Based Rent payable from the Stadium Authority to the City. This is detailed in Section 7.5.3 of the Stadium Lease, which states:

7.5.3 (a) If the amount of Public Safety Costs, including Public Safety Capital Expenditures (whether funded from the Stadium Capital Expenditure Reserve or otherwise), attributable to NFL Games for any Lease Year (which shall, in the case of Public Safety Capital Expenditures, include only the amortization thereof applicable to such Lease Year) exceed the Public Safety Costs Threshold applicable to such Lease Year, then, subject to the provisions of Paragraph 7.5.5 below; and, except to the extent such excess is paid by the Stadium

Authority out of the Stadium Authority Discretionary Fund or from Net Hotel CFD Revenue pursuant to Paragraph 12.5 below, or, in the case of a League Event, paid by third parties, such as the "event host committee", the amount by which such Public Safety Costs exceed the Public Safety Costs Threshold shall constitute "Credited Public Safety Costs" and shall be included among the Performance-Based Rent Credits for purposes of determining the amount of Performance-Based Rent payable by the Stadium Authority for such Lease Year pursuant to the Ground Lease (and, following the Tenant Season Expansion Date if the Stadium Authority Put Right is exercised, the Performance-Based Rent payable by Tenant for such Lease Year in accordance with Paragraph 6.4 above)

Your draft report states: *"The Civil Grand Jury watched a February 2022 presentation made to the City Council by a reputable event management company hired by City staff, which proposed options for increasing revenue streams at the Stadium. According to their envisioned marketing strategies, the curfew need not be a significant impediment for booking talent...After the presentation, the City Council Voting Bloc voted not to forward the marketing plan presented that evening to ManCo for consideration."*

This comment is incorrect in several material respects.

- First of all, your draft report defines the City Council Voting Bloc as five individuals, and the vote on this item was actually 4-3. This is quite common, and underscores that one of the key premises of your report is incorrect – these five individuals do not consistently vote the same way on stadium matters, and most of the Board votes on Stadium issues are not 5-2 votes. In fact, a quick review of the actual votes on stadium issues for calendar year 2021 reveals that approval of an item 5-2 vote on any particular issue is exceptionally rare – in fact nearly 90% of the votes on stadium matters were either unanimous or 6-1.
- Second, the consultant did not say that the curfew would not be a significant impediment. In fact, he said the exact opposite. Here are the quotes from the consultant when Mr. Chahal asked him to talk about the impact of the 10PM curfew on event booking:

Well the curfew, you know (laughs) it's a question that comes up, uh, you know, anytime you're negotiating with a promoter, uh, they'll ask you that question. Sometimes it comes up first. And uh, in this case, with this venue, with it's, uh, you know, apparent, uh, you know, curfew, uh, you know issues in the past, it would come up

probably in the first five questions. The promoter would ask is did you get your curfew worked out?

But, uh, curfew comes up it is, uh, it is an issue, um, for some shows. I have to say, um, you know, the ones that I have been involved with and uh we've mentioned them here Taylor Swift's, Kenny Chesney, uh, Jimmy Buffet, Brad Paisley... these shows go on at 9:30 and they end at 11:00, and, you know, uh, that's all they go. That's it.

But there are some shows that go later. Uh, Guns & Roses, uh, they wanna go until midnight. So, it's kind of a, you know, uh, when you sit down with a promoter and you're talking about an event, they'll let you know, "Hey, this band likes to play late. Is that going to be an issue?"

- As we explained to the Board and the public, the former City Manager hired the consultant based on the false premise that the problem in booking concerts was a deficiency in the 49ers marketing plan. That was not the problem, and the proof is in the pudding. After the City Council voted to adjust the curfew imposed by the former City Manager in 2017, and to allow the 49ers to book up to five concerts that end at 11pm, we booked a whole series of them, and they are all profitable in the range of \$500K to \$800K per show. In fact, there are two concerts this weekend that will generate over \$1M for the Stadium authority.

That same section of your report also includes this allegation: *"It is not clear to the Civil Grand Jury why the City Council Voting Bloc would not want ManCo to consider all strategies for booking non-NFL events. It is actions like these that show that the City Council Voting Bloc puts the 49ers' interests ahead of the City's interests."*

This comment is an apparent product of the Grand Jury's misunderstanding of the economics of Non-NFL Events. The profits from Non-NFL Events go to the Stadium Authority, not the 49ers. As the Stadium Manager, the 49ers urged the City for years to adjust the curfew, not because it was in the 49ers economic interest but because it would increase revenues to the Stadium Authority. It is our job as Stadium Manager to encourage SCSA to adopt strategies and policies that will increase its revenues. So when the Council voted to adjust the curfew it was, in fact, acting in *its own* economic interest.

- There is a similar theme throughout your draft report: this notion that if the 49ers propose something to the Stadium Authority it must be counter to the City's interest, and in the financial interests of the 49ers. That is completely

and wholly incorrect. In fact, the Stadium contracts contemplate and require that the 49ers will bring a broad range of proposals to the Stadium Authority.

For example, the 49ers propose dozens of Board actions to hire concessionaires, repair signage, sell seat licenses, approve budgets, contract with vendors, etc. That is our job as manager of the Stadium. It is incorrect, and harmful, for your draft report to suggest that Council members who vote favorably on those actions are not acting in the interest of the City.

The Harvey Rose Report

Your draft report refers to a report by the Harvey Rose firm in 2017 and says "... there are 15 instances where compliance has never been achieved or has deteriorated rather than improved." Your report then lists four items which you describe as "the most egregious". I will address each of those bullet points:

- *“Existing plans, reports, and budget documents have not been provided by ManCo as required.”*
 - All required plans, reports, and budget documents have been provided. There are thousands of pages available at City Hall, and the 49ers have copies of them. If the Civil Grand Jury would like to view them, we are happy to make them available.
- *“A one-year budget and five-year projection of shared Stadium expenses were required to be supplied on an annual basis to the Stadium Authority. ManCo has not provided these budgets with necessary details.”*
 - The Stadium Manager submits the one-year budget and five-year projection of Shared Stadium Expense year to the City. A copy of the latest submission was included in my letter dated 10/7/22. The City Staff then asks questions and requests supporting documentation for specific line items, which Stadium Manager responds to in writing. That material is also available if the Civil Grand Jury would like to review it.
- *“Financial information is required on an ongoing basis to assess non-NFL event financial performance, including incentive payments to ManCo. This was partially completed as of 2017 and has since slipped into non-compliance.”*
 - The Stadium Manager submits a flash report P&L for each ticketed event to City Hall 45 days after each show. At year end, the supporting documentation for each show is organized into a packet (typically 500 +

pages per show) and submitted to City Hall. The packet includes all the supporting documentation for each event, including the event contract, ticket sales, concessions, event expenses, etc.

- *“Reports and documentation to verify accuracy of the revenue calculated by ManCo to back up NFL tickets sold each fiscal year have not been provided.”*
 - We assume this comment is regarding the calculation of the NFL Ticket Surcharge payable to the Stadium Authority by TeamCo pursuant to the Non-Relocation Agreement. Since it is a material revenue source for the Stadium Authority, generating roughly \$10M annually, this information is audited annually by the Stadium Authority’s independent auditors. If there is some specific request the Civil Grand Jury has on this item, or if they would like to us to show them the calculations and supporting documents, we would be happy to do so.

It’s also worth noting that the Harvey Rose report, which described itself as a “Comprehensive Audit of Stadium Authority Finances” was not actually an audit. The annual audit of the Stadium Authority is conducted each year by KPMG, an actual CPA firm. The Harvey Rose report was more of an opinion piece and included recommendations like: *“Certain provisions in the agreements, detailed in this report, do not appear to be in the best interest of the Stadium Authority and should be considered for proposed amendments to the agreements.”* Comments like that are obviously outside the scope of an audit, and left both the 49ers and City Staff concerned that the report was not particularly useful. One of our responses to the Harvey Rose report is attached as Exhibit C and will provide the Grand Jury with additional color on the contents of that report.

It’s also worth noting that the concerns over the Harvey Rose report were shared by the City’s elected Chief of Police – who served the City of Santa Clara for more than three decades. Here is an excerpt from his comments at the public City Council meeting on this topic in 2016:

Tonight, I will ensure that the public gets a full and accurate account regarding police costs as it relates to Levi’s Stadium; and not the political grandstanding by our Mayor Gillmor and her reckless claims of abuse, misappropriation of funds, and allegations of corruption, as she has claimed several times in the media.

I have to be honest, Mayor. Your rhetoric has unfairly tarnished the reputation of the Santa Clara Police Department and many, many city employees.

Our city has been subject to a level of hatred and nastiness that I have never seen before. It is being compounded by your lack of leadership, honesty and transparency. This unnecessary burden is affecting the fine men and women that have served this great city, and frankly, they are all tired of it. They do not deserve to be treated nor portrayed the way they have been, and especially this past year. Several key staff members have left the city due to this behavior.

The core issue is the city's relationship with the San Francisco 49ers, Levi's Stadium, and this recent public safety audit from Harvey M. Rose. I am tonight here to set the record straight. As an elected official, I can no longer stand by and allow the negativity that's been going on to affect this great city.

I'd like to start with the audit by Harvey M. Rose.

First of all, let me be clear. I am all about transparency and accountability. There is no question I support and appreciate financial audits. They us make better decisions and keep our city financially stable and guide use. But as my team and I went through this process with Harvey M. Rose, we started to question the validity and the direction of this audit, and this is why.

It is not very often that the council goes against staff recommendations, and there's a reason for that. The city staff work. Tirelessly to vet quality CPA firms that met the city's request for proposal for this financial audit. In this case, staff recommended a qualified auditor to council, and it was not Harvey M. rose.

Nonetheless my team cooperated 100% with the staff from Harvey M. Rose. It was not long before it became very clear to us that they were given specific instructions and directions consistent with the narrative that unfortunately you have been claiming for over a year now under the guise of protecting us all against potential Measure J violations.

The HSNO "forensic" audit of Non-NFL Events

Your draft report includes this comment: "According to a 2021-2022 budget document prepared by the Stadium Authority, a forensic auditor had been retained to conduct an "expanded analysis of non-NFL events' revenues and expenses. That forensic auditor was hired by the former City Manager. According to the document, the forensic audit was expected to be completed by the Fall of

2021. However, the audit was never completed, and the Civil Grand Jury learned that the effort was ceased after the City Manager was terminated.”

This is the first time the 49ers have heard that the HSNO audit work on Non-NFL Events was terminated. Your draft report seems to suggest that the 49ers were pushing to end the audit, suggesting that we are hiding something or we afraid of the results of an audit. Nothing could be further from the truth.

It is our expectation that the City will retain a reputable and qualified CPA firm to perform whatever audit work they deem appropriate. We have explained – in writing and publicly – that we don’t believe that firm should be HSNO. As explained in the letter attached as Exhibit D, while HSNO was working for the SCSA, HSNO was forced to surrender its license to act as a Certified Public Accountancy Corporation. Here is the explanation from the attached letter:

Similar to its engagement for SCSA, HSNO was hired by the City of Irvine to review work of outside contractors. As a result of its work, HSNO was sued by the Attorney General’s office, and it agreed to the following facts when it surrendered its license:

This matter arises from the City of Irvine’s engagement of Respondent HSNO to prepare two reports for which the firm was paid approximately \$778,000. Yet, the reports prepared by Respondent HSNO contained misleading statements and failed to meet minimum professional standards that required due professional care, objectivity, and sufficient relevant data to support many of its findings and opinions. Respondent HSNO’s findings and conclusions included falsely portraying that certain parties had failed to cooperate with Respondent HSNO’s engagement, and that one party had double billed the City. Respondent HSNO used its own deficient findings to justify Respondent HSNO performing further work for the City.

SCSA never revealed any of this to the public. And now, we see the pattern from Irvine repeat: after years of work, the receipt of more than 70,000 pages of documentation, and payment of more than \$150,000, Mr. Gillihan’s questions just lead to more questions, all of which require Mr. Gillihan to continue his work for SCSA, indefinitely. But after these years of work, Mr. Gillihan’s report does not identify a single dollar owed to SCSA. Authorizing Mr. Gillihan to continue his “investigation” would be the definition of wasteful spending.

Timing of the Report

The planned release of the report on Monday, October 10 also raises concerns, as it is clearly outside the normal operation of the Civil Grand Jury and seems intentionally rushed.

- Over the course of the previous two terms, more than 83% of all final reports from the Grand Jury were released between December 10-17 each year. In fact, every report but two were released within that window.
- Furthermore, this draft report states that the Civil Grand Jury conducted ten interviews before reaching its final conclusions. In comparison, every report that the Jury released over the previous two terms and for which numbers are public, were based on findings from at least 20 interviews, and sometimes as many as 45.
- Lastly, the planned release date of the final report on Monday, October 10 – Indigenous Peoples’ Day - is especially odd given that both the County’s government offices and the City’s government offices will be closed (including those of the officials required to respond to the report).

Based on the Grand Jury’s own precedent, we are concerned that the planned release of the final report on October 10 raises questions about the motivation for rushing its release.

Brown Act Violations

Finally, while it is beyond the scope of this letter to debate the legal analysis set forth in the draft report, we do wish to note that the report’s discussion of the Brown Act’s prohibition on “serial meetings” appears intended to leave the impression that such a violation may have occurred, but all of the facts set forth in the report indicate exactly the opposite. First, not one of the definitions of a “serial meeting” presented in the report (at page 14) applies to the actual meetings discussed in the report. That is, under the legal definition of a serial meeting, *none took place*. Second, as the report acknowledges, where a serial meeting *has* taken place, the question under the Brown Act is then whether the serial meeting was a means for “a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533. The *Wolfe* court’s discussion of how the Brown Act treats the concepts of serial meetings and collective concurrence is useful here, because, on both counts, it rejects the report’s approach:

*While Wolfe alleges that Diaz's activities went beyond merely supplying policy-related information to the council members, we conclude that, for two reasons, the allegations nonetheless fail to state a claim under section 54952.2, subdivision (b). First, as the City argues, the complaint fails to allege that Diaz acted as an intermediary regarding the new policy. As noted above, the Brown Act is not violated by serial meetings between council members and a nonmember unless the nonmember acts as a "personal intermediary" among the council members. Because the act does not define "intermediary," we look first to the dictionary for its "usual and ordinary" meaning (see, e.g., *Bernard v. Foley* (2006) 39 Cal.4th 794, 807, 47 Cal. Rptr.3d 248, 139 P.3d 1196), where we find that an intermediary is a "go-between." (Merriam Webster's Collegiate Dictionary (10th ed.2000) p. 610, col. 1.) In other words, Wolfe was required to allege facts from which it could be concluded that Diaz acted as a personal go-between among council members, a role that would require Diaz, at a minimum, to make the council members aware of each other's views.^[7] Not only does the complaint contain no express allegation that Diaz acted as an intermediary, it contains no allegation of facts from which such a role can be found. When discussing Diaz's activities, all the complaint alleges is that Diaz attempted to persuade council members to his own views regarding the new policy, not that he acted as a go-between to pass information or views from one council member to another.*

*Second, the allegations regarding Diaz's activities do not demonstrate the development of a "collective concurrence" by a majority of the City Council. The statute does not define this phrase. In *Roberts and Frazer*, which were rendered a short time before passage of the 1993 amendments, the term "collective" was used to refer to "interaction or communication between or among individual Board members, either directly or through the agency of ... staff." (Frazer, *supra*, 18 Cal. App.4th at p. 797, 22 Cal.Rptr.2d 641.)^[8] "Concurrence," according to the dictionary, is an "agreement or union in action." (Merriam Webster's Collegiate Dictionary, *supra*, at p. 239, col. 2.) Combining the two, a "collective concurrence" would require not only that a majority of the council members share the same view, or "concur," but also that the members have reached that shared view after interaction between or among themselves, whether directly or through an intermediary. By requiring collective action in addition to a concurrence, the definition promotes the policy behind the act, which is to ensure that the deliberations—that is, the discussion of matters leading to a decision—of public bodies are*

done in public. (§ 54950.) It is also consistent with the conclusion reached in Stockton Newspapers that the act's requirement of public meetings "comprehends informal sessions at which a legislative body commits itself collectively to a particular future decision concerning the public business." (Stockton Newspapers, supra, 171 Cal.App.3d at p. 102, 214 Cal. Rptr. 561, italics added.)

The complaint's factual allegations with respect to Diaz's activities state only that he met individually with a majority of the members of the City Council and that those members expressed the view that they supported taking no action with respect to the verified response policy.^{19]} As is implicit in the above discussion, however, the mere fact that a majority of the members of the legislative body have reached the same conclusion about an action does not constitute a violation of the Brown Act if the members reached that conclusion acting independently of one another, without deliberation among themselves. Under those circumstances, any concurrence was not "collective." Wolfe's allegations regarding the activities of Diaz contain no indication that the council members reached their consensus with an awareness of each other's views, let alone that they reached it as a result of direct or indirect interaction among themselves. Accordingly, considered in isolation, the allegations about Diaz's activities fail to state a claim under section 54952.2, subdivision (b).

Conclusion

The draft "Unsportsmanlike Conduct" report purports to be an in-depth analysis of the failure of the Santa Clara Stadium Authority/City Council to discharge its fiduciary responsibilities regarding the operations of Levi's Stadium, and to conduct itself in accordance with good governance principles. In fact, it is a deeply anti-democratic document – attacking the voting decisions of five duly-elected members of the Council by ascribing dark motives to them, by invoking baseless conspiracy theories, and by asserting, without any credible evidence, that the city government has been captured by forces hostile to the interests of the people.

We have seen this kind of rhetoric infect our national political environment, and it is disheartening to see it in a report from a local body committed to good governance. And it is particularly alarming to see such a report – built on false premises, and implicitly disdainful of democratic governance – issued by a body that is part of the County's judicial system. **We want to be clear on this point: We do not mean to impugn the good intentions of the civil grand jury.**

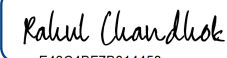
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People still regard the judicial system as trustworthy, and as free from the biases and promotion of “alterative facts” that have undermined faith in our political system generally, and it is my hope that they continue to do so. But the draft report’s manifest reliance on groundless accusations that could only have come from the Mayor (whose majority hold on the City Council was rejected by the voters) and certain former City officials (dismissed from their employment), has rendered it a partisan, not a judicial, document. And its issuance in its current form will inevitably undermine people’s faith in the civil grand jury system.

Respectfully,

DocuSigned by:

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Rahul Chandhok

Chief Communications & Public Affairs Officer

Exhibit A

Letter to Rajeev Batra

10/7/22



October 7, 2022

VIA ELECTRONIC MAIL

Mr. Rajeev Batra
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Civil Grand Jury

Dear Executive Director Batra,

I received a copy of a “report” entitled “Unsportsmanlike Conduct” from multiple press outlets. There is nothing new in this report. The report is a regurgitation of Mayor Gillmor’s false allegations. The timing of the report makes it clear that this was a political hit job orchestrated by the Mayor and her allies, including disgruntled employees from the City, and the opinions in it are based on the false statements of those individuals. The authors never asked the 49ers for the other side of the story. If the Civil Grand Jury is interested in the facts, we are delighted to share them.

The report is rife with errors - too many errors for us to correct in this letter - but we did want to briefly correct the record on a few of the glaring and easily disproven misstatements contained in the report.

The timing of this report is obviously intended to boost Lisa Gillmor’s run for re-election, and I expect her to go on a press tour shortly, trumpeting the false information she provided to the Civil Grand Jury.

Since we have had no contact with the Civil Grand Jury, we would appreciate it if you would forward a copy of this letter to them and ask that they include a copy of it in their report, so the public is not misled by the contents of their report.

False Statements about Financial Accounting Deficiencies

The report proclaims (falsely) that “...lack of proper financial accounting [for the stadium] have not been resolved.” (Page 16). This is incorrect. All of the stadium financial records have been provided to City Staff – literally thousands of pages of documents. The Civil Grand Jury may review them, as well.

As an example, the Report states that the City “only” made \$872,000 from a Rolling Stones concert, but there is “no way to verify these numbers because ManCo has not been forthcoming with detailed documentation”. That is demonstrably false. Attached as Exhibit 1 is the first page of the of the supporting documentation for the Rolling Stones concert. We only included the first page since the entire supporting document packet for this single event is more than 600 pages - all of which was delivered to City Staff years ago – but if the Civil Grand Jury would like to review the entire package for this or any other stadium event, we would be happy to provide it to them.

Similarly, the Report claims that “...obtaining financials has proven problematic”. But the Report neglected to note that the 49ers and City Staff instituted a new financial accounting system five months ago that provides City Staff with online access to all stadium financial records. Indeed, the 49ers proposed this system several years ago, but the project was delayed because of the interference of the former City Manager, as explained in Exhibit 2.

False Statements about the Harvey Rose Report

The Report states (falsely) that the “... Harvey Rose Audit raised several areas of deficiency regarding Manco, many of which remain unresolved.” (Page 16). In support of that false allegation, the Report included Appendix B (page 35) listing a series of findings and identifying some that are “Out of Compliance” or “Partially Complete”. That appendix is inaccurate.

For example, the appendix includes this item regarding budget documents, and claims it is “Out of Compliance”:

1.R The Stadium Authority Board should direct the Executive Director to establish procedures to ensure that all existing plans, reports, and budget documents required to be provided by Manco are provided to the Stadium Authority in the manner required by existing agreements. The Stadium Authority Board should further direct the Executive Director to report annually on the status (receipt, review, and approval status) of each required plan, report, and budget document	Partially Complete	Out of Compliance
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Apparently, the Civil Grand Jury neglected to request those documents from the City (or the 49ers). I have attached as Exhibit 3 the budget package for FY22-23, which includes

all the required documents from ManCo, which were sent to the City in January 2022. If the Civil Grand Jury cares to review documents from any prior years, we would be happy to provide them.

Similarly, the appendix includes the following item regarding 45-day Non-NFL event reports, and claims (falsely) that they have not been provided.

1.N	<u>ONGOING BASIS.</u> The Stadium Authority Board should direct the Executive Director to notify Manco that it is in breach of Management Agreement Section 3.3, which requires that written revenue or other reports relating to non-NFL events be provided to the Stadium Authority within 45 days of each non-NFL event with attendance projected to exceed \$25,000. The Stadium Authority Board should further direct the Executive Director to demand that Manco provide such written revenue reports according to specifications to be detailed by the Treasurer for all future non-NFL events with attendance projected to exceed \$25,000.	Partially Complete	Out of Compliance
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Once again, all these reports have been provided in a timely manner to City Staff, which the Civil Grand Jury’s “investigation” would have confirmed if they had simply asked City Staff or the 49ers. For example, attached as Exhibit 4 are the 45-day reports for the concerts that have been hosted at the Stadium so far this year.

Profits from Non-NFL Events

The report parrots Mayor Gillmor’s talking points on the paucity of profits from Non-NFL events, stating: *“To fully appreciate the seriousness of the situation and the pessimism of the City about the prospect of non-NFL events resulting in income to the City, the 2022-2023 Stadium Authority budget specifies zero dollars for Performance Rent.”* (Page 17)

What the Report fails to note is that the Performance Rent of zero cited in the table was actually based on the financial results of Non-NFL Events that occurred during the preceding fiscal year ended 3/31/22, and those events were severely curtailed due to COVID-19. In fact, there were zero ticketed Non-NFL Events in the stadium that year. But now that the pandemic is over and the concert curfew has been adjusted by the City Council, Levi’s Stadium is on track to have seven major ticketed events during the current fiscal year, which are expected to generate millions in revenue for the SCSA, with an even bigger slate of profitable events under negotiation for the following year.

More importantly, however, the focus on Non-NFL event profits is a red herring – Non-NFL Events are a relatively small piece of the Stadium’s overall revenues. Total Stadium Authority revenues are in the range of \$70M annually, and have far exceeded all reasonable performance metrics. Indeed, the Stadium’s remarkable financial performance

has allowed the Stadium Authority to pay down nearly \$400M in debt in just seven years – far ahead of the most optimistic early projections.

Operational Tours

The Civil Grand Jury parrots the same accusations about improper gifts and “FPPC violations” regarding Councilmembers Chahal and Hardy that we have heard from Mayor Gillmor and her allies for months. The reality is that the FPPC has found no issue with the events in question to date. For the Civil Grand Jury to imply that SCSA Board Members shouldn’t be allowed to view their own stadium during a major event in which they welcome tens of thousands of visitors to Santa Clara is ludicrous. The SCSA funded, built, and owns the stadium; commensurate with that authority, Board Members have every right to view operations in their own building.

As both Councilmembers have said publicly numerous times, the FPPC defines activities which are exempt from being considered gifts and do not require Form 700 reporting. FPPC Regulation 18942.1(c) defines “Informational material” as one such category that is exempt, and includes “On-site demonstrations, tours, or inspections” within it. This information is publicly available and easily found online, a fact which the Civil Grand Jury, Mayor Gillmor and the former City Attorney have either willfully ignored or failed to make the effort to find.

During the November 15th game in question, both Councilmembers viewed critical operations at Levi’s Stadium, which they are responsible for and ultimately own, such as the temporary holding facility operated by the Santa Clara Police Department, the security operations control room, and first responder staging areas. After the tour Councilmembers Chahal and Hardy gave a verbal report on their findings during open session for the public to hear.

The Closed-Door Meetings

The report is full of derogatory innuendos about “secret meetings” between the 49ers and members of the City Council, speculating that there may have been violations of the Brown Act or there may have been privileged information shared. The report is a parroting of Gillmor’s talking points. All meetings have been put on the public calendar and no privileged information was shared.

For example at page 15 the report states: “...*one of the councilmembers expressed that the need to meet with 49ers lobbyists was because they were the management company, **which of course is not true** and underscores at least one councilmember’s contorted view of the reporting relationships.*”

This statement by the author of the report demonstrates no knowledge of the contractual relationships. The 49ers are, in fact, the management company for the stadium, and many of its employees were registered as lobbyists at the request of the former City Manager. The report neglected to note that meetings between City Staff and the 49ers were terminated more than a year ago following the bizarre tirade from the former City Attorney (Exhibit 5), so when City Council members want information on events and operations at the stadium – one of the City’s largest assets - the only source of information is talking directly to Stadium Manager.

Incredibly, the report states “... there is no way to know what was discussed...” in these meetings. But if the Grand Jury wanted to know what was discussed, they could have asked the council members or the 49ers. No one from the Civil Grand Jury asked the 49ers, perhaps because the facts would have interfered with the political narrative of the Report.

Significantly, after concluding its “investigation”, the report alleges no actual violations of any laws or rules – by the council members or the 49ers. Because there were none.

FIFA

The Report spends several pages criticizing certain council members for researching and supporting the bid to host the FIFA World Cup in 2026, suggesting that there was some disagreement among the City Council about this issue – but there wasn’t. The City’s resolution to support the FIFA event was a unanimous vote by the City Council on 2/22/22 (Exhibit 6).

Furthermore, the Report suggests that the City could be on the hook for millions of dollars in public safety costs for this event. That is incorrect. In fact the resolution approved unanimously by the Board says the exact opposite: “... *both the City of Santa Clara and the Santa Clara Stadium Authority must be insulated from any financial losses in accordance with voter-approved Measure J*”.

Lawsuits

The report spends several paragraphs talking about the litigation between the 49ers and the City, and presents the talking points that Mayor Gillmor has been pushing for years.

For example, the Report says the Civil Grand Jury learned that some people “...with knowledge of the litigation believed the City had a strong case...” Of course, the report fails to mention that those people were allies of Mayor Gillmor, who likely benefitted financially from her witch hunt, and neglects to point out that both sides believed they had a strong case, but ultimately concluded that the legal costs outweighed the likely recoveries. That is how settlements work.

Similarly, the Report includes the “story” Mayor Gillmor fed to the San Francisco Chronicle about “... swearing, offensive hand gestures, and aggression...” by one City Council member at closed session meeting, and claims that “the police were called”. The Report neglects to point out that this was only one side of the story – and the Civil Grand Jury could have uncovered the other side of the story by simply reading a contemporaneous article in the Santa Clara Weekly, which stated:

No one denied that there was an acrimonious discussion. It’s no secret that Gillmor and Watanabe’s conduct toward their colleagues is frequently rude and insulting. Since Gillmor lost her majority on the Council, she and her allies, Watanabe and fired City Attorney Brian Doyle, routinely attempt to create procedural roadblocks in the path of Council action.

Gillmor also told the Chronicle that she felt so threatened at the meeting that she called the police.

In fact, the police weren’t at City Hall because she called them, but because someone with an apparent mental disturbance had been wandering around City Hall since 8 a.m. and appeared to be very confused.

City Manager Rajeev Batra called SCPD after the person was still in the Council chambers late into the evening.

We find it astonishing that the Civil Grand Jury based large portions of its report on what it read in cherry-picked media outlets without doing any actual investigation on its own.

In closing, we are disappointed that the Civil Grand Jury allowed itself to be used a political tool in Mayor Gillmor’s vendetta against the 49ers. They were bamboozled into preparing a report that is full of false statements, speculation, and lurid innuendos, but doesn’t allege any actual violations of policy or law.

Very truly yours,

Rahul Chandhok
Chief Communications & Public Affairs Officer

Exhibit B

Letter to Deanna Santana

Rolling Stones Show

3/5/2021



FORTY NINERS STADIUM MANAGEMENT COMPANY

March 5, 2021

VIA EMAIL - MayorAndCouncil@santaclaraca.gov

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Mayor & Council,

We continue to be concerned that the reports you receive from City Staff on Levi's Stadium contain material inaccuracies and are significantly influenced by the City Staff's effort to justify their over-spending and litigation strategy. They consistently portray the 49ers as uncooperative and untruthful, while they portray City Staff as heroic players in the Stadium dramas that they themselves have created.

In the past, the 49ers sent letters to City Hall debunking the misrepresentations from your City Attorney and staff at your Council meetings. Since there are a number of new members on your City Council, I thought it might be helpful to separate the facts from the fiction on a more recent issue: City Staff's bureaucratic interference with the Rolling Stones show in August 2019.

Manager Santana prepared a lengthy memo describing her heroic acts that resulted in what she described as a "successful" show for the Rolling Stones. Her memo, which was prepared for Robert Haugh, a local blogger supported by Mayor Gillmor, is attached as **Exhibit 1**. When the City's interference in the Rolling Stones show began getting the attention of the media, Santana sent a packet of information to the Mercury News in an attempt to cover up her culpability (**Exhibit 2**).

In this letter, I will debunk some of Santana's misrepresentations on the Rolling Stones show. Obviously, the 49ers would prefer not wasting our time (or yours) on any of this. In view of the pandemic's impact on the SCSA's revenues, and the alarming increase in the SCSA's administrative costs, it seems particularly wasteful to have letters going back and forth about past events.

Background on Rolling Stones Show

The Rolling Stones "No Filter" Tour was originally scheduled at Levi's Stadium in May 2019, but due to a medical issue with one of the performers, the tour was rescheduled to the summer of 2019.

The 49ers sent an email to Santana on 4.25.19 asking if the City would allow the rescheduled show to happen on a weeknight. The concern with a weeknight concert at

4900 Marie P. DeBartolo Way | Santa Clara, CA 95054

Levi's is that the City has generally prohibited weeknight shows that will run beyond 10PM, and major touring concerts always run past 10PM.

Rather than simply approving or denying a weeknight show, which could have been handled in a brief email, Santana replied with a three-page letter (**Exhibit 3**) reciting her concerns and demands, which began a lengthy exchange of emails, letters, and accusations. Ultimately, Santana weaponized her City Staff to interfere with the show, resulting in two letters from the promoters expressing their frustration (**Exhibit 4**). Here is a quote from the promoter: "... *do you not want touring shows anymore? The impression I and many others in the industry have, is your facility is getting so restrictive and dysfunctional, it's no longer worth the effort to play there due to the myriad and random rule changes or sudden restrictions placed on a tour.*"

Misrepresentations by Santana

City Prohibits Rolling Stones Fireworks Display

The Rolling Stones show, like most big concerts, had planned for a fireworks display at the end of their performance. Levi's Stadium was the only stop on their world tour that did not include this feature, because the City refused to allow it. Santana's story was that the promoter did not request a permit for fireworks. In Santana's packet to the Mercury news she included a yellow post-it note stating: "Promoter's application did not propose fireworks – there is confusion on their end" (**Exhibit 2 Page 5**).

But that is misleading. The Promoter's *initial* application did, in fact, include a full fireworks display, but the City rejected that, and indicated that their permit would only be approved if they removed all the fireworks and submitted a new permit request. That revised permit (with no fireworks) is the one that Santana cited as evidence that the promoter did not propose fireworks. That is a clear misrepresentation by Santana. Here are the facts and supporting documents:

- Attached as **Exhibit 5** is one of the earlier permit requests the Promoter submitted. – You can see at **page 3** the request for a full fireworks display. This particular submittal was dated 8.1.19, but the original submittal from the promoter was sent to the City on 7.16.19 via FedEx, and also included the full fireworks display.
- Attached as **Exhibit 6** is an email from SCFD telling the promoters that their request for fireworks would not be approved.
- **Exhibit 7** is the subsequent *revised* permit submittal by the promoter dated 8.12.19. You can see on **page 3** that the promoter whited out all the fireworks, leaving only the flickers¹. Obviously, this was not the Promoter's

¹ Flickers are a visual special effect that don't make noise.

preferred decision. They were forced to submit this permit because the City told them to remove all the fireworks.

Any assertion that the Promoter's did not request fireworks is simply (and demonstrably) false.

City Staff interferes with the show layout - Bike Rack fiasco.

Large touring concerts have elaborate stage setups and seating for patrons on the field. These layouts are designed by industry professionals with decades of experience in doing stadium shows. It's a complex process because no two stadiums are identical, and the tours bring their stage equipment along with them to each stop on the tour. The stages are then constructed on site using skilled local labor.

The layout for the Rolling Stones show is attached as **Exhibit 8**.

During the process of setting up for the show, City Staff decided that they wanted to change the layout. Specifically, they wanted to add physical barriers around Pit 3, which are the areas on **Exhibit 8** outlined in green. The requirement proposed by City Staff was that the patrons in these areas should be confined in these areas by installing physical barriers (interlocking metal barricades, referred to as bike racks) on the field – essentially creating corrals to keep the patrons inside their areas.

City Staff's requirement to corral patrons on the field was immediately and firmly rejected by the 49ers and the promoter, because it would have created an unsafe condition. In an emergency, a barricaded corral would most certainly have resulted in patrons rushing to the exits, only to be blocked by the interlocking metal barricades required by City staff, including the Fire Marshal. The promoter was shocked at this level of interference from City Staff who clearly demonstrated their lack of understanding regarding live events and crowd management.

Ultimately, the City Staff backed down and allowed the 49ers to delineate the Pit 3 seating areas with yellow tape applied to the floor, which was their plan before the City began interfering.

In an attempt to cover her tracks on this issue, Santana said: "The 49ers proposed bike racks, not the City". Her "evidence" was an email exchange dated 8.15.19 about bike racks in the Stadium parking lot that were proposed to delineate an outdoor sponsor activation zone requested by the Rolling Stones². (**Exhibit 2, page 12**). But that was an entirely separate issue that had nothing to do with the City Staff's dangerous requirement to corral patrons on the field.

This bike rack fiasco provides a good example of two recurring themes with Santana and her staff:

² City Staff rejected this sponsor activation zone, and the promoter's frustration with that decision was referenced in their letters after the show: "Whether it's denying the placement of our sponsor activation in your GIANT parking lot or the horrendously expensive permitting process..." (**Exhibit 4, Page 1**).

- Staff tries to insert themselves into the operations of the Stadium, but they lack experience and simply create more work for themselves and the Stadium Manager, and present to the promoters an unacceptable level of interference.
- When Santana is cornered by the facts, she will waste huge amounts of time writing lengthy memos to deflect and cover her tracks.

There are certainly more misrepresentations by Santana in the hundreds of pages she generated to explain her bizarre interference in the Rolling Stones show, but we are not going to take the time to debunk all of them in this letter. We would simply encourage the Board to be mindful and wary of Santana's assertions about the 49ers. She has proven time and time again that her bias against the 49ers, and her efforts to portray herself as a heroic bureaucrat, lead to a cavalcade of false and misleading claims serving only her own interests.

Thanks,

V.L. on behalf of

Larry MacNeil
Compliance Manager

Exhibit 1

Santana Memo for Blogger Robert Haugh

Robert,

I am in receipt of your questions and have provided a detailed response. There are two separate issues inherent in your series of questions: (1) whether I granted a formal exemption and (2) whether I advised the Board. I **did not** grant a formal exemption and I **did** advise the Board. In the last few days, I have checked in with the Board members about the rescheduling activities surrounding the concert and some remember clearly, vaguely, or not at all. That does not present a truthfulness or contradiction problem; everyone is different, and both outcomes can happen at once. Below are my responses to your questions.

Curfew questions

1. What were the reasons you granted the 49ers a curfew exemption for the Rolling Stones?

There was no formal curfew exemption, deal, or formal agreement. The scheduling of this concert was a unique occurrence in that the original date went from a May 18, 2019 Saturday date with an 11 p.m. end time, as authorized in the Development Permit, and then to a Sunday date with a 10 p.m. end time (August 18, 2019).

During the rescheduling of the concert, there was always the possibility of the event going past 10 p.m. With the likelihood of the rescheduled event going past 10 p.m., I realistically focused on authorizing public safety resources to prepare operationally to mitigate community impacts. Like past concerts, the Stadium Manager expressed the likelihood of this event going past 10 p.m. because the original event was planned for an 11 p.m. end time. As you will see in the attached emails (See Appendix), rescheduling the concert came with some limitations for the Stadium Manager, given the unique set of circumstances regarding the purpose for postponement. Booking the Rolling Stones concert was widely considered to be a positive event for Santa Clara.

I am very much aware of the Stadium Authority Board's concern relative to the Development Permit's Conditions of Approval (P22c), which states: *Night outdoor non-NFL events shall be scheduled to end not later than 10:00 PM Sunday through Thursday and 11:00 PM Friday and Saturday, unless otherwise approved by the City Manager or their delegate.* The Stadium Authority Board was kept advised of the rescheduling activity and, like other concerts, that it would likely run past 10 p.m. and that I would likely issue them a fine. See Appendix, Attachments 1-5, with the supporting attachments.

2. What other groups might get a curfew exemption from you and what's the criteria for future exemptions?

As described above, there was no formal curfew exemption, deal, or formal agreement. The scheduling of this concert was a unique occurrence in that the original date went from a date with an 11 p.m. end time to a date with a 10 p.m. end time.

I focused on authorizing public safety resources to prepare operationally and for mitigating community impacts which were apparently mitigated.

3. Why was the City Council not informed?

The Council/Board was informed of how the rescheduling was taking place by the Stadium Manager. Over the course of several weeks (April 25 – June 4, See Appendix, Attachments 1-3), I was advised by the Stadium Manager of rescheduling activity by the Promoter and, subsequently, informed the Board about the rescheduling activity and the likeliness of the rescheduled concert occurring on a weekend that would go past 10 p.m. The exception was Councilmember/Board member Mahan who was ill at the time and declined the Budget Briefings.

At these meetings, I advised each Board member of my position, as articulated in the May 9th letter (See Appendix, Attachment 4), and that if the concert was rescheduled, it would inevitably run past 10 p.m. I planned responsibly, realistically, and accordingly.

My calendar reflects the following (Appendix, Attachment 2):

- May 1, communication with Larry MacNeill about the status of rescheduling and limitations and confirming a telephone conversation for May 3, which was strategically scheduled due to budget briefings with Councilmembers at that time and the opportunity to brief them in person.
- From May 2 through 6, I met with Councilmembers to discuss the Budget and provided a rescheduling update.
- On May 3, I had a telephone conversation with Larry MacNeill about an update on the “Rolling Stones Concert Update” at 9:15 a.m.
- From May 4 – 8, in consultation with the City Attorney, my letter dated May 9 was sent to Larry MacNeill (Appendix, Attachment 4).
- Between May 10 and May 21, I received confirmation of the limitations for rescheduling the concert during a weekday event. It was evident that the concert would be rescheduled to August 18, 2019 and I assumed that it would go past 10 p.m.

Timeline	Individual(s)
May 2, 2019 – 10:00-11:30 a.m. 2019-20 Budget Briefings	Councilmember Davis
May 2, 2019 – 3:30-5:00 p.m. 2019-20 Budget Briefings	Councilmember Hardy Councilmember Chahal
May 3, 2019 - 9:15 a.m. Rolling Stones Concert Update (Telephone Call)	Larry MacNeill
May 3, 2019 - 2:00 – 3:30 p.m. 2019-20 Budget Briefings	Councilmember Watanabe
May 6, 2019 - 1:00 – 2:30 p.m. 2019-20 Budget Briefings	Mayor Gillmor Councilmember O’Neill
May 9, 2019 Letter to Larry MacNeill	Larry MacNeill
May 11, 2019 - 1:00 - 2:30 p.m. Call Larry MacNeill re Rolling Stones Concert	Larry MacNeill

On May 21, after the Council meeting, I advised the Councilmembers that I believed that the concert would be confirmed for August 18, 2019 and the inevitability of it going past 10 p.m., like other concerts.

On May 22, I advised Jim Mercurio and Larry MacNeill that I knew that the concert would go past 10 p.m. and that I would likely issue a fine notice. There was no objection from either of them. This is no different than the Cold Play concert, where it was well known of the concert’s likelihood of going past 10 p.m. and the likeliness of a fine notice.

It is my understanding that some Councilmembers remember clearly, some vaguely, and some do not remember at all. I cannot explain that. However, it does not change the facts or suggest untruthfulness, of the following:

- The advisement from the Stadium Manager in late April that led to me talking with the Board member during the budget briefings;
- The fact that some Councilmembers recall me telling them about the rescheduling activities during the budget briefings in early May confirms my actions;

- The fact that I had a telephone meeting scheduled with Larry MacNeill during the budget to discuss with him rescheduling confirms that I strategically scheduled a telephone call during a time when I was briefing the Board of what rescheduling activity was taking place at that time;
- The subsequent May 9 letter that was written shortly after the budget briefings on May 6 and coordinated with the Stadium Authority Counsel;
- The May 21 email from Larry where he acknowledges that I needed to discuss the August 18th date internally (e.g., Councilmembers);
- The confirmation of the August 18, 2019 date via advanced press release from the Stadium Manager to the Stadium Authority Board provides compelling support of having kept the Board informed; and,
- Larry MacNeill's emails on this matter were sent to me, Walter Rossmann, Catlin Ivanetich, and Brian Doyle which further support that rescheduling activities was widely known.

4. Why was the public not informed?

The Levi's Stadium does not regularly advertise end times for concerts, just start times. Because there had already been several conversations about the likeliness of the concert going past 10 p.m., the Police Department operationally planned for the event to end past 10 p.m. which was the responsible thing to do. As you can see in the Appendix, on August 17, at 7:14 p.m., the Stadium Manager sent out an "Event Notes" showing that the event was proposed to end at 21:50 (e.g., 9:50 p.m.).

While this may have been the best-case scenario, it was safe to say that it was anticipated and operationally planned to go past 10 p.m., with the end time specifically unknown. I do not know why the traffic advisory was not updated. Again, this is no different than past events where it is strongly anticipated that the concert would run past 10 p.m. and responsibly planned for operationally.

5. Were all the City departments informed? If so, when?

The Police Department and Fire Department, which are the relevant departments to be involved with concert logistics, were given authorization and adequate time to prepare operationally for the event including the anticipated time-frame.

6. How much in estimated money will the City make from the Rolling Stones concert?

Although the Stadium Authority does not receive immediate actual revenue data, we anticipated that the Rolling Stones concert would be a money-maker that the Stadium Authority would not want to lose from this year's schedule, given the Stadium Manager's lack of scheduled money-making events for the fiscal year.

As with past events, the revenue and expenses are provided in a Draft Profit and Loss statement that staff verifies after the event. Keeping in mind, in January 2019, the 49ers reported to the media the significantly lower revenues for last fiscal year and this fiscal year. This concert is the only money-making ticketed non-NFL event planned, with all other ticketed non-NFL events being money losers for the Stadium Authority. It is hoped that the positive revenue generated from this concert will mitigate the losses generated from the few other non-NFL ticketed events that are on the schedule for this fiscal year. The Stadium Authority's fiscal condition is fragile, given that the Stadium Manager has not successfully issued a Marketing Plan or booked money-making events.

APPENDIX

Background

The Stadium Manager is fully responsible for booking events at the Levi's Stadium and, as with all past events, the Stadium Authority **does not** participate in the booking, or rescheduling, of events at the Levi's Stadium. The Stadium Authority **does** participate in the operations of supporting the events.

This event was not any different than past concerts, where the Stadium Manager acknowledges that the event will likely go past 10 p.m. and advises the Stadium Authority. I understood that and communicated with both the Board and Stadium Manager accordingly.

What was different is that the Stadium Manager reached out to try to work toward rescheduling a weekday summer event that may go past 10 p.m. When that did not happen, I was realistic about the likeliness of it going past the 10 p.m., took significant actions to mitigate community impacts, and authorize public safety resources to plan operationally for an event past 10 p.m. Both parties knew that the media would be focused on the rescheduled date and were mindful of required actions that needed to take place. In fact, the documents demonstrate the effort to agree on the media message.

Here are the series of events that occurred leading up to August 18, 2019, with supporting documentation:

1. November 19, 2018, the Stadium Authority learned that the Rolling Stones concert were scheduled to play at Levi's Stadium on a Saturday, May 18, 2019, which allowed for an 11 p.m. end time which was expected to be met given the proposed concert schedule (Attachment 1).
2. On March 30, 2019, the Stadium Manager sent an email to the Stadium Authority that the event was being postponed (Attachment 1).
3. On April 25, 2019, the Stadium Manager advised me, Walter Rossman, Catlin Ivanetich, and Brian Doyle of the Promoter's intent to reschedule the concerts under a short timeframe. At the time, a summer weeknight was preferred (Attachment 1), but there was no certainty about the specific date. The email was discussed internally amongst the staff in receipt of the email.
4. On April 29, I reached out to Larry MacNeill to discuss the April 25 email and the possibility of rescheduling of the event. Larry MacNeill confirmed a scheduled telephone call on May 3, 2019 before 10 a.m. and sent it to the same group of staff referred to in #3 above.

The call with Larry was specifically planned around the opportunity to advise the Board/Council during pre-scheduled budget briefings (which were planned for May 2 and 3, with a May 6 briefing added at the last minute due to calendar conflicts). Given that I would be meeting with the Council/Board, this was a timely opportunity to talk with the Council/Board about the concert rescheduling activity including the event of a weekday concert that went past 10 p.m. Board members were provided an update on the rescheduling of the event during at the Budget meetings (Attachment 2) and I was clear about the strong possibility of the event going past 10 p.m. if it was scheduled on a weekday and that I would likely issue a fine. I did state at those meetings that a weekend was preferred, like the original concert date was planned on a Saturday with a proposed ending before 11 p.m.

Under these circumstances, I advised the Board that my focus with respect to the rescheduling of the Rolling Stones concert was to reinforce to the Stadium Authority of the importance for the Stadium Manager to (1) seek a weekend event and (2) for them to minimize community impacts if it was not on a weekend.

5. From May 2 through May 6, I met with all of the Council/Board members for Budget Briefings and, at that meeting, advised them of the rescheduling activities as noted in #4. I also had strategically scheduled a telephone call with Larry MacNeill on May 3, as noted above.
6. Once the Budget Briefings were completed and after advising the Board, with the guidance of the Stadium Authority Counsel, I sent a letter on May 9 to the Stadium Manager that reinforced my request for rescheduling the event, as well as concerns expressed at Stadium Authority Board briefings (Attachment 3). The letter was drafted from May 6 through May 9 and this letter confirms that I was seeking the following:
 - Prioritize a Saturday or Friday night concert;
 - Re-schedule the concert during summer months;
 - Confirm up to and/or no later than 11 p.m. end time during a summer week night event; the \$4 Non-NFL Ticket Surcharge to the Stadium Authority for any and all tickets given away for free (specifically, we should agree on the language that the Management Company authorizes in its agreement with the promoter: as ultimately, the Management Company has the control to include or omit this activity through the contract with the promoter); and
 - Reduce the cost for parking in lots used for this Non-NFL Event.
7. On May 11, Larry MacNeill and I had a follow-up telephone call regarding the May 9 letter, which included the receipt of confidential information from the Promoter. By May 14 (Attachment 1), during a telephone call, Larry MacNeill explained that my first three requests were communicated to the Promoter, but still undetermined based on the rescheduling still not completed. The fourth item was not possible due to the contract already being executed for the original concert date, which did not include a \$4 Non-NFL Ticket Surcharge for all tickets given away for free. Last, in order to successfully address the fifth request, the following issues needed to be completed with very little time and absolutely **no staff capacity** on Stadium Authority staff's part (we were in the middle of State of the City planning, experiencing key staff departures, and final Budget approval milestones):
 - Determine impact on public transit ridership and resulting traffic impacts with lower parking rates.
 - Coordination of pricing with private lots that are permitted by the City, but that are not under the Stadium Manager's control.
 - Lower parking revenue to both the Promoter and the SCSA.
 - Contractual terms with venue users with respect to parking pricing.
 - Impact on private lot owners' interest in offering their parking for the event if prices are forced to be reduced under short notice, along with new City requirements in place (e.g., more port-a-potties, security guards, etc.).

Between May 10 through May 21, Larry MacNeill and I had a series of telephone calls where we talked through the May 9 letter and the likeliness of the event not being schedule on a weekend due to various limitations. Emails sent on this topic were addressed to me, Walter Rossman, Catlin Ivanetich, and Brian Doyle which reflects working knowledge of the rescheduling activities and internal communications. On May 15, 2019, Larry advised that the Promoter was finalizing dates (Attachment 1) and that he expected dates soon, with the reality most likely being an August 18, 2019 concert which went past 10 p.m. The end time was never discussed, because it was not specifically known; however, it was clear that, like other concerts, it would run past 10 p.m.

8. On May 21, Larry MacNeill acknowledged that the rescheduling was focused on August 18, 2019 and that further inquiry about going past 10 p.m. Larry acknowledges in that email that his notes indicate that I needed to discuss the 11 p.m. matter internally (Attachment 1), specifically his email states, "**You would discuss the 11PM matter internally on your side.**" That note reflects working knowledge by the Stadium Manager and my efforts of keeping the Board informed of the rescheduling activity.

9. On May 21, after the Council meeting, I confirmed with Board members of the likeliness of the concert being confirmed for August 18, 2019 and it going past 10 p.m.—along with the unlikeliness of influencing another date and some of the matters that I had advanced (e.g., surcharge for tickets given away for free and lower cost parking). Despite much effort, it was clear that the rescheduling would be on August 18, 2019, a Sunday night, and inevitable that it would run past 10 p.m. Accordingly, I focused on mitigating community impacts (at that time, I was under the impression that August 19 was the first day of school) and authorizing public safety resources to prepare operationally for an event that would likely run past 10 p.m. Given the upcoming public national announcement of the rescheduled dates, there was no time to go to the Board or address the issues pending in the May 9 letter.
10. On May 22, 2019, while at a meeting at the Levi's Stadium, I advised the Stadium Manager that I anticipated that the concert would to go beyond 10 p.m. and that I would limit my response to the violation to the issuance of a fine. This was a reality-based set of actions, just like with past other concerts where it has been expected and/or anticipated that concerts would go past 10 p.m. and, responsibly, I focused on the operational side of a safe and successful event. I did not pretend that it was not going to happen; instead I discussed the reality of it happening with the Stadium Manager and Board members and the need to authorize staffing to operationally plan.
11. On June 4, 2019, the Stadium Manager emailed an advanced copy of a Press Release with the Stadium Authority Board members announcing the rescheduled concerts for the Rolling Stones concerts, which showed Santa Clara on August 18, 2019 (Attachment 1). This confirmed the August 18 date and the next day, June 5, it was announced.
12. On June 6, I advised the Police Chief, Assistant Police Chief, and Captain of the likelihood of the event running past 10 p.m. and authorized for planned staff resources, accordingly.
13. On August 17, at 7:14 p.m., the Stadium Manager sent out an "Event Notes" (Attachment 4) showing on Page 11 that the event was proposed to end at 21:50 (e.g., 9:50 p.m.). While this may have been the best-case scenario, it was fully anticipated and operationally planned to go past 10 p.m., with the exact end time unknown. Even their "Event Notes" do not reflect an 11 p.m. end time and this was the first time that an end time was estimated; however, I concluded that this would likely not occur.

Sunday August 18 (Event Day)

09:00 In-House Medical coverage continues
 15:00 County Ambulance dedicated back stage for Talent
 16:00 parking gates open
 16:00 (RockMed staff to Green lot (annex)
 17:00 (County Ambulance – Green Lot)
 17:00 (County Ambulance – Gold 4)
 17:30 100, 200, 700 and 300 aid stations operational
 17:30 Main doors open
 19:00 (County Ambulance – FA-300)
 19:00 (County Ambulance – Station 10)
 19:30 Event starts
 21:50 Events ends
 21:50 Overnight medical coverage continues
 11:30 Event Medical Release (soft)

A Successful Event & Mitigated Community Impacts

The result of this effort to mitigate community impacts were successful:

- 1) **Noise** -- The Noise Monitoring Program shows that the noise level stayed within the 60 dBA requirements at all three monitors (Attachment 5). The Stadium Development Permit outlines the noise threshold requirements:

P23 (Page 21) -- In order to control noise, the stadium loudspeaker systems (permanent and temporary) shall be oriented in a manner consistent with Community Noise Analysis prepared by WJHW, dated May 27, 2010 for the proposed 49ers Stadium, in order to control noise impacts to adjacent residential neighborhoods. In accordance with Section 9 .10.070(c) of the Santa Clara City Code, and the recommendations of this noise analysis, sound system levels shall be limited to 100 dBA for NFL games and other uses of the permanent speaker system, and not more than 105 dBA for temporary concert speaker systems as presented in the analysis. For sound system installations and modifications within the stadium site, the target for maximum sound level exposure in residential areas to the east and south shall be 60 dBA, in order to minimize noise impacts to sensitive receptors.

- 2) **Rolling Stones Activation** – Rolling Stones Promoter requested an activation of a portion of the parking lot for an enhanced interactive fan-based experience. The outside activation site would be comprised of a large screen, playing various videos, and other outside fan activities. Due to public safety concerns, and the lateness of the proposal, the City quickly denied such request.
- 3) **Fireworks** – On August 14/15, the Stadium Manager and Promoter made a last-minute effort to end the show with fireworks. I adamantly opposed this request and originally stated that fireworks would need to be restricted to 9 p.m. I was adamant that there would be no fireworks after 10 p.m. (Attachment 10). The Promoters understood the seriousness of mitigating community impacts and, rather than fireworks, they submitted an application to the Fire Department that did not propose the use of any fireworks, rather the use of Flickers (lights that make no sound, the ultimate community mitigation solution to fireworks) (Attachment 5). The Fire Department approved that application on August 16, 2019 (Attachment 5).

It is worth noting this focus was largely successful in that no complaints were received by the City the night of the concert regarding neighborhood impact; the only two complaints received by the City were about the long wait time for food at the concessions and traffic congestion experienced by concert goers in exiting the event.

Exhibit 2

Documents Sent by Santana to the Mercury News

9.11.2019

Deanna Santana

From: Deanna Santana
Sent: Thursday, August 15, 2019 5:43 PM
To: Mercurio, Jim; Guido, Al
Cc: Ruben Torres; Paul Gongaware
Subject: RE: Fire Marshall

Good evening,

As I told Jim Mercurio yesterday, there appears to be miscommunication or lack of information sharing on your end. The City received an application and was reviewing it yesterday (which I also shared as the status of the application yesterday). I heard today, from the Fire Department, that the submitted application was approved.

* Please obtain a copy of that application and permit to be aware of what activity was requested for approval by the City and, ultimately, approved today. **This is the approved activity and there is no authority to go beyond what was represented in the application submitted.**

The actual set of events is very different from what is represented in this email stream and appears to be a lack of communication or information sharing on your end. We received an application, reviewed it, and approved it in a timely manner.

If you have any questions, please feel free to reach out.

Thank you,

DEANNA J. SANTANA | City Manager
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2210 | www.santaclaraca.gov



Promoter's
application
did not propose
fireworks -
there is confusion
on their end - see
next page

From: Paul Gongaware [REDACTED]
Sent: Wednesday, August 14, 2019 7:17 PM
To: Mercurio, Jim <[REDACTED]>; Guido, Al <[REDACTED]>
Cc: Deanna Santana <DSantana@SantaClaraCA.gov>
Subject: Re: Fire Marshall

Thanks everyone. [REDACTED]. Deanna please feel free to reach out to me when convenient.

Paul Gongaware
Tour Director
Rolling Stones 2019

**CITY OF SANTA CLARA FIRE DEPARTMENT
FIRE PREVENTION AND HAZARDOUS MATERIALS DIVISION**

1675 Lincoln Street, Santa Clara, CA 95050

(408) 615-4987 (408) 615-4970

Code Requirement Information Schedule Inspection Appointments

Fire Dept. #:	FIR2019-1000, Revision 5	FIRE PERMIT STATUS: Permit Issued with Conditions	
Address:	4900 Marie P. Debartolo Way		
Facility:	Levi's Stadium	Occupancy:	A-5
Scope of Work:	Pyrotechnics/special effects display (48-flickers ONLY) for 2019 Rolling Stones Concert scheduled for 8/18/19 (Image Engineering DBA Image SFX)		
Permit Type:	Pyrotechnic and Special Effects Display Proximate to an Audience	Inspection Area:	10
Date Reviewed:	7/29/19, 8/8/19, 8/13/19	Reviewed by:	A. Hyatt



Plan Review Conditions

Pyrotechnic and Special Effects displays shall comply with all applicable codes and standards: Code of Federal Regulations Title 27, Part 55, Subpart K, California Code of Regulations Title 19, Chapter 6, California Health and Safety Code, Section 12500-12759, California Fire Code (2016 edition), NFPA 1123 (2018 edition), NFPA 1126 (2016 edition). **Final approval shall be based on compliance with these conditions, rehearsal display observations, and field inspections.**

FPO'S INITIALS	#	PERMIT CONDITIONS
		STORAGE
	1.	Pyrotechnic special effects shall be stored in accordance with the California State Fire regulations and the regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The designated storage location has been identified in the employee parking lot of 4949 Marie P. Debartolo Way.
	2.	To prevent unauthorized personnel from gaining access to the pyrotechnic special effect materials and devices Image Engineering (DB Image SFX) and 49ers management shall provide a lockable facility for the storage.
	3.	Storage areas shall be provided with appropriate signage to denote the hazards posed to Emergency Responders. Warning signs shall be clearly visible from a distance of fifty feet (large, detailed signs are required).
	4.	"NO SMOKING" signs shall be conspicuously posted

		around storage and preparation areas.
		PRE-SHOW REHEARSAL
	5.	A Pre-Show Rehearsal to demonstrate the flicker effects has been schedule for August 18, 2019 at 3:00 pm. It is the applicant's responsibility to coordinate the rehearsal with the 49ers, show producers, and FAA as required. Additional, conditions may be applied to permit as deemed necessary for public safety.
	6.	The pyrotechnic operator(s) shall verify safety distances with the Performers, and the Santa Clara Fire Department for each effect.
	7.	Each pyrotechnic device fired during a performance shall be separated from the audience by a minimum of 15 feet or twice the fallout radius of the device, whichever is greater (NFPA 1126). This shall be verified during the rehearsal and the day of the event.
		DAY OF EVENT
	8.	All special effects staff shall wear appropriate personal protective equipment (PPE) as dictated by their assignment.
	9.	The pyrotechnic effect operator(s) shall advise all support personnel that they are exposed to a potentially hazardous situation when performing or otherwise carrying out their responsibilities in the vicinity of a pyrotechnic effect.
	10.	Performers and support personnel familiar and experienced with the pyrotechnic effects being used shall be permitted to be in the area of a pyrotechnic effect, but only voluntarily and in the performance of their duties.
	11.	The placement and wiring of all special effect and/or pyrotechnic devices shall be designed to minimize the possibility of performers and support personnel disturbing the devices during a performance.
	12.	The pyrotechnic operator shall exercise extreme care throughout the performance to ensure that the special effect and/or pyrotechnic devices function correctly and that the performers, support personnel, and audience are clear of the devices.
	13.	Immediately after each performance and before support personnel remove any property related to a performance, the pyrotechnic operator shall verify that all special effect and/or pyrotechnic devices have been fired.
	14.	Immediately before any performance, the pyrotechnic operator shall make a final check of wiring, position(s), hookups, and pyrotechnic devices to ensure that they are in working order.
	15.	All pyrotechnic special effect materials and/or devices shall be mounted in a secure manner to maintain their proper positions and orientations so that, when fired, the effects operate as designed.
	16.	All Image Engineering (DB Image SFX) personnel AND the responsible pyrotechnician shall have two-way voice communication at all time.
	17.	Pyrotechnic special effect materials and/or devices shall be fired only when the area where the effect is to occur is in clear view of the pyrotechnic operator or an assistant who is in direct communication with the operator.
		Adequate security staff shall be positioned around the

18.	display site to prevent spectators or any other unauthorized persons from entering potential fall-out areas.
19.	Pyrotechnic special effect materials and/or devices shall be sited so that activation of the effect or fallout <u>does not endanger the public, performers, or damages property.</u>
20.	If any unsafe conditions are detected, including (but not limited to) hazardous debris falling into the audience the spotter(s) shall signal the shooter to cease firing until the unsafe condition is corrected. The spotters shall be in direct communication with the shooter(s) at all times during the event.
21.	If high winds, or other adverse weather conditions exist that impacted the safety of the public the pyrotechnic special effects and/or devices shall be postponed or discontinued.
22.	While Santa Clara Fire Department personnel have the authority to stop the firing of pyrotechnics and/or special effects as necessary to ensure the safety of the public, and/or performers the ultimate responsibility shall be that of the pyrotechnic operator.
23.	When the special effect and/or pyrotechnic devices are fired, the quantity of smoke developed shall be controlled so as not to obscure the visibility of exit signs or paths of egress.
24.	Four or more fire extinguishers of the classification and size as approved by the Fire Department shall be readily accessible while the pyrotechnics are being loaded, prepared for firing, or fired. In all cases, at least two pressurized water, Class 2-A extinguishers and two Class 10-BC extinguishers shall be provided at each site.
25.	All pyrotechnics personnel shall have a working knowledge on the proper use of the applicable fire extinguishers.
26.	All unused pyrotechnics shall be returned to an approved storage location, as soon as, possible following the performance or rehearsal. Any unfired pyrotechnic materials or devices shall be disposed of in accordance with the manufacturer's recommendations.
27.	After all other properties and equipment relating to the production have been removed from the performance site, the pyrotechnic operator shall verify that the performance site is free of any pyrotechnic materials and/or devices
28.	Additional Fire Department conditions may be applied to the show after witnessing the rehearsal, or the day of the event to ensure public safety. Failure to comply with all conditions of this permit will result in future application not being accepted, and referral to the California State Fire Marshal for license revocation.
	END.

Rolling Stones 2019

RECEIVED

AUG 13 2019

S.C.F.D.



IMAGE SFX

975 WHITE DRIVE LAS VEGAS NV. 891 19
OFFICE; 800-771-7938 / 702.844.6055
[HTTPS://IMAGESFX.COM](https://imagesfx.com)

IMAGE SFX

Rolling Stones 2019

This booklet is designed to provide you with all the information required to approve a permit for the pyrotechnic and flame effects display that will be used during Rolling Stones Tour 2019.

We have structured this booklet after the design plan requirements in NFPA 1126 and NFPA 160. Included you will find two pages that contain these requirements, and these pages can be used as tables of contents for the rest of the book.

Our Operator in charge is Casey Lake and can be reached by mobile phone at (714) 273-4864 or by E-mail at cpyroboy@aol.com. Credentials and copies of licenses for all of our Operators are located in Section "B".

We would like to request that any demonstration/walk-through be scheduled between 3-4pm on show day.

Please direct any questions to Image SFX., at (702) 844-6055.

The information contained in this booklet is sensitive and confidential. Please dispose of the booklet once it has served its purpose for *Rolling Stones Tour*.

Thank you,

Michelle Wuscher
Project Manager
Mobile: (702) 271-9958
michelle@imagesfx.com

975 WHITE DRIVE LAS VEGAS NV. 89119
OFFICE; 800-771-7938 / 702.844.6055
[HTTPS://IMAGESFX.COM](https://imagesfx.com)

Extinguisher Rider

The following is a list of equipment to be supplied by the Promoter or Venue for each show:

Four (4) – CO2 Fire Extinguishers

Two (2) – Pressurized H2O Fire Extinguishers

Please do not hesitate to contact me with any questions or concerns.
Thank you.

Michelle Wuscher
Project Manager
Mobile: 702.271.9958
michelle@imagesfx.com

IMAGE SFX
975 WHITE DRIVE LAS VEGAS NV. 89119
OFFICE; 800-771-7938 / 702.844.6055
[HTTPS://IMAGESFX.COM](https://imagesfx.com)

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I: Flame-Retardant Certificates

J: Safety and Security Plans

SECTION "A-1"

IMAGE SFX

975 WHITE DRIVE LAS VEGAS NV. 891 19
OFFICE; 800-771-7938 / 702.844.6055
HTTPS://IMAGESFX.COM

Operator Contact List:

Casey Lake/ Crew Chief
10 Westwood Lake Drive Newnan, Ga 30263
Mobile: (714) 273-4864/ E-mail: CPYROBOY@AOL.COM / D.O.B. 07/25/1980

Fred Lee Price/ Pyrotechnics Technician
2025 Quail Hill Road Brandon, MS 39042
Mobile: (601) 906-8457/ E-mail: fdlprc@gmail.com / D.O.B. 08/11/1978

Jack Kingry/ Pyrotechnics Technician
1741 SE Marianna Road Port St. Lucie, FL 34952
Mobile: (702) 606-1950/ E-mail: morepyro@gmail.com / D.O.B. 07/11/1988

Administrative Contact List:

Michelle Wuscher
Project Manager
Mobile: (702) 271-9958
E-mail: michelle@imagesfx.com

Peter Cappadocia
Project Manager
Mobile: (702) 429-6911
E-mail: pyropete@cox.net

Section A: RUN OF SHOW

Proposed Set List for ROLLING STONES at Levi Stadium August 18, 2019

Starts at approximately 8:45pm

1. Street Fighting Man
2. Lets Spend the Night
3. Tumbling Dice
4. She's a Rainbow
5. Can't Always Get
6. Sweet Virginia
7. Dead Flowers
8. Sympathy – Pyro Flickers 9:30pm +/- 10 minutes
9. Honky Tonk Woman
10. Slipping Away
11. Before They Make Me Run
12. Miss You
13. Paint It Black
14. Midnight Rambler
15. Start Me Up
16. JJ Flash
17. Brown Sugar
- ENCORE
18. Gimme Shelter
19. Satisfaction

Bike Racks

Deanna Santana

From: Derek Rush
Sent: Thursday, August 15, 2019 10:53 AM
To: Deanna Santana; Andrew Crabtree
Cc: Ruth Shikada; Catlin Ivanetich
Subject: RE: Rolling Stones Activation

49ers proposed
bike racks, not
city.

They have both "planter boxes" and "k-rail" that are designed to mitigate the vehicle/pedestrian concern. Bike racks do not provide adequate protection. Removing the activation prior to the end of the concert will work for the pedestrian egress concern.

-----Original Message-----

From: Deanna Santana <DSantana@SantaClaraCA.gov>
Sent: Thursday, August 15, 2019 10:42 AM
To: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>
Cc: Derek Rush <DRush@santaclaraca.gov>; Ruth Shikada <RShikada@SantaClaraCA.gov>; Catlin Ivanetich <Civanetich@SantaClaraCA.gov>
Subject: Re: Rolling Stones Activation

Please make sure that the proposed location is not city property and does not block off ADA parking spaces

Deanna J. Santana
Please excuse typos and brevity
Sent from my iPhone

> On Aug 15, 2019, at 12:38 PM, Andrew Crabtree <ACrabtree@santaclaraca.gov> wrote:

>
> Captain,
> Dale has provided a response that they would barricade the area off with bicycle racks and attended by staff and remove the activation before the end of the concert. Would this adequately address the concerns?

> Andrew

> From: Moul, Dale
> Sent: Thursday, August 15, 8:07 AM
> Subject: RE: Rolling Stones Activation
> To: Andrew Crabtree, Reena Brilliot, Jake Tomlin
> Cc: David Tran

> Andrew,

> Thanks for your response.

> I have attached an updated layout of the activation that shows we would add bike rack barricade (indicated by the red boarder), along with staff posted at entrance/exit points, to corral and separate pedestrians from vehicles.

> This activation would be struck and cleared out during the concert so that the area would be cleared for egress.

> Let me know if you have any other questions. Upon approval, we will submit proper permitting to the fire dept.

>
> Thanks,
>
> Dale
>
> DALE MOUL
> Senior Manager, Special Events Operations Forty Niners Stadium
> Management Company T 408.673.2125 | M 415.716.5750 Levi's® Stadium
> 4900 Marie P. DeBartolo Way
> Santa Clara, CA 95054
>
> _____
>
>
> FAITHFUL THEN, FAITHFUL NOW
> LevisStadium.com<h
> ttp%3A%2F%2Fwww.levisstadium.com%2F&data=02%7C01%7CDRush%40santacl
> araca.gov%7C98a2d5b9a7df48f7412608d721a7d8c6%7C28ea354810694e81aa0b6e4
> b3271a5cb%7C0%7C0%7C637014877092303699&data=XfoZobwfx3hpVJcNV%2B1
> N95m6zl9TrqjLXTIKT1pONI4%3D&reserved=0>

>
>
>
> From: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>
> Sent: Wednesday, August 14, 2019 5:33 PM
> To: Moul, Dale <dale.moul@49ers-smc.com>; Reena Brilliot
> <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
> Cc: David Tran <DTran@SantaClaraCA.gov>
> Subject: RE: Rolling Stones Activation

>
> Dale,

>
> We have concerns with how this activation will interact with pedestrian and vehicular flow in the surrounding parking lot.

>
> Can you provide additional information on:

- > 1) Bollards or other measures to separate pedestrians at the activation and vehicles in Red1
- > 2) How the activation won't impede egress along this heavily traveled corridor

>
> Thank you,

>
> Andrew Crabtree | Community Development Director
> (408) 615-2451
> Community Development Department

>
> From: Moul, Dale
> <dale.moul@49ers-smc.com<mailto:dale.moul@49ers-smc.com>>
> Sent: Wednesday, August 14, 2019 7:37 AM
> To: Andrew Crabtree
> <ACrabtree@SantaClaraCA.gov<mailto:ACrabtree@SantaClaraCA.gov>>; Reena
> Brilliot
> <RBrilliot@SantaClaraCA.gov<mailto:RBrilliot@SantaClaraCA.gov>>; Jake
> Tomlin <Jtomlin@SantaClaraCA.gov<mailto:Jtomlin@SantaClaraCA.gov>>

> Cc: David Tran <DTran@SantaClaraCA.gov<mailto:DTran@SantaClaraCA.gov>>

> Subject: RE: Rolling Stones Activation

>

> Thank you.

>

> From: Andrew Crabtree

> <ACrabtree@SantaClaraCA.gov<mailto:ACrabtree@SantaClaraCA.gov>>

> Sent: Tuesday, August 13, 2019 8:10 PM

> To: Moul, Dale

> <dale.moul@49ers-smc.com<mailto:dale.moul@49ers-smc.com>>; Reena

> Brilliot

> <RBrilliot@SantaClaraCA.gov<mailto:RBrilliot@SantaClaraCA.gov>>; Jake

> Tomlin <Jtomlin@SantaClaraCA.gov<mailto:Jtomlin@SantaClaraCA.gov>>

> Cc: David Tran <DTran@SantaClaraCA.gov<mailto:DTran@SantaClaraCA.gov>>

> Subject: Re: Rolling Stones Activation

>

> Dale,

> We will review and respond to you as soon as possible.

> Andrew

> Get Outlook for

> Android<https:%2

> F%2Faka.ms%2Fghei36&data=02%7C01%7CDRush%40santaclaraca.gov%7C98a2

> d5b9a7df48f7412608d721a7d8c6%7C28ea354810694e81aa0b6e4b3271a5cb%7C0%7C

> 0%7C637014877092313694&sdata=wD9SyRrTMoaK2tNYXsO3psFSIWQTnEBHb%2Bz

> ibRAFa4c%3D&reserved=0>

>

> From: Moul, Dale

> <dale.moul@49ers-smc.com<mailto:dale.moul@49ers-smc.com>>

> Sent: Tuesday, August 13, 2019 5:40:22 PM

> To: Andrew Crabtree

> <ACrabtree@SantaClaraCA.gov<mailto:ACrabtree@SantaClaraCA.gov>>; Reena

> Brilliot

> <RBrilliot@SantaClaraCA.gov<mailto:RBrilliot@SantaClaraCA.gov>>; Jake

> Tomlin <Jtomlin@SantaClaraCA.gov<mailto:Jtomlin@SantaClaraCA.gov>>

> Cc: David Tran <DTran@SantaClaraCA.gov<mailto:DTran@SantaClaraCA.gov>>

> Subject: Rolling Stones Activation

>

> Andrew, Reena & Jake:

>

> We are reaching out to you to gain approval for the proposed location for an interactive activation for the Rolling Stones concert scheduled for August 18, 2019. The proposed location for this activation would be placed in the northern fenced-end of the Great America parking lot along Tasman Drive (please reference the attached, proposed layout and Google Maps). As proposed, this activation does not affect any building code requirements that would require permitting from the building department. We are seeking approval from planning and will submit a proper fire department application once planning approval is granted.

>

> This activation would be installed on August 17, 2019 and removed no later than the end of day on August 19, 2019. I have included some photos of the elements of the activation for you to reference as well.

>

> Let me know if you need anything else in order to move the process along for approval of this activation.

>

> Regards,

>
> Dale
>
> DALE MOUL
> Senior Manager, Special Events Operations Forty Niners Stadium
> Management Company T 408.673.2125 | M 415.716.5750 Levi's® Stadium
> 4900 Marie P. DeBartolo Way
> Santa Clara, CA 95054
>
> _____
>
> FAITHFUL THEN, FAITHFUL NOW
> LevisStadium.com<h
> ttp%3A%2F%2Fwww.levisstadium.com%2F&data=02%7C01%7CDRush%40santac
> araca.gov%7C98a2d5b9a7df48f7412608d721a7d8c6%7C28ea354810694e81aa0b6e4
> b3271a5cb%7C0%7C0%7C637014877092313694&data=Jwe6lbwy7%2BOeRn1G4xs
> bkpxOm6IUW2xOesW0HXtSo1Y%3D&reserved=0>
>
>
>
>
> <Updated layout.pdf>

Deanna Santana

From: Andrew Crabtree
Sent: Thursday, August 15, 2019 5:29 PM
To: Moul, Dale; Reena Brilliot; Jake Tomlin
Cc: David Tran
Subject: RE: Rolling Stones Activation

Dale,

We've determined that we are not able to approve the request for this Activation. We have continued concerns about the ability to maintain a safe separation between pedestrians and vehicular traffic. Also, we did not have sufficient time to adequately review the proposal in advance of the event.

Andrew

From: Moul, Dale <dale.moul@49ers-smc.com>
Sent: Thursday, August 15, 2019 8:06 AM
To: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Cc: David Tran <DTran@SantaClaraCA.gov>
Subject: RE: Rolling Stones Activation

Andrew,

Thanks for your response.

I have attached an updated layout of the activation that shows we would add bike rack barricade (indicated by the red boarder), along with staff posted at entrance/exit points, to corral and separate pedestrians from vehicles.

This activation would be struck and cleared out during the concert so that the area would be cleared for egress.

Let me know if you have any other questions. Upon approval, we will submit proper permitting to the fire dept.

Thanks,

Dale

DALE MOUL
Senior Manager, Special Events Operations
Forty Niners Stadium Management Company
T 408.673.2125 | M 415.716.5750
Levi's® Stadium
4900 Marie P. DeBartolo Way
Santa Clara, CA 95054

FAITHFUL THEN, FAITHFUL NOW
LevisStadium.com

From: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>
Sent: Wednesday, August 14, 2019 5:33 PM

To: Moul, Dale <dale.moul@49ers-smc.com>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Cc: David Tran <DTran@SantaClaraCA.gov>
Subject: RE: Rolling Stones Activation

Dale,

We have concerns with how this activation will interact with pedestrian and vehicular flow in the surrounding parking lot.

Can you provide additional information on:

- 1) Bollards or other measures to separate pedestrians at the activation and vehicles in Red1
- 2) How the activation won't impede egress along this heavily traveled corridor

Thank you,

Andrew Crabtree | Community Development Director
(408) 615-2451
Community Development Department

From: Moul, Dale <dale.moul@49ers-smc.com>
Sent: Wednesday, August 14, 2019 7:37 AM
To: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Cc: David Tran <DTran@SantaClaraCA.gov>
Subject: RE: Rolling Stones Activation

Thank you.

From: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>
Sent: Tuesday, August 13, 2019 8:10 PM
To: Moul, Dale <dale.moul@49ers-smc.com>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Cc: David Tran <DTran@SantaClaraCA.gov>
Subject: Re: Rolling Stones Activation

Dale,

We will review and respond to you as soon as possible.

Andrew

Get [Outlook for Android](#)

From: Moul, Dale <dale.moul@49ers-smc.com>
Sent: Tuesday, August 13, 2019 5:40:22 PM
To: Andrew Crabtree <ACrabtree@SantaClaraCA.gov>; Reena Brilliot <RBrilliot@SantaClaraCA.gov>; Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Cc: David Tran <DTran@SantaClaraCA.gov>
Subject: Rolling Stones Activation

Andrew, Reena & Jake:

We are reaching out to you to gain approval for the proposed location for an interactive activation for the Rolling Stones concert scheduled for August 18, 2019. The proposed location for this activation would be placed in the northern fenced-end of the Great America parking lot along Tasman Drive (please reference the attached, proposed layout and Google Maps). As proposed, this activation does not affect any building code requirements that would require permitting from the building department. We are seeking approval from planning and will submit a proper fire department application once planning approval is granted.

This activation would be installed on August 17, 2019 and removed no later than the end of day on August 19, 2019. I have included some photos of the elements of the activation for you to reference as well.

Let me know if you need anything else in order to move the process along for approval of this activation.

Regards,

Dale

DALE MOUL

Senior Manager, Special Events Operations

Forty Niners Stadium Management Company

T 408.673.2125 | M 415.716.5750

Levi's® Stadium

4900 Marie P. DeBartolo Way

Santa Clara, CA 95054

FAITHFUL THEN, FAITHFUL NOW
LevisStadium.com

Exhibit 3

Santana to MacNeil Listing Her Conditions to the Rescheduled
Rolling Stones Show 5.1.2019



May 9, 2019

Mr. Larry MacNeil, Compliance Manager
San Francisco Forty Niners Management Company LLC
4900 Marie P. De Bartolo Way
Santa Clara, California 95054

SUBJECT: Rolling Stone Concert Reschedule

Dear Mr. MacNeil:

The purpose of this letter is to summarize our phone call of last Friday, May 3, to discuss the possibility of rescheduling of the Rolling Stones concert based on your anticipated communication from the promoter. You specifically inquired about the Stadium Authority's willingness to permit a weeknight concert, under the Development Permit condition P22c, which states:

Night outdoor non-NFL events shall be scheduled to end not later than 10:00 PM Sunday through Thursday and 11 :00 PM Friday and Saturday, unless otherwise approved by the City Manager or their designee.

The Stadium Authority's preference for any concert is a Saturday event, followed by a Friday concert. Weekend dates have the least impact to our community. A Saturday concert, in particular, will have a less challenging traffic impact and is most amenable to the scheduling of the various public services required to support these events.

While our conversation was promising and a positive reflection of our ability to work together, it is important to mention that this discussion and willingness to entertain this request is in context of the Management Company's need to rebuild trust with the Stadium Authority Board and the Santa Clara community. If I, as the Executive Director of the Stadium Authority, am directly involved with the rescheduling process and working toward our goal of rescheduling the Rolling Stones, it must come with the commitment to good faith discussions, full transparency of the information that I need to inform the Board and represent our interests, and including possibly being in direct communication with the promoter.

MR. LARRY MACNEIL, COMPLIANCE MANAGER

RE: ROLLING STONE CONCERT RESCHEDULE

May 9, 2019

Page 2 of 3

In order for a weekday concert to be supportable, I would have to be able to explain why the promoter could not accommodate a Friday or Saturday night.

As we discussed, the issue of neighborhood impact is a significant issue to ensure for any non-NFL event on any date, but particularly those that take place on a weekday. As part of that conversation, I stated that my comfort with working towards this goal would likely have some conditions. As I stated, any conditions would be rather predictable and the Management Company should not be surprised. The Management Company should be able to easily support these to demonstrate your willingness to maximize revenue, but, equally as important, to work collaboratively toward rebuilding trust with the Board and community. In particular, we will need to address the following:

- Prioritize a Saturday or Friday night concert;
- Re-schedule the concert during summer months;
- Confirm up to and/or no later than 11 p.m. end time during a summer week night event;
- Minimize the quantity of complimentary tickets allowed to the promoter and guarantee the \$4 Non-NFL Ticket Surcharge to the Stadium Authority for any and all tickets given away for free (specifically, we should agree on the language that the Management Company authorizes in its agreement with the promoter: as ultimately, the Management Company has the control to include or omit this activity through the contract with the promoter);
- Reduce the cost for parking in lots used for this Non-NFL Event.

Our recent conversations about how the management agreement obligations (Management Agreement, Provision 3.3) to disclose information about non-NFL booking activity have revolved around your position of providing the minimum information, while we seek commercially responsive details. As I suggested, for both of us to be successful with this effort, you will need to communicate with me frequently on rescheduling this activity, beyond your current position to provide minimum detail. Further, none of this should play out through media.

As I mentioned, given the previous public discussions promulgated by the former city manager, I would most likely seek the Board's approval of any variation from the development conditions regarding the concert end time. You have my commitment to work with you through those details and within the context of this letter.

In response to your email inquiry regarding the protection from disclosure of emails regarding the negotiation of the new dates, Stadium Authority Counsel has advised me that there are legal grounds to treat records regarding negotiations as exempt from disclosure if we can demonstrate that the public interest in nondisclosure outweighs the public interest in obtaining the records. A necessary precondition to maintaining confidentiality under these conditions is the requirement of absolute good faith on your part, as articulated in this letter. While you so

MR. LARRY MACNEIL, COMPLIANCE MANAGER

RE: ROLLING STONE CONCERT RESCHEDULE

May 9, 2019

Page 3 of 3

far have demonstrated good faith in our discussions of the potential rescheduling of the Rolling Stones concert date, I must state that some of your recent emails on other topics are of very serious concern and set our mutual interest on this effort back. To stay on topic, I will put aside those emails and handle separately our question on whether the Management Company truly understands its fiduciary duties as agent for a public entity which raise concern about apparent bad faith in those communications.

That said, I look forward to working with you on the matter at hand as outlined above.

Sincerely,



Deanna J. Santana

Executive Director

cc: Walter C. Rossmann, Chief Operating Officer
Brian Doyle, Stadium Authority Counsel

Exhibit 4

Letters from Rolling Stones Tour Expressing Their Frustration with City
Staff

Mr. Jim Mercurio
General Manager
Levi's Stadium

23 August 2019

Dear Mr. Jim Mercurio,

I wanted to send a note thanking you and your staff for the great time we had doing the Stones concert last week. Nelson was a prince, instantly responding to all of our needs and requests without question—don't lose him! Craig and Dale and Danny were exemplary in every detail, and for that I thank you as well. Your facility was one of the fastest load-outs we have had on this tour, and the ease of working within the facility is to be commended.

Now, on the other hand, do you not want touring shows anymore? The impression I and many others in the industry have, is your facility is getting so restrictive and dysfunctional, it's no longer worth the effort to play there due to the myriad and random rule changes or sudden restrictions placed on a tour. In our case, a last-minute requests for our structural engineer to fly across the country to inspect the stage when we have never done this before at Levi's. That alone cost us \$6000.

Then the no pyro at the last minute, when our pyrotechnician has done countless shows in the stadium as well as across America for numerous artists, without incident, only to be told if he disobeys the demand from the fire department he would be subject to black listing from the state. Really, is this how you operate?

Our catering area has been used for numerous shows, only to be told at the eleventh hour it is off limits. Thank you, Mr. Mercurio, for your intervention in that ruling so we had a place to feed band and crew.

Quite honestly, we were half expecting someone from the city or whoever is pulling the strings to try and dictate the set list!! Oh my, where does it stop??

Your facility is top notch, your staff commendable, and yet each time someone mentions playing Levi's, we all cringe, knowing that some new rule will be applied to the show just before we start either loading in or before the show. That's not healthy in the least for booking future shows. .

Whether it's denying the placement of our sponsor activation in your GIANT parking lot or the horrendously expensive permitting process (how do you build anything in the city with those prices?), it all adds up in the negative column for playing Levi's. Not a good sign.

I sincerely hope you and your staff can rectify these random acts of authority and ensure a smooth-running facility when it comes to large concerts such as ours, and others. I've been doing site coordination since the 70's, and have basically played every stadium in the US and numerous ones in Europe. I understand rules and regulations, and knowing what is in place helps determine where one plays, but the great unknown or random rules makes for a hesitancy on the bookers ' part to play those stadiums.

WE enjoy playing Levi's, and I sincerely hope to come back under more favorable conditions, and once again enjoy my time there with your excellent staff.

Sincerely,

John Morrison

Site Promoter

The Rolling Stones No Filter 2019

Jim:

First and foremost, thank you. Please thank Craig, Nelson, Camila and Landmark. Hands down the best show on the tour. You have a great team. I firmly believe your leadership, experience and attention to detail make this a winning team so thank you very much.

Now the bad. Despite all of the posturing and outlandish last minute decisions from the City Officials, you guys persevered and our show was a success. I applaud you and the team for working through all of these outlandish, and quite frankly, unsafe recommendations the City had for our performance. All of the last minute change orders that came from the City are very unfortunate. Our Pyro shooter has been shooting this show all over the globe with us; so to have this portion of the show get arbitrarily canceled weighs heavy on him. What is the future of professional pyrotechnics in your building.

Quite honestly, the "concerns" expressed by the SCFD and the City were unfounded. Had they done their diligence or more importantly acquired the requisite knowledge of Live Event mass gatherings, they would of never recommended putting our fans at risk by corralling them into inescapable pens surrounded by bike rack. Thankfully, your experienced team were able to change course and avoid a sure catastrophe.

I don't quite understand all of the over regulation and micro management. I would think that the City would want this joint venture to bear fruit. The touring industry has made note of the difficulties and uncertainties presented by the City and eventually will just skip your market.

You know me and my background. In my 30 years in this industry, 26 of them touring the world, this last minute scrutiny will not play in your favor. The approval process is give and take and we were willing to concede a lot. Other tours may say No Thank You!

Anyway - it's a great stadium, great fans and your staff did an awesome job. If you can get your partners on board with allowing more than just football, you have a winning situation. I hope to see you soon my friend. Thanks again for taking care of us and our fans, greatly appreciated.

Good luck this year.

Michael Wozniak

Exhibit 5

8.1.2019 Permit Submittal Requesting Fireworks



Fireworks Public Display & Special Effects Permit

Applications shall be submitted 30 days prior to the Display

APPLICATION INFORMATION

I/we hereby make application for a permit to conduct a display of fireworks as defined by the California Health and Safety Code. I/we agree to comply in every particular with the law pertaining thereto as set forth in Part 2 of Division II of the Health and Safety Code and the rules and Regulations adopted by the State Fire Marshal.

Name of Company or Business Applying: Image Engineering Special Effects DBA ImageSFX

Mailing Address: 975 White Dr., Las Vegas, NV 89119

Contact Name: Jean Woodruff Phone: 702-773-8183 E-mail: jean@imagesfx.com

License Type: Public Display (General) License #: GPD-1413 Expires: 6/30/20

Workers' Comp Policy #: XWS1958469235 Expires: 12/13/19

Wholesale License #: NA Expires: NA

Transportation Vehicle Type: N/A License #: N/A

EVENT/DISPLAY INFORMATION

Public Display **Motion Picture** **Stage/Theatrical** **Special Effects**

Name of Event: Rolling Stones Concert at Levi Stadium

Event Sponsor or Responsible Person(s): Rolling Stones and ImageSFX

Address of Event Site: Levi Stadium

Street: 4900 Marie DeBartolo Way City: Santa Clara, CA Zip Code: 95054

Location/Area of Event or Shoot Site: On the Field on the floor in the stand behind the main stage

Event or Display Date(s): 8/18/19 Site Arrival Date/Time: 9:00am

Time(s) of Event or Display: aproximately Start: 9pm End: 11pm

Pyrotechnician of Record: Eric Zeps Cell #: 916-425-6524

Firing method: Manual Electric Combination Manual/Electric

Will reloading be necessary?: Yes No

Will display affect airport traffic?: Yes* No

***NOTE: If "Yes," FAA notification is required and is the responsibility of the Pyrotechnician.**

INSURANCE INFORMATION

An attached copy of Employees Compensation Insurance and Public Liability Insurance certificates is required to process all permit applications. Please see below for additional information.

Policy number of Employees Compensation Insurance: XWS1958469235

Policy number of Public Liability Insurance: CA0000325 14-01

1. Insurance Requirements: An original Certificate of Insurance must be filed with this application, which complies with the following requirements (refer to Section 993, Title 19 and 12611, California Health & Safety Code):
 - a. The deductible (if any) may not exceed fifteen thousand dollars (\$15,000.00). Limits of bodily injury and property damage may be not less than one million dollars (\$1,000,000.00) combined single limits for each occurrence annually.
 - b. A statement must be included that the insurer will not cancel the insured's coverage without fifteen (15) days prior written notice to the State Fire Marshal.
 - c. The licensed pyrotechnic operator supervising/discharging the display and the City of Santa Clara, its officers, agents, employees, and servants must be included as additional insureds.

PYROTECHNIC OPERATOR INFORMATION

Name of State Licensed Operator Supervising Display: Eric Zeps Cell Phone # <u>916-425-6524</u>	License Class: <u>Theatrical & Basic</u>	License #: <u>1028-10, & 2160-02</u>
		E-mail Address: <u>deptoffire@yahoo.com</u>
Names of Operator Assistants (attach additional sheet if necessary):		
1. <u>Casey Lake</u>	2. <u>Fred Price</u>	3. <u>Jack Kingry</u>
4. _____	5. _____	6. _____
7. _____	8. _____	_____

LOAD SITE & STORAGE INFORMATION FOR DEVICES AND EFFECTS

Location of storage prior to shipping to display site: On production truck traveling from previous show	City & State: <u>Seattle, WA</u>
Departure date from storage location: <u>08/16/19</u>	Approximate arrival date: <u>08/17/19</u>
Location of load site: <u>Levi Stadium</u>	Location and method of storage prior to display or performance: <u>Will be stored in a secured truck in parking lot of venue</u>
Location and method of storage during display or performance (if applicable): <u>Will not be in venue until day of show load in.</u>	

GENERAL REQUIREMENTS

1. Provide at least two (2) copies of a dimensional plot plan diagramming the area where the display will be held. The plot plan shall include: the placement of devices, location of firing site, locations of nearby buildings and roads, location of any performers, distance to audiences or spectators, fallout area and normal wind direction. Clearly delineate the Fallout Area dimensions using the worst-case device or effect.
2. Submit a photocopy of the California State License individual(s) in charge of show.
3. Provide proof of current state pyrotechnic operator license at display site.
4. When applicable, submit fire retardant certificates for any stage drops/decorations, etc.
5. For outdoor displays, provide a detailed site security plan. Site security shall be arranged or provided by the applicant.
6. For theatrical special effects, provide a queue script (run of show) that describes when the effect(s) will occur during the performance.

CONDITIONS OF APPROVAL

1. All applications and fees shall be submitted a minimum of thirty (30) days in advance of the beginning date of the display or event. Applications submitted later than thirty (30) days in advance of the beginning date of the display or event may be subject to additional fees.
2. A pre-event inspection is required prior to the display or performance. The display or performance shall not proceed unless a representative of the Fire Marshal's Office is present. For theatrical or other special effects, a product demonstration prior to the performance may be required. Note that inspections must be scheduled a minimum of seven (7) business days in advance.
3. All fees are non-refundable upon submission to this office.
4. A permit issued for a Public Fireworks Display or Special Effects may be suspended or revoked if it is determined that there has been any false statement made or misrepresentation as to a material fact in the application or plans on which the permit or application was based.
5. Any fireworks or special effect performances may be stopped or modified at the discretion of the representative of the Fire Marshal's Office as the situation warrants.
6. A copy of the post display report sent to the State Fire Marshal shall be submitted to this office within ten (10) working days following the display.

In affirming my signature hereon, I understand that as the permittee, I am responsible for compliance with all provisions under which this permit may be granted, including the filing of reports required by Title 19 of the California Code of Regulations. I further affirm that I am an authorized agent for the public display license listed hereon, as required by California Health and Safety Code, Section 12583.

APPLICANT'S PRINTED NAME: Peter Cappadocia

APPLICANT'S SIGNATURE: _____ **DATE:** 8/1/19

Exhibit 6

8.8.2019 Email from Jake Tomlin SCFD Rejecting All Fireworks

From: Jake Tomlin <Jtomlin@SantaClaraCA.gov>
Subject: FIR19-1000 - Rolling Stones Concert Pyrotechnic Display Permit Application
Date: August 8, 2019 at 4:45:34 PM PDT
To: "petec@imagesfx.com" <petec@imagesfx.com>
Cc: "michelle@imagesfx.com" <michelle@imagesfx.com>, Jeremy Ray <JRay@santaclaraca.gov>, Andrew Hyatt <AHyatt@santaclaraca.gov>
Resent-From: <petec@imagesfx.com>

Mr. Cappadocia,

I am the Fire Marshal for the City of Santa Clara Fire Department. I wanted to reach out to you directly to notify you that the City has determined that no pyrotechnic effects may be utilized after 9:00 pm for the Rolling Stones Concert scheduled at Levi's Stadium on Sunday August 18, 2019. Therefore, the pyrotechnic display application FIR2019-1000 cannot be approved at this time. If the planned run of show can be modified so that all pyrotechnics effects are utilized prior to 9:00 pm, then the permit could be approved once determined complete.

While you will be receiving a formal response from Andrew Hyatt of our office shortly, I did want to notify you myself. Thank you for cooperation.

With regards,

Jake

Jake Tomlin, Fire Marshal
Santa Clara Fire Department
Office: (408) 615-4970

Exhibit 7

8.12.2019 Submittal by Promoter After Eliminating All Fireworks as
Demanded by City



Fireworks Public Display & Special Effects Permit

Applications shall be submitted 30 days prior to the Display

APPLICATION INFORMATION

I/we hereby make application for a permit to conduct a display of fireworks as defined by the California Health and Safety Code. I/we agree to comply in every particular with the law pertaining thereto as set forth in Part 2 of Division II of the Health and Safety Code and the rules and Regulations adopted by the State Fire Marshal.

Name of Company or Business Applying: Image Engineering Special Effects DBA ImageSFX

Mailing Address: 975 White Dr., Las Vegas, NV 89119

Contact Name: Michelle Wuscher Phone: 702-271-9958 E-mail: michelle@imagesfx.com

License Type: Public Display (General) License #: GPD-1413 Expires: 6/30/20

Workers' Comp Policy #: XWS1958469235 Expires: 12/13/19

Wholesale License #: W-0502, I/E-0502 Expires: 6/30/2020

Transportation Vehicle Type: N/A License #: N/A

EVENT/DISPLAY INFORMATION

Public Display **Motion Picture** **Stage/Theatrical** **Special Effects**

Name of Event: Rolling Stones Concert at Levi Stadium

Event Sponsor or Responsible Person(s): Rolling Stones and ImageSFX

Address of Event Site: Levi Stadium

Street: 4900 Marie DeBartolo Way City: Santa Clara, CA Zip Code: 95054

Location/Area of Event or Shoot Site: n the stand behind the main stage

Event or Display Date(s): 8/18/19 Site Arrival Date/Time: 9:00am

Time(s) of Event or Display: Approximately _____ Start: 8:45pm End: 11pm

Pyrotechnician of Record: Eric Zeps Cell #: 916-425-6524

Firing method: Manual Electric Combination Manual/Electric

Will reloading be necessary?: Yes No

Will display affect airport traffic?: Yes* No

***NOTE: If "Yes," FAA notification is required and is the responsibility of the Pyrotechnician.**

INSURANCE INFORMATION

An attached copy of Employees Compensation Insurance and Public Liability Insurance certificates is required to process all permit applications. Please see below for additional information.

Policy number of Employees Compensation Insurance: XWS1958469235

Policy number of Public Liability Insurance: CA0000325 14-01

1. Insurance Requirements: An original Certificate of Insurance must be filed with this application, which complies with the following requirements (refer to Section 993, Title 19 and 12611, California Health & Safety Code):
 - a. The deductible (if any) may not exceed fifteen thousand dollars (\$15,000.00). Limits of bodily injury and property damage may be not less than one million dollars (\$1,000,000.00) combined single limits for each occurrence annually.
 - b. A statement must be included that the insurer will not cancel the insured's coverage without fifteen (15) days prior written notice to the State Fire Marshal.
 - c. The licensed pyrotechnic operator supervising/discharging the display and the City of Santa Clara, its officers, agents, employees, and servants must be included as additional insureds.

PYROTECHNIC OPERATOR INFORMATION

Name of State Licensed Operator Supervising Display: Eric Zeps Cell Phone # <u>916-425-6524</u>	License Class: <u>Theatrical & Basic</u>	License #: <u>1028-10, & 2160-02</u>
Names of Operator Assistants (attach additional sheet if necessary):		E-mail Address: <u>deptoffire@yahoo.com</u>
1. <u>Casey Lake</u>	2. <u>Fred Price</u>	3. <u>Jack Kingry</u>
4. _____	5. _____	6. _____
7. _____	8. _____	_____

LOAD SITE & STORAGE INFORMATION FOR DEVICES AND EFFECTS

Location of storage prior to shipping to display site: On production truck traveling from previous show	City & State: <u>Seattle, WA</u>
Departure date from storage location: <u>08/16/19</u>	Approximate arrival date: <u>08/17/19</u>
Location of load site: <u>Levi Stadium</u>	Location and method of storage prior to display or performance: <u>Will be stored in secured truck in parking lot of 49ers Practice Field</u>
Location and method of storage during display or performance (if applicable): <u>Will not be in venue until day of show load in.</u>	

GENERAL REQUIREMENTS

1. Provide at least two (2) copies of a dimensional plot plan diagramming the area where the display will be held. The plot plan shall include: the placement of devices, location of firing site, locations of nearby buildings and roads, location of any performers, distance to audiences or spectators, fallout area and normal wind direction. Clearly delineate the Fallout Area dimensions using the worst-case device or effect.
2. Submit a photocopy of the California State License individual(s) in charge of show.
3. Provide proof of current state pyrotechnic operator license at display site.
4. When applicable, submit fire retardant certificates for any stage drops/decorations, etc.
5. For outdoor displays, provide a detailed site security plan. Site security shall be arranged or provided by the applicant.
6. For theatrical special effects, provide a queue script (run of show) that describes when the effect(s) will occur during the performance.

CONDITIONS OF APPROVAL

1. All applications and fees shall be submitted a minimum of thirty (30) days in advance of the beginning date of the display or event. Applications submitted later than thirty (30) days in advance of the beginning date of the display or event may be subject to additional fees.
2. A pre-event inspection is required prior to the display or performance. The display or performance shall not proceed unless a representative of the Fire Marshal's Office is present. For theatrical or other special effects, a product demonstration prior to the performance may be required. Note that inspections must be scheduled a minimum of seven (7) business days in advance.
3. All fees are non-refundable upon submission to this office.
4. A permit issued for a Public Fireworks Display or Special Effects may be suspended or revoked if it is determined that there has been any false statement made or misrepresentation as to a material fact in the application or plans on which the permit or application was based.
5. Any fireworks or special effect performances may be stopped or modified at the discretion of the representative of the Fire Marshal's Office as the situation warrants.
6. A copy of the post display report sent to the State Fire Marshal shall be submitted to this office within ten (10) working days following the display.

In affirming my signature hereon, I understand that as the permittee, I am responsible for compliance with all provisions under which this permit may be granted, including the filing of reports required by Title 19 of the California Code of Regulations. I further affirm that I am an authorized agent for the public display license listed hereon, as required by California Health and Safety Code, Section 12583.

APPLICANT'S PRINTED NAME: Michelle Wuscher

APPLICANT'S SIGNATURE: 

DATE: 8/12/19

Exhibit 8
Field Layout for Rolling Stones Show

A minimum of 48" clear opening shall be provided at all entrance/emergency exits for pit areas

**4,880 Exit through level event
3178 Exit up bowl aisles
8058 Egress Capacity**

SEATING ASSUMPTIONS

FIELD CAPACITY:
4,134 SEATED GUESTS
652 PIT-1 G.A.
652 PIT-2 G.A.
2,423 PIT-3 G.A.
62 ADA 62 COMP

7,985 TOTAL GUESTS ON FIELD

San Francisco - Levi's Stadium

2440
3536
13'
8.9

2440
3536
13'
8.9

Rolling Stones
EVENT DATE: 2019
REV. DATE: 12-04-18

Brungardt Enterprises, L.L.C.
"CAD Services for Venues and Tours"

Date: December 04, 2018

File: < ROLLING STONES - SAN FRANCISCO - LEVI'S STADIUM - 12-04-18 - GA.DWG >

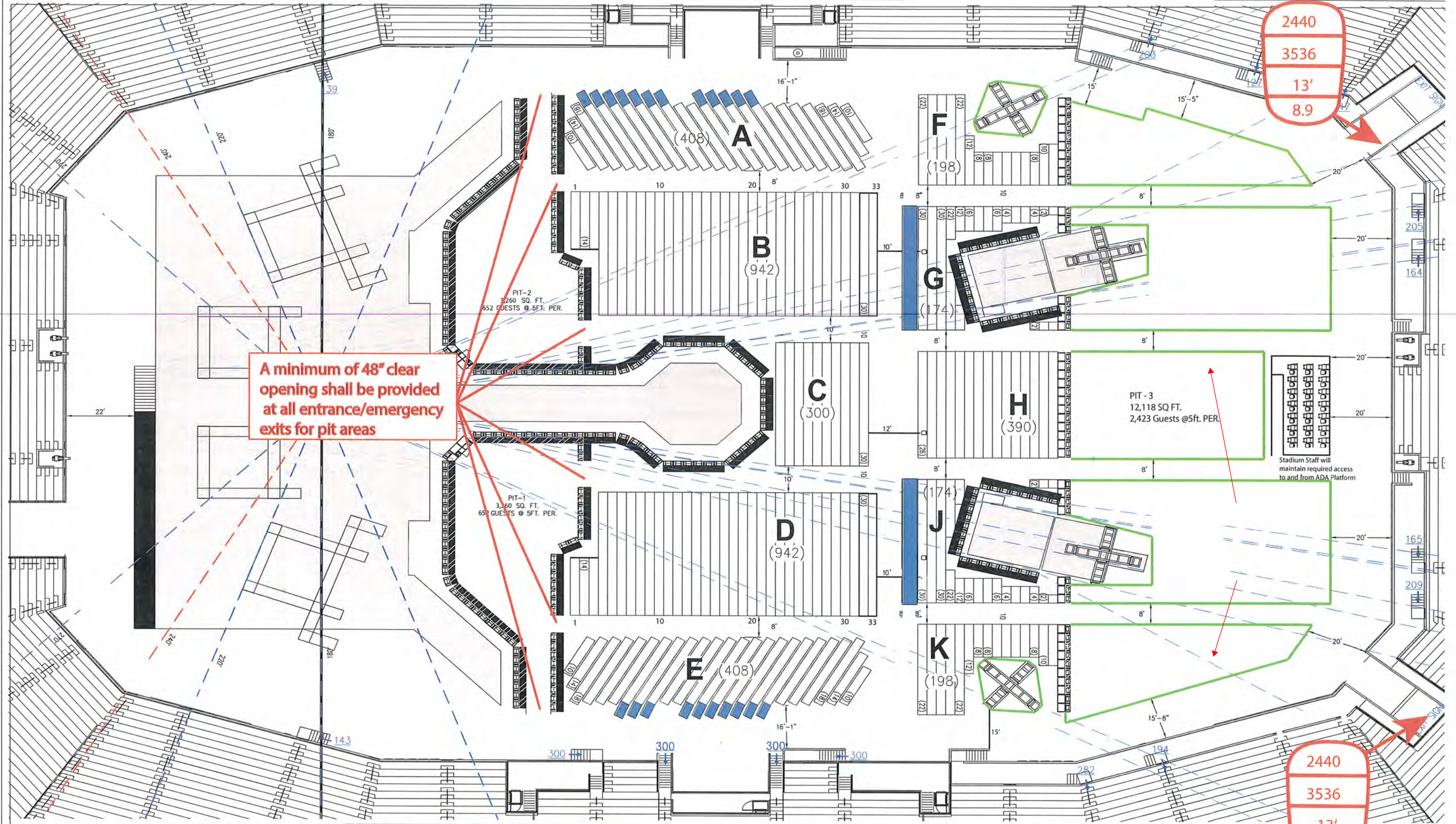


Exhibit 9

Email from City Requiring Physical Barriers for Patrons on the Field

From: Jake Tomlin <Jtomlin@SantaClaraCA.gov>

Sent: Saturday, August 10, 2019 4:00 PM

To: Moul, Dale <dale.moul@49ers-smc.com>

Cc: David Tran <DTran@SantaClaraCA.gov>; David Williams <DWilliams@SantaClaraCA.gov>; Andrew Hyatt <AHyatt@santaclaraca.gov>; Lacson, Cameron <cameron.lacson@49ers-smc.com>

Subject: Pit 3 Areas Physical Barrier

Importance: High

Dale,

After our phone conversation yesterday I had the chance to talk with David Tran in Building regarding how the Pit #3 areas will be delineated.

You must have misunderstood David that the use of tape on the flooring, in lieu of a physical barrier would be acceptable, if Fire also approved the substitution. Please let us all know what physical barriers will be utilized.

With regards,

Jake

Exhibit C

Letter to Harvey Rose

6/23/17



FORTY NINERS STADIUM MANAGEMENT COMPANY

June 23, 2017

VIA EMAIL

Fred Brousseau
Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102

Re: Harvey Rose Report

Dear Fred,

We have reviewed the confidential draft report that we received around the same time that it was leaked to the public via the San Francisco Chronicle. We are disappointed that the Stadium Authority spent \$200,000 to produce a report that will only serve to further confuse the Board and the public with erroneous information, incomplete and out of context half-truths, and outright misrepresentations.

While we were not given sufficient time to provide detailed comments on the 169 pages, we will set forth below comments and corrections on the most egregious inaccuracies. Much of the 169 page report attempts to explain the financial terms of the stadium transactions; terms which have been presented to the Authority Board on multiple occasions in public meetings and in closed session by their own lawyers, economic consultants, and staff. Efforts to understand the terms has been made more difficult because every outside counsel and staff attorney who knew the agreements has been forced out. If the Board does not understand the terms that it unanimously approved, this report will not help them understand.

- The report falsely claims that Harvey Rose was not given access to all information. In fact, the 49ers offered numerous times to work out terms of disclosure of the information that would be acceptable to both parties. Harvey Rose, apparently at the direction of the Stadium Authority, refused to meet to discuss, choosing instead to move forward with its report and repeat the same false accusations of lack of access to information. The leaking of the confidential draft report to the media demonstrates in and of itself why disclosure terms must be arranged before sharing proprietary information.
- The leaked report was used to justify headlines that the 49ers owe the City more than \$2M. Although even a one-sided reading of the report would, at most, come

up with a small fraction of that number, the reports are nonetheless worth correcting here:

- \$424K (mistakenly reported as \$488K). The splashiest so-called finding of the report is the “extrapolated” \$424K figure for administrative public safety time that the consultants argue could theoretically exist – although they can’t be sure and certainly can’t document it as fact. Even if some portion of the \$424K turns out to be real, it was the City’s mistake, and not a failure by the Authority or the 49ers. Simply put, this is money the City never billed – so of course no one would have known to pay it.
 - \$894K. The amount that was paid from the Stadium Authority’s construction fund in accordance with the same rigorous approval process applied to all construction draws, and it was included in the total amount of the Stadium Authority construction cost, which even with that amount, came in well below budget. At the end of construction, all costs were reviewed, in detail, again, by the Stadium Authority’s finance team as part of the final cost allocation prepared by the certified public accountants at KPMG. We have not been provided the detail to verify this amount, but even if the costs could be categorized as public safety costs, we are surprised by Harvey Rose’s suggestion that any item that was approved for payment from the Authority’s construction fund should instead have been part of the annual public safety cost budget as such categorization would have reduced the Stadium Authority Discretionary Fund or the ground rent paid to the City’s General Fund.
 - \$718K. The report states that the City believes that it is still due \$718K under the now-terminated agreement for parking on the golf course. The report fails to mention that the matter has been in dispute for months because the 49ers *OVERPAID* the Authority by a million dollars.
- Throughout the report, Harvey Rose, which is neither a law firm nor a certified public accounting firm qualified to perform an audit or give legal advice, draws legal conclusions and gives legal counsel. The report recommends renegotiating the governing agreements, and then makes clear that Harvey Rose does not understand the governing agreements. For example, Harvey Rose states the terms of the concessions minimum guarantee backwards, and in direct contradiction of Lease Section 7.3.2. In another example, Harvey Rose suggests that the Stadium Authority pay a proportionate share of Stadium insurance when the fixed amount was originally negotiated by the Authority specifically as a protection against the variability in insurance costs over a multi-decade lease term. Although it has nothing to do with what Harvey Rose was hired to audit, the report states, “As of the writing of this report, the Forty Niners SC Stadium Company is seeking to

reduce the facility rent due to the Stadium Authority based on this provision of the Stadium Lease.” The rent adjustment is required by the Lease. The Mayor and Board preferred to let an arbitrator decide the adjustment. The inclusion of this irrelevant and out of context fact is further evidence of the report’s failure.

With respect to the Executive Summary, the following addresses the summary of audit results point by point:

1. *“Numerous aspects of the agreements between the Stadium Authority and the 49ers entities (SC Stadium Company (“StadCo”) and the Forty Niners Stadium Management Company (ManCo)) were not complied with during Fiscal Years 2014-15 and 2015-16, primarily in the areas of the 49ers entities’ production and delivery of required plan and budget documents pertaining to the operations and costs of the Stadium.”*

This is false. The 49ers asked the Stadium Authority in December 2016 to notify it of any non-compliance and the Authority could not point to a single item. The argument here appears to be over the format of information included in the documents and not their existence or substance. The primary argument during the course of the engagement was as to whether different elements of the Stadium Operations and Maintenance Plan were kept in the same binder. A fair report would have stated that the 49ers have worked with the Authority and its staff in the past to change reporting formats as requested and continue to be willing to do so.

2. *“The Stadium Authority did not establish effective contract administration procedures to ensure and report contract compliance to the Board and public in a number of key areas, including monitoring the Stadium manager company to ensure that they provided all information and planning documents to the Stadium Authority as required in the various agreements and that those documents were presented to the Board.”*

The 49ers have provided all documents required under the agreements, as well as any additional documentation requested by the Authority.

3. *“Certain provisions in the agreements, detailed in this report, do not appear to be in the best interest of the Stadium Authority and should be considered for proposed amendments to the agreements.”*

No business deal of any complexity could ever be completed if there were not give and take on both sides. Each of the parties made concessions in some provisions to get something more out of others. The lack of business sophistication inherent in this conclusion casts a shadow over the entire exercise and all conclusions reached. There are

dozens of other provisions that benefit the City and Stadium Authority more than the 49ers.

4. *“Stadium Authority budget documents and financial status reports provided to the Board were insufficient during the first two years of Stadium operations. Key information such as details on the costs and revenues of non-NFL events, which are critical to the Stadium Authority’s and City’s financial success, are not presented in the budgetary documents. Related non-NFL event financial records are maintained by ManCo who provided review access to City staff but not copies for permanent City records. The proposed Stadium Authority budget for FY 2016-17 shows improvement in information presented.”*

All detail for all events is made available to any Authority-authorized personnel, including Harvey Rose. For legitimate business reasons, acknowledged by the Mayor, some event detail is not presented publicly here or at any other publicly owned stadium in the country. This industry standard practice protects the business interests of the facility, including publicly owned facilities. The public disclosure of proprietary information would greatly jeopardize the financial benefit to the City’s general fund.

5. *“Reports for the Board on transfers between the Stadium Authority’s Operating Fund, Capital Expenditure Fund, Debt Service Fund and Discretionary Fund were incomplete and inconsistently reported, putting the Board at a disadvantage in approving and reviewing funds available for purposes such as capital improvements and repairs, early payoffs of debt service and others. For example, the transfer of and use of approximately \$100 million from the Stadium Construction Fund to the Debt Service Fund for early debt payoff was not clearly presented in the budgetary documents.”*

Funds were used exactly as required under the stadium loan documents, so we do not know why this is confusing to Harvey Rose. There was nothing unclear about the use or the disclosure of the use, nor was there any further action that could or should have been taken by the Stadium Authority Board with respect to this transfer.

6. *“Though no payments to vendors were found to be in excess of their total contract amounts, procurement procedures for the Stadium Authority could be improved. A review of a sample of purchases made found that agreements for some vendors did not include clear statements of their rates and services and that some vendors did not bill at rates stated in their agreements. No turf purchases were reviewed as such records are assumedly maintained by ManCo and thus could not be reviewed by the audit team.”*

The report itself acknowledges that they could find no excess payments. All invoices for turf purchases were made available to the City's staff and the Harvey Rose consultants.

7. *“Not all costs for City staff time were charged and reimbursed during the audit review period, resulting in the General Fund covering some Stadium costs in violation of Measure J.”*

There is a process for reimbursement of City staff time. The 49ers have paid every bill submitted, and, as a result, have reimbursed millions of dollars of City staff time. If the City believes additional charges are due, it should submit them for reimbursement so that they can be reviewed and, assuming they are properly documented, reimbursed.

8. *“Based on a sample of 11 NFL and non-NFL events that took place between the fall of 2014 and May 2015, we estimate that \$424,349 in staff costs were not reimbursed for regularly performed activities such as preparing and moving equipment to the Stadium before and after events and performing Stadium arrest follow-up activities after event days. Another \$64,716 in unreimbursed one-time costs, such as training new officers hired for the Stadium, were also identified as part of this analysis. Direction to staff from the City Manager's Office on billing for Stadium work improved while this audit was underway.”*

As noted in the opening of this letter, the report does not document the \$424,349 that is “estimated.”

9. *“Excess Construction Fund monies were used to cover some public safety costs incurred by the City in FY 2014-15. These costs amounted to \$894,228 but the Stadium Authority Board did not approve these expenditures or receive reports of their occurrence or payment source in their Stadium Authority budgetary documents.”*

These costs were paid at the request of the Stadium Authority's finance director in accordance with construction fund practices and in the best interest of the Stadium Authority. If those funds had not been used, the purchases would have increased the Performance Based Rent credits (unless the Board wished to use its Discretionary Fund).

10. *“The Stadium Authority lacks controls and procedures to verify that public parking fees remitted during NFL events for public parking lots and private off-site parking fees and net parking revenues from privately owned parking lots are accurate. The agreement between ManCo and master parking lot operator CityPark grants the City and the Stadium Authority audit authority of CityPark records including detailed parking lot records. The Stadium Authority should audit the parking fees and net revenues for*

public and off-site parking managed by CityPark.”

ManCo has already engaged a CPA firm to audit CityPark under its agreement and will provide a copy of such findings regarding City parking fees and Non-NFL Event Stadium Authority net revenues when the report is complete.

There are a number of other more specific points in the report that I will briefly note below, although this list is not exhaustive:

- On page 18, the characterization about why the revolving credit agreement was created is wrong. The City’s general fund is absolutely insulated under the structure, with or without the revolving credit agreement. The revolving credit agreement was created to give the Stadium Authority additional protection from the natural and expected swings in cash flow from year to year, so that, in the event of a cash flow deficit, the Stadium Authority would have the option of not immediately resorting to other protections under the Lease, including the put right.
- We are not sure why you excluded many of the ancillary agreements, including the financing agreements for the Stadium Authority (pp. 18-21).
- Footnote 4 on page 1-25 and pages 1-26 and 1-27 inaccurately describes how public safety costs work. StadCo pays 100% of the public safety costs. The amount over the threshold is, by contract, required to be reimbursed by the Stadium Authority (NOT the City’s General Fund) but only by specified sources. The two possible sources come from either (i) paying the City less in performance rent or (ii) using the Discretionary Fund, which was expressly created for this use, among others. The Authority has, in each year, chosen the latter. The suggestion at several places in the report that the Discretionary Fund is somehow being misused for this purpose both ignores the actual contract language and appears intended to inflame rather than inform. If the report were fair, it would note that the 49ers offered to discuss the threshold a year early and had two meetings with the Stadium Authority on the topic recently.
- On page 1-32, the report fails to note that in the early years, all expenditures that could have been characterized as capital expenditures were funded as part of the construction costs so the parties did not need to utilize capital expenditure funds: an excellent outcome for the Stadium Authority since the capex reserve was being funded but not spent in those years. Recommendation 1.C on page 1-33 appears to be a legal opinion by Harvey Rose, which, again, Harvey Rose is not qualified to give.

- Page 1-34 is false as Harvey Rose was provided an unredacted copy of the Stadium Operation and Maintenance Plan for review. When ManCo was asked to provide a copy that could become a public record, a copy that was redacted for public safety purposes was provided.
- Page 1-37 gets the operative lease section backwards and again raises the question as to why a consulting firm is interpreting contracts. If the concessionaire required payments turn out to be less than (not in excess of) the guaranteed minimum, then the guaranteed minimum (which is based on having NFL games only and no Non-NFL events) would be payable to StadCo. If concessionaire payments exceed the guaranteed minimum then the provision that Harvey Rose attempts to apply is not applicable. Concessionaire payments have exceeded the guaranteed minimum each year and the Stadium Authority has received the commissions from Non-NFL Events.
- Page 1-43 fails to disclose that the fixed insurance amount was a protection that the Stadium Authority negotiated for itself to protect it against growing costs in the insurance market.
- The findings and recommendations on Page 1-44, again, legal opinions which Harvey Rose is not qualified to give, have already been addressed in correspondence from ManCo to the Stadium Authority on December 6, 2016. The operative agreements do not require Manager to prepare a Statement of Stadium Operations. Instead, it provides that a third-party certified public accounting firm, selected by StadCo and the Stadium Authority, will prepare such a statement. ManCo's only obligation is to deliver such a statement, once prepared by that accounting firm, to StadCo and the Stadium Authority. StadCo and the Stadium Authority have not designated a third-party certified public accounting firm to prepare those statements, although the Stadium Authority and its lenders have approved KPMG as its auditor generally. At the direction of StadCo and the Stadium Authority, ManCo has worked with Stadium Authority staff to provide all required information in an agreed format to allow Stadium Authority staff to prepare annual financial statements, as well as quarterly performance updates. These reports are regularly presented to the Stadium Authority Board and are available on the Stadium Authority's website. The annual financial statements, which are prepared by the Stadium Authority staff, with the assistance of ManCo, are subject to audit by KPMG, the Stadium Authority's approved certified public accounting firm (and are available on the Stadium Authority's website). The Stadium Authority is required to deliver the Statement of Stadium Operations to StadCo under the lease. StadCo has, in the

past, accepted the financial statements audited by KPMG as fulfilling the Stadium Authority's obligation to deliver that Statement.

- On page 1-46, Harvey Rose again comes to legal conclusions it is not qualified to provide in any case, but particularly in light of the fact that the Stadium Authority has been provided a shared stadium expense budget for each year in the form requested by the Authority.
- Page 53 misses the additional extension terms that correspond to extensions under the lease.
- Moreover, on page 53, Harvey Rose incorrectly states that Article 3 of the Stadium Management Agreement was deleted by the First Amendment to the Stadium Management Agreement. In fact, Article 3 was not deleted by the First Amendment to the Stadium Management Agreement and remains in effect. The only change to Article 3 was the replacement of the original 3.2 with the far more detailed section of the First Amendment.
- The finding on page 1-62 is incorrect. Detail was shown to the Stadium Authority on all Non-NFL Events.
- The findings on page 1-63 are incorrect and the recommendation does not make sense for a few reasons. First, attendance is not a dollar figure. Second, the requirement is only to report as the parties may agree from time to time and ManCo was not asked for anything that it did not provide and provided detailed revenue information for review. Finally, with respect to the finding, it is no fault of the 49ers if a meeting was not "recorded as a marketing meeting." (For those trying to follow along with the Harvey Rose report, the reference to Section 3.3 may be confusing unless you look at the First Amendment to which they are attempting to refer.)
- The chart on page 2-12 is inaccurate as it includes only ticketed events and not private events.
- It is a shame that the critical finding is buried on page 2-13: "ManCo provides access to line item details and the backup documentation... and City Finance Department staff tie the supporting documentation to the line item detail shown for each event. Staff conduct this review process for each event." This reality seems to be ignored in the finding on page 2-14 which also ignores the fact that no venue in the country publicly presents such detailed financial information as it would harm their competitive position.
- Page 2-17 is wrong. Section 6.1.1 of the lease states that the rent amount is subject to the adjustment in 6.1.2: the rent adjustment is required by the lease, it is not something that the 49ers are asking for.

- Pages 2-21 and beyond regarding transfers reflects a misunderstanding of the scope of the Deposit and Disbursement Agreement. All Stadium Authority revenues and transfers between funds, whether to operations, debt service, or cap ex are strictly controlled and prescribed until the end of each fiscal year when funds that were not used during the year and are not required to be held in prescribed lender-required operating, debt service, and reserve accounts, are distributed to the Authority, but then are strictly controlled under the provisions of Article 14 of the Lease. The \$100M was transferred from the Construction Fund to the Debt Service Fund because the loan documents require that transfer and do not require or permit any further approval by any party, including the Stadium Authority.
- Similarly, on page 2-24, there is no way to avoid late or retroactive budget amounts of the type referred to because the debt service payments are mandated by the loan documents. The Stadium Authority Board approved the loan documents, including the provisions that require strict application of funds, in a prescribed order, to repay debt service.
- On page 2-28, there is again a demonstrated lack of understanding of the totality of the documents governing stadium affairs, and there are factual inaccuracies. For example, at the middle of page 2-28, it states that debt prepayments were made in the first two fiscal years to Term A and B loans. Term B was prepaid as required by the applicable loan documents. No prepayments have been made on Term A to date. In each of the last two fiscal years, prepayment offers were made, as mandated, to holders of Term A. None of the offers was accepted so, as mandated by the documents, the particular funds available for prepayment of Term B (excess SBL proceeds) were used, as required, to pay down the subordinated debt. These required prepayments are governed by the Deposit and Disbursement Agreement and never become Excess Revenues governed by Article 14 of the Lease. Recommendation 2.H on page 2-34 ignores the governing documents.
- We have already addressed above the fact that the economic reality and legislative history are ignored on page 2-35 regarding the protections against increases in insurance costs for the Stadium Authority.
- The entirety of Section 3 has already been addressed earlier in this letter. If there are real charges based on actual records that are appropriate to charge to the 49ers under the agreements, then we will pay those bills. The 49ers have paid all charged costs to date and would like more detail on the overhead charges that have been billed.

Letter to F. Brousseau


June 23, 2017

Page 10

there are real charges based on actual records that are appropriate to charge to the 49ers under the agreements, then we will pay those bills. The 49ers have paid all charged costs to date and would like more detail on the overhead charges that have been billed.

Levi's® Stadium has been a great financial success for the City of Santa Clara and has brought the eyes of the world to this City. We are proud to manage this building and are open to suggestions that can build our partnership with the City, its residents, or otherwise enhance the performance of the stadium. To the extent that this report was, at least in part, an effort to not acknowledge success or encourage even greater success, but rather to search for, even to the point of misrepresentation, any means of disparaging stadium performance, it is a waste of public time and funds.

Sincerely,

DocuSigned by:

0B865D2E03AA48E
Hannan Gordon
General Counsel

cc: Rajeev Batra, Stadium Authority Acting Executive Director

Exhibit D

Letter to Santana re: HSNO

12/1/2020



FORTY NINERS STADIUM MANAGEMENT COMPANY

December 1, 2020

VIA EMAIL - DSantana@SantaClaraCA.gov

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

Dear Deanna,

I am writing in response to the November 24, 2020 report by Tim Gillihan, an accountant formerly a partner with Hagen, Streiff, Newton & Oshiro (“HSNO”), and now with J.S. Held. Stadium Manager (referred to as ManCo in the report) was not given an opportunity to review or respond to the report before it was publicly released, and even now, have only had the chance to do a preliminary review. There are a broad range of errors, large and small, throughout the report, but I will only comment on a few of them.

First, Mr. Gillihan says that his primary charge was to investigate the difference between the year-end net income for all Non-NFL Events, on the one hand, and the net income reported for each individual at event, on the other. Though Mr. Gillihan professes to be mystified by the reason for these differences, they have been explained to him, and to SCSA, several times.

After each event, Stadium Manager prepares a *preliminary* P&L that includes the revenues and expenses received/known at that point and are noted as such. Some revenues and expenses take weeks or months to be finalized. For example, the City invoices Stadium Manager for the public safety expenses incurred for large events. At times, it has taken many months for those invoices to arrive. When Stadium Manager prepares the P&L for that event, it often includes an *estimated* amount of public safety expense.¹

Total income for *all* events is reported after the close of the fiscal year – including year-end adjustments for depreciation, year-end commissions to corporate event sales staff, and others. These year-end adjustments account for the difference between the “two sets of numbers” about which Mr. Gillihan and SCSA claim to be so flummoxed. To be clear: SCSA has never lacked visibility into the revenues and expenses for Non-NFL Events. Prior to approximately 2017 or 2018, SCSA and Stadium Manager staff

¹ Note that the amount of public safety expense that the City has charged to these events has increased dramatically since 2017, which is one of the reasons that the profitability of those events has declined so precipitously since that time.

would meet regularly to review and discuss them. **Exhibit A** is an example of a “sign off” sheet initialed by Tyler Cook, former Principal Financial Analyst for the City.²

Second, Mr. Gillihan complains that most of the documents he received were prepared by Stadium Manager. That’s not true. Stadium Manager produced more than 70,000 pages of documents, including thousands of pages of invoices and proofs of payment. For example, Stadium Manager produced a packet with hundreds of pages of “backup” for the September 2016 Coldplay concert. It includes receipts and invoices for items as small as \$50.³

Third, Mr. Gillihan says that he couldn’t complete his report because Stadium Manager stopped corresponding directly with him. Several months ago, Stadium Manager learned that SCSA and Mr. Gillihan had not been truthful about the purpose of Mr. Gillihan’s engagement, and that Mr. Gillihan was actually a stalking horse for SCSA’s outside litigation attorneys. **Exhibit 21** to Mr. Gillihan’s report is a letter describing SCSA’s lack of candor.⁴ Any further inquiries from Mr. Gillihan may be transmitted through the appropriate channels.

In fact, SCSA has never disclosed to the public that Mr. Gillihan’s firm has a history of deceptive behavior. Mr. Gillihan’s report, and SCSA’s staff report, say only that HSNO was “acquired” by JS Held during the course of Mr. Gillihan’s work. But SCSA has never revealed the circumstances of that acquisition: HSNO was forced to surrender its license to act as a Certified Public Accountancy Corporation.

Similar to its engagement for SCSA, HSNO was hired by the City of Irvine to review work of outside contractors. As a result of its work, HSNO was sued by the Attorney General’s office, and it agreed to the following facts when it surrendered its license:

This matter arises from the City of Irvine’s engagement of Respondent HSNO to prepare two reports for which the firm was paid approximately \$778,000. Yet, the reports prepared by Respondent HSNO contained *misleading statements and failed to meet minimum professional standards* that required due professional care, objectivity,

² For a period of time after the arrival of Mr. Doyle and Ms. Santana, City staff halted its practice of attending these meetings. There was no apparent rationale for that reluctance, since SCSA was, at the same time, claiming that it wanted more information about Non-NFL Events.

³ Mr. Gillihan’s report includes detailed event-level financial information. Stadium Manager has advised you, many times, that this information should not be publicly disclosed, as it is sensitive business information, and its public disclosure makes the Stadium a less attractive venue for performers, and makes it more difficult for Stadium Manager to maximize revenue from events. Nevertheless, SCSA has insisted on publicizing this information, and resisted Stadium Manager’s efforts to protect it.

⁴ Mr. Gillihan also complains through his report about having encountered delays through the process. Responding to his inquiries was certainly time-consuming, and that process was hindered by SCSA’s refusal to pay most of the expenses associated with responding to the inquiries, notwithstanding SCSA’s contractual obligation to do so.

and sufficient relevant data to support many of its findings and opinions. Respondent HSNO's findings and conclusions included *falsely portraying* that certain parties had failed to cooperate with Respondent HSNO's engagement, and that one party had double billed the City. Respondent HSNO used its own deficient findings to *justify Respondent HSNO performing further work for the City.*

SCSA never revealed *any* of this to the public. And now, we see the pattern from Irvine repeat: after years of work, the receipt of more than 70,000 pages of documentation, and payment of more than \$150,000, Mr. Gillihan's questions just lead to more questions, all of which require Mr. Gillihan to continue his work for SCSA, indefinitely. But after these years of work, Mr. Gillihan's report does not identify *a single dollar* owed to SCSA. Authorizing Mr. Gillihan to continue his "investigation" would be the definition of wasteful spending.

Finally, once one penetrates the tables and figures in Mr. Gillihan's report, it becomes clear that Mr. Gillihan is woefully unsuited to conduct any sort of "audit" of Stadium Manager's work, or to recommend "improvements" to Stadium Manager's accounting practices. For example, Mr. Gillihan says that he would like to investigate the 2015 Taylor Swift concerts, "in light of reports that demand was weak for [the] second night and many comp tickets were distributed." (Gillihan report, page 27.) But those reports related to the 2018 Taylor Swift concerts.⁵ One wonders how far Mr. Gillihan would have proceeded in his investigation before realizing that there were two different Taylor Swift concerts, three years apart.

He also seems perplexed by the fact that attendance at Pac-12 college football games fluctuated widely. The Pac-12 conference has teams from California, Arizona, Oregon, Washington, Utah, and Colorado. In the Bay Area, a Stanford-Cal game will draw many more attendees than a University of Washington v. Arizona State game. That fact should not require much explanation, even to someone (like Mr. Gillihan) with no expertise in the events business. Yet, once again, Mr. Gillihan believes that further evaluation is warranted.

Under these circumstances, it would be folly for SCSA to accept this report for any purpose other than to terminate Mr. Gillihan's work on its behalf. The SCSA Board has said, many times, that it wants to have a more "businesslike" relationship with Stadium Manager, and with the Forty Niners. But it continues to pursue wasteful investigations, intended to serve the political interests of certain members of the SCSA Board, and not

⁵ In fact, SCSA's entire narrative about the Taylor Swift concerts is misleading. The 2015 concerts were profitable. The 2018 concerts were too – SCSA netted approximately \$1 million.

the residents of the City of Santa Clara.⁶ In other words, regardless of what those SCSA Board members *say*, their *actions* evidence an unabated commitment to continue down the path of litigation, and years of careless spending.⁷

If the Board is truly committed to pursuing a “business like” relationship with the Forty Niners, it should instruct Mr. Gillihan to cease his work on this matter. In addition, it should, in a future meeting, agendaize the approval of measures proposed by Stadium Manager to enhance transparency and visibility into Stadium operations, like the new accounting system, and the expenses necessary to implement and operate them.

Thank you,



Scott Sabatino
Chief Financial Officer

CC: Mayor and SCSA Board

⁶ Several years ago, SCSA commissioned the Harvey Rose firm to review Stadium operations. On the night *that* report was accepted by the SCSA Board, then-Chief of Police Sellers commented:

Tonight, I will ensure that the public gets a full and accurate account regarding police costs as it relates to Levi's Stadium; and not the political grandstanding by our Mayor Gillmor. . . . Our city has been subject to a level of hatred and nastiness that I have never seen before. It is being compounded by [Mayor Gillmor's] lack of leadership, honesty, and transparency. . . . [M]y team cooperated 100% with the staff from Harvey Rose. It was not long before it became very clear to us that they were being given specific instructions and directions consistent with the narrative that unfortunately [Mayor Gillmor] has been claiming for over a year not . . . [Your] claims are not only completely absurd, it has now been proven, as many have suspected, as being absolutely false. . . . These politically motivated attacks must stop. They must stop. You are hurting our City.

⁷ Indeed, even the method of handling the exhibits to Mr. Gillihan's report are not consistent with a desire to be a “partner” in a “business like” relationship. SCSA and Mr. Gillihan decided to publicize documents that had been marked as “confidential” by Stadium Manager, but without advising Stadium Manager in advance, or even asking Stadium Manager *why* those documents might have been marked confidential. That is the *opposite* of how one would behave in a “business like” relationship.

Exhibit A

TEC 4/19/2017 TEC 4/19/2017 TEC 4/19/2017 TEC 4/19/2017 TEC 4/26/17 TEC 4/26/17 TEC 4/26/17 ✓ TEC 5/2/17 TEC 5/2/17 TEC 5/11/17 TEC 5/11/17 TEC 5/11/17 TEC 5/11/17 TEC 5/18/17 TEC 5/18/17

TEC
\$321K MERCH
MIS-C. DIBO TO
2017 COLDPLAY
RECLASS NEEDED

INCLUDES TRAFFY SIGNOS

INCLUDES NET PARKING FEE CHARGES TO CONCESSIONS PL CONCESSIONS TO PARK & SHUTTLE TO WORK

Revenue		Supercross	Monster Jam	Beyonce	COPA #1	COPA #2	COPA #3	COPA #4	Wedemeyer	Liverpool/AC Milan	Kenny Chesney	Friday Night Lights	Coldplay	Beyonce 2	Pac-12	Foster Farms	Total
		CROSS01-2016	MONST01-2016	BEYON01-2016	INTLS01-2016	INTLS02-2016	INTLS03-2016	INTLS04-2016	HSFBA01-2016	INTLS05-2016	CHE\$N01-2016	HSFBA02-2016	COLDP01-2016	BEYON02-2016	PAC1201-2016	SFB0W01-2016	
101	Seating Bowl Revenue																(26,657,483.51)
102	TM Fees																(2,318,523.32)
103	Suite Ticket Revenue																(1,592,174.81)
104	F & B Revenue																(3,928,461.51)
105	Parking Revenue																(2,295,966.05)
107	Sponsorship																(1,332,125.00)
108	Merchandise																(228,668.19)
109	Other Revenue																(1,952,205.03)
Total Revenue																	(40,305,607.42)
Expense		Supercross	Monster Jam	Beyonce	COPA #1	COPA #2	COPA #3	COPA #4	Wedemeyer	Liverpool/AC Milan	Kenny Chesney	Friday Night Lights	Coldplay	Beyonce 2	Pac-12	Foster Farms	Total
201	Guest Service Representatives																999,501.49
202	Public Safety Cost																2,638,226.44
203	Security																2,469,409.99
204	Janitorial / Maintenance																1,884,590.80
205	Field Conversion / Replacement																868,355.04
206	Other Stadium Operations																686,258.70
207	Utilities																291,525.58
208	Other Gameday Staff																2,703,119.84
209	Transportation																(31,999.20)
230	Parking Operations																2,242,037.45
231	Parking - 3rd Party Lot Rental																210,585.50
240	Credit Card Fees																464,272.84
250	Catering																795,656.30
250	Partner Payments & Guarantees																26,094,619.72
270	Ticket Sales Commissions																49,374.36
280	Marketing Expense																448,897.37
285	Bowl Committee Expenses																456,022.51
290	Partner Reimbursement																(4,726,242.86)
Total Expense																	38,544,211.87
SCSA Net																	(1,761,395.55)
SCSA Surcharge		94,552	188,724	174,888	259,316	267,092	152,392	267,828	10,536	117,016	149,032	12,688	208,760	168,788	137,604	101,328	2,310,544

The initials "TEC" on this document are by Tyler E. Cook, Principal Financial Analyst for the City of Santa Clara