



**City of
Santa Clara**
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City Manager's Office

The Honorable Rise Jones Pinchon
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Janice Jones DEPUTY August 24, 2016

Re: Santa Clara County Grand Jury Report – *The City of Santa Clara, The Santa Clara Stadium Authority, Levi's Stadium, and Measure J*

Dear Judge Pinchon:

The City of Santa Clara received the 2015-2016 Santa Clara County Civil Grand Jury report entitled "*The City of Santa Clara, The Santa Clara Stadium Authority, Levi's Stadium, and Measure J*". Per California Penal Code Section 933 (c) and 933.05, please find below the City of Santa Clara's responses to the findings and recommendations.

Finding 1:

Since the passage of the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J), there has been no compliance audit. During the course of the Grand Jury's investigation, the Santa Clara Stadium Authority board approved a Measure J compliance audit to be performed by a third party, to be selected.

Recommendation 1a

The Santa Clara Stadium Authority should specify that the compliance audit cover the time period beginning with the passage of Measure J through March 31, 2016, the end of the Stadium Authority fiscal year.

Response 1a

The Measure J Compliance Audit Request for Proposals was issued on May 13, 2016. The scope of the audit was based on specific audit requirements provided to staff by the Stadium Authority Board. The scope includes a comprehensive Measure J compliance audit of Stadium Authority finances dating back to April 1, 2014 (i.e., the period of the fiscal year of the first year of operations) through March 31, 2016. The Board has already selected an auditor based on this scope, and a contract with Harvey M. Rose, the selected auditor, has been executed.

The Respondent is reviewing options to expand the auditing scope as suggested by the Civil Grand Jury. It should be noted that the activities undertaken related to the Stadium during the time period between the passage of Measure J and March 31, 2014 were primarily construction related. A separate cost allocation review of construction expenditures was completed by KPMG on November 17, 2015.

Recommendation 1b

The Santa Clara Stadium Authority should specify that the scope of the compliance audit include whether City of Santa Clara general funds have been used for the operation or maintenance of Levi's Stadium in violation of Measure J.

Response 1b

The Respondent agrees with this recommendation and this was included in the scope of services for the Measure J Audit discussed above. .

Recommendation 1c

The Santa Clara Stadium Authority should specify that a Measure J compliance audit include a review of the billing and tracking procedures used when City employees perform Stadium business and how and when the City is reimbursed.

Response 1c

The Respondent agrees with this recommendation and it was included in the scope of services for the Measure J audit.

Recommendation 1d

Once the audit is complete, the Santa Clara Stadium Authority should release the results to the public.

Response 1d

The Respondent agrees with this recommendation. All Stadium Authority and City audits are publicly posted as part of meeting agenda packets. In addition, audits are also posted on the City of Santa Clara Finance Department web page. The completed audit will also be posted on the Santa Clara Stadium Authority web page.

Finding 2

The public safety costs incurred during the first two NFL football seasons at Levi's Stadium have exceeded the monetary threshold stated in the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J).

Recommendation 2

If the public safety cost overage continues through the 2016 NFL season, the City of Santa Clara should seek an adjustment of the public safety cost threshold in accordance with clause 7.5.4(b) of the *Amended and Restated Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty Niners Santa Clara Stadium Company LLC dated March 28, 2012, As Amended and Restated as of June 19, 2013.*

Response 2

The Respondent agrees with this recommendation. It should be noted that the Respondent initiated discussions with the Forty Niners SC Stadium Company LLC (StadCo) on public safety costs in 2015 and requested the commencement of negotiations following the end of the second NFL season (February 2016) – one full year in advance of the lease provision. While the parties previously agreed to enter into early negotiations, these discussions are currently on hold pending resolution of the arbitration process.

Finding 3

The Santa Clara Stadium Authority's Finance Director, Treasurer, and Auditor positions are currently held by the same individual.

Recommendation 3

The Santa Clara Stadium Authority should adopt the same structure as the City of Santa Clara, where the auditor position is separate and independent from that of the finance director.

Response 3

The Respondent agrees with this recommendation. While there is no evidence that an actual conflict exists and there are already established internal controls within the Finance Department (e.g., multiple signatures are required to initiate transactions) and the Stadium Authority is audited annually by an independent third party, the Respondent agrees that having these functions all under one position could create the appearance of a conflict of interest.

The Joint Powers Agreement that created the Santa Clara Stadium Authority defined Board and staff positions and assigned the title of Finance Director/Treasurer/Auditor for Stadium Authority to the City's Director of Finance. The Respondent will bring forward a recommendation to the Joint Powers Authority (JPA) partners to change the JPA Agreement to reassign the Auditor title.

If there are any questions in regard to the City's response to the Grand Jury's findings and recommendations, please contact me at (408) 615-2210. Thank you for the opportunity to comment on the report.

Sincerely,



Rajeev Batra
Acting City Manager

cc: Mayor and City Council