



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

(ENDORSED)
FILED
SEP 11 2024
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Brian Huebner DEPUTY

Mayor
Lisa M. Gillmor

Councilmembers
Kathy Watanabe, District 1
Raj Chahal, District 2
Karen Hardy, District 3
Kevin Park, District 4
Suds Jain, District 5
Anthony J. Becker, District 6

VIA EMAIL; HARDCOPY TO FOLLOW VIA U.S. MAIL

September 11, 2024

Honorable Beth McGowen
Presiding Judge
Santa Clara Superior Court
191 North First Street,
San Jose, CA 95113

RE: Santa Clara City Council and Santa Clara Stadium Authority Board Official Response to Findings and Recommendations Designated for Response in the 2024 Santa Clara Civil Grand Jury Report Entitled, "Outplayed: Measure J, the City of Santa Clara, and the San Francisco 49ers"

Honorable Judge McGowen:

Please find attached the City of Santa Clara/Santa Clara Stadium Authority Board response to the 2024 Santa Clara Civil Grand Jury Report entitled, "Outplayed: Measure J, the City of Santa Clara, and the San Francisco 49ers." As requested by the Grand Jury, in accordance with California Penal Code section 933.05(a) and (b), responses have been provided to Grand Jury Findings: 1, 2, 3, 4, 5, 6a, 6b, 6c, 7a, 7b, 8a, 8b, 9a, 9b, 9c, 10a, 10b, 11, 12, and 13, and to Grand Jury Recommendations: 1, 2, 3, 7, 8, 9, 10, 12, and 13.

The attached response was approved by the City Council/Stadium Authority Board at the September 4, 2024 City/Stadium Authority concurrent meeting. For the record, please note that the City/Stadium Authority responses to Findings 2, 9b, 12 and 13, and Recommendations 3, 7 and 12 were approved unanimously (6-0, Councilmember Chahal absent); Finding 1 was approved by majority vote (5-1, Councilmember Watanabe opposed); and Findings 3, 4, 5, 6a, 6b, 6c, 7a, 7b, 8a, 8b, 9a, 9c, 10a, 10b, 11, and Recommendations 1, 2, 8, 9, 10, 13 were approved by majority vote (4-2, Mayor Gillmor and Councilmember Watanabe opposed).

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Please note that any responses required from, or provided independently by, individual Council/Board members have been provided by such members in their individual capacities and are not a part of the City Council/Stadium Authority Board official response.

Sincerely,



Lisa M. Gillmor

Mayor/Chair

City of Santa Clara City Council/Stadium Authority Board

Enclosure

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FINDINGS

Finding 1:

From the beginning, the City was impatient and overmatched in its negotiation posture with the 49ers to the long-term detriment of the City/Stadium Authority.

Response to Finding 1:

The City/Stadium Authority generally agrees with this finding in that the original Stadium agreements did include provisions that put the City/Stadium Authority at a disadvantage in a number of areas.

City/Stadium Authority notes, however, that one primary objective of the City/Stadium Authority, to minimize the contribution of public funds and to protect the City’s general fund from liability to the maximum extent possible, was achieved, as noted in the Civil Grand Jury’s Finding 3.

Finding 2:

The City has not studied the actual economic impact of the Stadium. The 49ers have produced their own studies, which they use to tout long-term unverified benefits and frame all discussions surrounding the success of the Stadium.

Response to Finding 2:

The City/Stadium Authority agrees that it has not conducted a comprehensive study of the full (direct and indirect) economic impact of the Stadium.

The City/Stadium Authority does have detailed information on “direct” revenues generated by Stadium operations to the City and the Stadium Authority. This information is presented to the Stadium Authority Board quarterly in the form of Stadium Authority Quarterly Financial Reports. These documents outline revenues and expenses from stadium events. Specific to revenues, the Quarterly Financial Reports outline the following revenues:

- Stadium Revenues
 - Rent
 - NFL and Non-NFL Ticket Surcharge
 - Stadium Builder License (SBL) Proceeds
 - Non-NFL Event Net Revenue
 - Naming Rights
 - STR sponsorship revenue
 - Interest

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- General Fund
 - Senior and Youth Fees
 - Base rent
 - Performance rent
 - Sales tax

All such reports have been provided to the Grand Jury and are available to the public on the Stadium Authority’s website.

To date, the City/Stadium Authority has not invested public dollars to conduct an economic impact study that examines direct and indirect financial benefits. While there are “indirect” economic impacts that benefit the City (e.g., hotel tax), this information has not historically been tracked and reported as “Stadium related” because it is difficult to ascribe to Stadium Authority operations based on the data the City and Stadium Authority receive.

Regarding the most recent economic impact study conducted and released by the 49ers, the City/Stadium Authority has no comment as we were not consulted on any aspect of such study.

Finding 3:

Measure J’s promise to protect the City’s General Fund has been realized. The funding structure from the Stadium Lease has successfully allowed the Stadium Authority to pay off Stadium construction loans and fund required Waterfall reserves faster than originally planned.

Response to Finding 3:

The City/Stadium Authority agrees with this finding.

Finding 4:

The City/Stadium Authority agreed to use ManCo, an affiliate of the 49ers, with an inherent conflict of interest to handle the Stadium Authority’s financial interests in non-NFL events.

Response to Finding 4:

The City/Stadium Authority agrees with this finding that there are inherent conflicts of interest; however we also note that there are material advantages and efficiencies to having one entity manage the Stadium for both NFL and non-NFL events, and that this arrangement is not atypical for similar venues throughout the country. Of course, care must be taken to provide proper oversight and accountability where such an arrangement exists, and the City/Stadium Authority is committed to providing such oversight, with critical self-assessment and improvements where needed, going forward.

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Finding 5:

The City/Stadium Authority failed to ensure that the Management Agreement included a fair termination clause.

Response to Finding 5:

The City/Stadium Authority partially disagrees with this finding due to a lack of any clear definition of what would constitute a “fair termination clause.” City/Stadium Authority does agree that the termination clause is not ironclad and that, as a result, the Management Agreement performance standards have been challenging to enforce.

Finding 6a:

The City/Stadium Authority failed to ensure the Management Agreement provided the Stadium Authority with full access to financial records.

Response to Finding 6a:

The City/Stadium Authority partially disagrees with this finding. The Management Agreement does contain substantial terms for access to Stadium financial records. The contract language has not been the issue. The challenge has been with historic disagreements over the extent and implementation of such access, with ManCo resisting full access. Using existing contract language, such access has substantially improved, particularly with the advent of the new Financial Management System implemented in 2022.

Finding 6b:

ManCo’s financial transparency with the Stadium Authority has improved with the implementation in 2022 of a new financial management system.

Response to Finding 6b:

The City/Stadium Authority agrees with this finding.

Finding 6c:

Transaction-level testing generally supports ManCo’s reporting of financial results for non-NFL events.

Response to Finding 6c:

The City/Stadium Authority agrees with this finding.

Finding 7a:

The City/Stadium Authority failed to ensure that the original Management Agreement and the 2022 settlement agreement contained sufficient language requiring specific items or methods and performance metrics to prioritize Stadium Authority revenue generation. This has resulted in a failure to hold ManCo accountable for the success of non-NFL events.

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Response to Finding 7a:

The City/Stadium Authority partially disagrees with this finding.

The March 28, 2012 Management Agreement includes Standards of Care and Duties terms in regard to ManCo’s obligations to exercise prudent, commercially reasonable good faith efforts to maximize Stadium Authority revenues (sections 2.9 and 2.10). The Stadium Authority agrees that the Management Agreement does not otherwise include specific methods or performance metrics in regard to generating those Stadium Authority’s revenues. Further, the Stadium Authority made multiple efforts from and after 2017 to try to implement more specific methods and metrics in the Marketing Plans. The parties could not agree to the level of specificity, with ManCo ultimately relying on the operative Management Agreement terms in place. The 2022 Settlement Agreement further warrants and confirms ManCo’s duty of care obligations and the prioritization to maximize Stadium Authority revenues. By the time of the 2022 Settlement Agreement, the agreements for earlier money-losing events (like the College Football games) had ended or were ending, and ManCo prioritized booking more profitable events that Stadium Authority has held on and after 2023.

Finding 7b:

The Stadium Authority failed to use the prescribed Marketing Correction Plan per Article 3.3.1 of the Management Agreement process to hold ManCo accountable for unsuccessful non-NFL event bookings.

Response to Finding 7b:

The City/Stadium Authority disagrees with this finding.

On December 13, 2018, Stadium Authority served ManCo a Notice to provide a Management Correction Plan, pursuant to Article 3.3.1 of the Management Agreement. That Correction Plan Notice concerned ManCo’s communications and reports to Stadium Authority regarding non-NFL Event bookings, and ManCo’s procurement practices. ManCo’s non-substantive response to that Correction Plan Notice and ManCo’s booking of money losing non-NFL Events became one of the bases of Stadium Authority’s actions to terminate ManCo as the Stadium Manager in 2019 and 2020, and claims in Stadium Authority’s February 2022 Amended Cross-Complaint for Breach of Contract. The parties settled those claims with their August 31, 2022 Settlement Agreement, which included Stadium Manager’s express warranties regarding booking non-NFL Events and maximizing Stadium revenues [See Settlement Agreement Section 8(c)].

In addition to the December 2018 Notice of Correction Plan, Stadium Authority has made multiple efforts to hold ManCo accountable for unsuccessful non-NFL event bookings throughout the years, as exemplified by public discussions of the 2018, 2019, and 2020 Marketing Plan, and Stadium Authority’s hiring of an independent consultant to review the 2019 and 2020 Marketing Plans. These efforts will continue.

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Finding 8a:

There is no evidence showing that ManCo is negotiating to maximize Stadium Authority profits for non-NFL events.

Response to Finding 8a:

The City/Stadium Authority disagrees with this finding.

The Management Agreement provides for a Stadium Marketing and Booking Fee that is performance based. This structure is purposely designed to incentivize ManCo to maximize Stadium Authority profits. As a 49er entity affiliate, ManCo is also inherently motivated to ensure that the Stadium Authority is successful so that adequate funds will be available to contribute towards needed capital improvements to the venue shared with the 49ers, and that Stadium Authority monies will be available, as necessary, to timely pay the 49ers any entitlement they may have to reimbursement of public safety costs above the public safety cost threshold.

Also, it should be noted that Stadium Authority net revenues have increased substantially in recent years. Accordingly, City/Stadium Authority believes it is inaccurate to say that there is “no evidence” showing ManCo is negotiating to maximize Stadium Authority profits. That being said, City/Stadium Authority agree that ManCo’s obligation and commitment under the Management Agreement to maximize revenues and minimize costs in accordance with industry standards is at the core of their responsibilities and warrants ongoing and enhanced oversight by Stadium Authority staff and Board.

Finding 8b:

The Stadium Authority has failed to ensure the Management Agreement requires ManCo to incentivize its staff to prioritize the Stadium Authority’s success. There is no evidence that there are employee sales goals, metrics, or consequences related to unprofitable non-NFL events.

Response to Finding 8b:

The City/Stadium Authority disagrees with this finding.

The City/Stadium Authority contract and relationship is with ManCo, not its employees. It would not be typical, or we believe appropriate, for such a contract to include or require terms for how ManCo incentivizes or compensates its employees.

The contract based (and other) financial incentives for ManCo to maximize profits for Non-NFL events is discussed in the City/Stadium Authority response to Finding 8.a, above.

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Finding 9a:

StadCo/ManCo interprets the Stadium Lease to require non-NFL ticket surcharges be applied to tickets associated with Rental and Trophy Luxury Suites, but failed to remit all corresponding surcharges to the Stadium Authority.

Response to Finding 9a:

The City/Stadium Authority agrees that this is the correct interpretation of the application of the ticket surcharge; however, we disagree in part that StadCo/ManCo failed to remit all corresponding surcharges to the Stadium Authority.

The Stadium Authority staff was able to confirm that surcharges were applied to tickets associated with Rental and Trophy Luxury Suites. This confirmation was possible for the last two fiscal years through the Financial Management System; however, we are not able to verify payment of such amounts for prior years before the Financial Management System was implemented.

The Stadium Authority makes no assessment of ManCo’s interpretation of the Stadium Lease.

Finding 9b:

StadCo/ManCo interprets the Stadium Lease to not require non-NFL ticket surcharges to be applied to Seating Bowl complimentary tickets and Owners Club Luxury Suite tickets.

Response to Finding 9b:

The City/Stadium Authority agrees that this is how StadCo/ManCo interprets the existing agreements with respect to the application of the non-NFL event ticket surcharge. This matter is currently under review with Stadium Authority legal counsel to confirm, in all respects, whether or not this is the correct interpretation.

Finding 9c:

Suite ticket revenue submitted to the Stadium Authority does not account for suite ticket revenue for certain suite attendees.

Response to Finding 9c:

The Stadium Authority partially disagrees with this finding.

As noted in Finding 9a, Stadium Authority staff was able to confirm that surcharges were applied to tickets associated with Rental and Trophy Luxury Suites. This confirmation was possible for the last two fiscal years through the Financial Management System; however, we are not able to verify payment of such amounts for prior years before the Financial Management System was implemented.

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Finding 10a:

Most revenue from non-NFL events goes to the promoter, which is typical. StadCo can make money on luxury suites regardless of the event's profitability for the Stadium Authority.

Response to Finding 10a:

The City/Stadium Authority generally agrees with this finding in that event promoters and performers generally receive most non-NFL event revenues, and that StadCo revenues from luxury suites are not contingent on the profitability of the event to the Stadium Authority. Both StadCo and the Stadium Authority benefit from successful non-NFL events that generate substantial net revenues.

Finding 10b:

The Stadium Authority is unaware of the market revenue potential for non-NFL events at the Stadium. The Stadium Authority does not know what net revenues should be expected for non-NFL, ticketed and non-ticketed, events.

Response to Finding 10b:

The City/Stadium Authority partially disagrees with this finding. The Stadium Authority released a Request for Proposals and has awarded a contract to an independent consultant to study the market potential trends and financial performance for stadium events and concerts at publicly owned venues.

The City/Stadium Authority will attempt to obtain market-based revenue information. It is important to note that information for public facilities will be easier to attain, and while we solicit information from privately-owned stadiums, it will be up to the discretion of those facilities to release such information.

Further, it is important to note that the City/Stadium Authority now has 10 years of experience with operations at the Stadium and has accumulated substantial knowledge over this time period on the large stadium market generally, and the market revenue potential for Levi's Stadium. That being said, this is an important issue, and City/Stadium Authority is committed to developing a deeper understanding of such matters, augmented by the input of industry professionals.

Finding 11:

Per the Stadium Lease, the Stadium Authority failed to negotiate pertinent details about buffet costs in the contract, such as parameters on cost thresholds and alcohol. The Stadium Authority accepted responsibility for buffet costs but failed to follow up when the expense was omitted from ManCo's budgets.

Response to Finding 11:

The City/Stadium Authority partially disagrees with this finding. Although the buffet costs language in the Stadium Lease is not extensive, the understanding of the City/Stadium Authority staff at the time of negotiations for the original Stadium agreements was that

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buffet costs would be covered by Facility Rent paid by StadCo to the Stadium Authority. In hindsight, particularly since current City/Stadium Authority staff was not involved, it would not be fair, or useful, to now characterize this as a failure in City/Stadium Authority negotiations or “follow-up.” It should be noted that any contract term ambiguity on buffet costs was addressed under the terms of the May 2024 Settlement Agreement with revisions to the Stadium leases that now impose clear limits (caps) on buffet cost reimbursements and add provisions for Stadium Authority audits of such costs.

Finding 12:

A Multi-Use Community Facility at the Stadium was one of Measure J’s original promises and was memorialized in the Stadium Lease. The current designated space for the Community Room at the Stadium is not easily accessible nor is it pragmatic for most civic events.

Response to Finding 12:

The City/Stadium Authority agrees with this finding.

Finding 13:

The FIFA World Cup commitments for the City and the Stadium Authority were made without consultation with the City/Stadium Authority.

Response to Finding 13:

The City/Stadium Authority agrees with this finding. Current staff were not involved at the time, and the Stadium Authority does not have a record of substantive communications between staff and StadCo/ManCo regarding the original proposed terms for the FIFA World Cup event.

RECOMMENDATIONS

Recommendation 1:

Given the long-term nature of the various agreements, the 49ers’ sophistication, and the history of past disputes, the City/Stadium Authority should engage advisors with specialized knowledge to determine options to level the playing field.

Response to Recommendation 1:

The recommendation has been partially implemented and will continue to be implemented going forward.

The Stadium Authority has and will continue to hire consultants with specialized expertise **in areas including the following:** legal, marketing, audit and financials, systems implementation, and security.

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Recommendation 2:

The City should commission its own report to determine the Stadium's actual economic impact over the last decade. This recommendation should be implemented by July 1, 2025.

Response to Recommendation 2:

The recommendation requires further analysis before it can be implemented.

There are clearly “indirect” economic impacts from Stadium operations that benefit the City of Santa Clara and the greater region, (likely increases in City transit occupancy taxes and sales taxes being the most obvious). However, looking at such information in hindsight and determining the amount of such revenues that should be ascribed to Stadium Authority operations would be extremely difficult. (See also, City/Stadium Authority response to Finding 2, above.) Before it proceeds with a comprehensive economic impact analysis, the City/Stadium Authority intends to analyze the appropriate methodology and time period for such an analysis. This analysis will be completed within the next 6 months. Based on the results of this analysis, the City Council/Stadium Authority Board will proceed with a comprehensive economic analysis of Stadium direct and indirect economic impacts.

Recommendation 3:

The May 2024 settlement agreement gives the Board/City Council new flexibility to divert Excess Revenue from the Stadium Authority to the City’s General Fund. When diverting Excess Revenue, the Board/City Council should be mindful of the long-term financial health of the Stadium Authority and request the Treasurer to produce a long-term plan for funding all required Stadium reserves, including reserves for capital improvements. This recommendation should be implemented by October 31, 2024.

Response to Recommendation 3:

The City Council/Stadium Authority Board agrees with this recommendation, and it will be implemented.

The Treasurer will provide a report to the Stadium Authority Board showing a current projection of the long-term plan. In addition, a Facilities Condition Assessment is currently underway which will help to inform the Stadium Authority Board and staff of the appropriate level of capital improvement reserves necessary to maintain the Stadium. A recommendation will be brought forward upon completion of the Facilities Condition Assessment and for presentation to the Board during the next Budget Study Session in early 2025.

Recommendation 7:

The Stadium Authority should retain the expertise needed to meaningfully weigh in on ManCo’s Marketing Plan to ensure that the Stadium Authority’s profitability is maximized. The Stadium Authority should also establish a yearly audit procedure to measure and analyze each season's Marketing Plan against its outcomes, updating

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future plans based on this analysis. This recommendation should be implemented by December 31, 2024.

Response to Recommendation 7:

The recommendation will be implemented within the next 6 months.

The Stadium Authority retained the services of an outside expert to review ManCo’s Marketing Plan in 2021 and will do so in the future.

As noted in our response to Finding 10b, above, the Stadium Authority released a Request for Proposals and has awarded a contract to an independent consultant to study the market potential trends and financial performance for stadium events and concerts at publicly-owned venues.

The Stadium Authority will attempt to obtain market-based revenue information. It is important to note that information for public facilities will be easier to attain; while we solicit information from privately-owned stadiums, it will be up to the discretion of those facilities to release such information.

The Stadium Authority also plans to hire consultants in the future to assist with review and input for each year’s Marketing Plan. Stadium Authority staff will also review the annual Marketing Plan against performance and industry baselines. **Note**, such a review is technically not an “audit” and is better characterized as a performance evaluation.

Recommendation 8:

As part of the Marketing Plan, Stadium Authority should require that ManCo produce a marketing plan that maximizes profits for the Stadium Authority and incentivizes ManCo marketing staff to prioritize the profitability of the Stadium Authority. This recommendation should be implemented by December 31, 2024.

Response to Recommendation 8:

The recommendation has been partially implemented, and additional efforts will be taken to provide ongoing oversight of ManCo’s Marketing Plan going forward. Please see our aforementioned responses to Findings 8b and 10b, as well as Recommendation 7.

It is also important to note that the sole objective of the Marketing Plan is not to maximize profits. There are other considerations, such as the impact on the City’s reputation and booking of events that pose significant public safety and community impact challenges.

Notwithstanding, the Stadium Authority believes that maximizing profits is an important issue and this will continue to be an ongoing matter that we address through oversight of ManCo’s activities.

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Recommendation 9:

The Stadium Authority should review and ensure that it receives all a) non-NFL event ticket surcharges for all event attendees, and b) ticket revenue for all suite attendees owed to the Stadium Authority. This recommendation should be implemented by October 31, 2024.

Response to Recommendation 9:

The recommendation has been implemented to the extent possible and the Stadium Authority’s ability to provide oversight and confirm receipt of appropriate revenue has greatly improved in the last two years since the implementation of a Financial Management System.

Stadium Authority staff has access to ManCo’s Financial Management System and currently reviews non-NFL event ticket surcharge and ticket revenue for suite tickets sold to ensure that Stadium Authority is receiving these revenues that are owed. Stadium Authority staff will continue to review this annually as part of the year end close and review of quarterly revenue information.

Recommendation 10:

The Stadium Authority should hire a professional third-party consultant, not affiliated with the 49ers, to analyze the reasonable expectations for non-NFL events such as:

- An analysis of the market revenue potential for non-NFL events at the Stadium.
- An analysis of ManCo's Marketing Plans, comparing successful (FY 2022-23) and unsuccessful (FY 2017-18) bookings to potential market revenue.
- A plan with measurable objectives and incentives for ManCo to achieve these results.

This recommendation should be implemented by December 31, 2024.

Response to Recommendation 10:

A portion of this recommendation has been implemented and will continue to be a part of ongoing Stadium Authority operations and oversight; one portion of this recommendation is not warranted or reasonable, as explained below.

As noted above, the Stadium Authority has and will continue to take efforts to enhance oversight of ManCo’s Marketing Plan. Please see our aforementioned responses to Findings 8b and 10b, as well as Recommendations 7 and 8.

In regard to attempting to conduct a comparative analysis of ManCo's Marketing Plans with regard to the successful FY 2022-23 and unsuccessful (FY 2017-18) bookings and revenue, we believe that such an effort will detract from needed ongoing oversight and Stadium Authority operations. Significant resources and time have already been spent by staff, legal counsel, and the Civil Grand Jury attempting to discern the rationales for prior years’ performance with limited to no success. Given that revenues are at an all-time high and major enhancements have been made in the areas of data accessibility

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and oversight, we believe that future time is best spent on efforts for ongoing oversight and Stadium Authority operational issues.

Recommendation 12:

The Stadium is not an appropriate location for a Community Facility. The Stadium Authority should work with the 49ers to identify and procure an alternative space for community needs. This recommendation should be implemented by June 30, 2025.

Response to Recommendation 12:

The recommendation has not yet been implemented and further analysis is required to determine the existence and viability of alternative locations that are acceptable to both parties.

City/Stadium Authority staff will aim to discuss with StadCo/ManCo and identify alternatives by June 30, 2025. However, it is important to note that if the agreed-upon alternative includes relocation and/or facility modifications, it is unlikely that such changes can be made (implemented) by June 30, 2025.

Recommendation 13:

The Stadium Authority should insist on consultation and prior notice before any major Stadium event commitments are made. This recommendation should be implemented by December 31, 2024.

Response to Recommendation 13:

This is a matter of ongoing discussions between Stadium Authority and ManCo, with improved communications and opportunities for input already implemented. The Stadium Authority intends to further implement this recommendation as follows: Within the next two Non-NFL Event booking cycles, Stadium Authority staff’s intent is to formalize this consultation and notice process, including Stadium Authority opportunities to approve certain major events in advance.