



## 2015-2016 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

### THE CITY OF SANTA CLARA, THE SANTA CLARA STADIUM AUTHORITY, LEVI'S STADIUM, AND MEASURE J

#### Background

The Santa Clara County Civil Grand Jury (Grand Jury) received a complaint concerning possible nonconformance with certain requirements of The Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J). Allegations were also brought to the Grand Jury's attention concerning the accuracy of time charged by City of Santa Clara (City) employees for stadium business.

The City, with a population of approximately 126,000, is located in Silicon Valley and has a convention center, hotels, the Great America amusement park, and Levi's Stadium (Stadium). The City has an appointed City Manager and part-time elected Mayor and City Council. In addition to serving as members of City committees and agencies, the Mayor and City Council also serve as the voting board of the Santa Clara Stadium Authority (Stadium Authority).

In June 2010, voters of the City passed Measure J, which authorized the formation of the Stadium Authority to oversee the design and construction of the Stadium, to be its owner/landlord, and to oversee all business related to Stadium maintenance and operation. It was also intended to insulate the taxpayers of the City from financial burdens beyond those specified in the ballot measure.

The Stadium Authority entered into a project management agreement with the Forty Niners Santa Clara Stadium Company LLC (StadCo) in accordance with Measure J. The agreement authorized StadCo to direct and manage the design and construction of the new 68,500-seat stadium on City-owned land subject to oversight by the Stadium Authority. The project management agreement also stipulated that the design would be developed by StadCo in consultation with the Stadium Authority and the City, and would be subject to public comment.

Construction began in April 2012, and the Stadium was opened in July 2014. During construction the Stadium Authority leased the stadium to StadCo and sold the stadium naming rights to Levi Strauss & Company. The stadium is now known as Levi's Stadium.

The Stadium Authority's governing board is comprised of the elected Mayor as chairperson and the six elected City Council members. Measure J stipulated that the Executive Director position of the Stadium Authority be the City Manager and the Stadium Authority Counsel be the City Attorney. City employees fill the other three management positions.

Listed below are the board members and managing officers of the Stadium Authority serving when the Grand Jury began its investigation (\*no longer serving or currently in a different role).

Governing Board:

- \*Jamie Matthews, Chairperson/Mayor
- Dominic J. Caserta, City Council member
- Debi Davis, City Council member
- \*Lisa Gillmor, City Council member
- Pat Kolstad, City Council member
- Jerry Marsalli, City Council member
- Teresa O'Neil, City Council member and Vice Mayor

Managing Officers/City Employee Role:

- \*Julio J. Fuentes, Executive Director/City Manager
- Richard E. Nosky, Jr., Stadium Authority Counsel/City Attorney
- Rod Diridon, Jr., Secretary/City Clerk, City Auditor
- Gary Ameling, Finance Director, Treasurer, Auditor/City Finance Director
- Ruth Shikada, Assistant Executive Director/Economic Development Officer, Assistant City Manager

Since this Grand Jury investigation began, several changes have been made that directly affect the composition of the Stadium Authority board and management.

- Jamie Matthews resigned as Mayor on February 8, 2016.
- City Council member Lisa Gillmor was appointed Mayor by the City Council on February 17, 2016 to serve the remainder of Jamie Matthews' term expiring November 2018.
- Kathy Watanabe was appointed by the City Council on March 7, 2016 to serve the remainder of Lisa Gillmor's term expiring November 2016.
- On March 3, 2016, Julio Fuentes announced his resignation as City Manager effective May 31, 2016.
- On March 24, 2016, the City Council formally accepted Julio Fuentes' resignation and placed him on paid leave until May 31, 2016.
- Ruth Shikada was appointed Acting City Manager by the City Council effective March 24, 2016.
- Rajeev Batra, Director of Public Works/City Engineer was appointed long-term Acting City Manager by the City Council replacing Ruth Shikada effective April 6, 2016.

Listed below is the Stadium Authority organization as of May 2016 (\*new role or person).

Governing Board:

- \*Lisa Gillmor, Chairperson/Mayor
- Dominic J. Caserta, City Council member
- Debi Davis, City Council member
- Pat Kolstad, City Council member
- Jerry Marsalli, City Council member
- Teresa O'Neil, City Council member and Vice Mayor
- \*Kathy Watanabe, City Council member

Managing Officers/City Employee Role:

- \*Rajeev Batra, Acting Executive Director/Acting City Manager
- Richard E. Nosky, Jr., Stadium Authority Counsel/City Attorney
- Rod Diridon, Jr., Secretary/City Clerk and City Auditor
- Gary Ameling, Finance Director, Treasurer, Auditor/Director of Finance, Assistant City Manager
- Ruth Shikada, Assistant Executive Director/Economic Development Officer, Assistant City Manager

The Stadium Authority leased the Stadium to StadCo for an initial term of 40 years with four 5-year lease options. The Stadium Authority has contracted with the Forty Niners Stadium Management Company LLC (ManCo), an affiliate of StadCo, to manage the Stadium. The contract has an initial term of 25 years with a 15-year renewal option. The Stadium Authority pays ManCo for services related to stadium operations on behalf of the Stadium Authority.

Games played during the National Football League (NFL) season (August through January) require City employees to provide public safety and other support activity such as traffic control, parking, crowd control, paramedics, on-call fire, and third party vendors. Additional public safety personnel from other jurisdictions are also required and are contracted for and paid by the City. The City is ultimately reimbursed for these costs.

Other recreational events, parties, and corporate events are also conducted at the Stadium during the NFL season and off-season. All expenses related to these activities are borne by event sponsors. To date, there have been hundreds of these events.

Large-scale events also take place during the NFL season and off-season. Concerts (for example, Taylor Swift and Beyoncé) and sporting events (college football, soccer, WrestleMania, Supercross, and outdoor National Hockey League

games) are the most common. These events require many of the same public safety and support services as NFL games.

## **Discussion**

The Grand Jury investigated the following:

- Financial compliance to Measure J
- Management structure of the Stadium Authority
- Reimbursement process for costs incurred by the City for Stadium business
- Public Safety cost threshold for NFL games

### **Measure J Compliance**

While there have been financial reports and audits related to the operation of the Stadium, to date no audit has been completed to assure City taxpayers that all transactions are in compliance with Measure J. On March 22, 2016, the Stadium Authority approved funding for a third-party Measure J compliance audit.

### **Stadium Authority Management Structure**

The management of the Stadium Authority is performed by City employees serving in the critical positions of Executive Director, Counsel, Finance Director, Treasurer, and Auditor. Measure J specifies that the Executive Director position be filled by the City Manager and the Stadium Authority Counsel position be filled by the City Attorney.

The Grand Jury learned from interviews that these City employees typically spend ten to fifteen percent of their time on Stadium Authority business. During its investigation the Grand Jury was surprised by the significant lack of understanding of Stadium Authority operational and financial details by those responsible for its management. The response to questions such as, "How do you assure that the City's general and enterprise funds are protected from subsidizing the operation and maintenance of Levi's Stadium as stated in Measure J" was consistently "I don't know."

The City's Finance Director also serves as the Stadium Authority's Treasurer and Auditor. The Grand Jury is concerned about the oversight position of auditor being held by the Finance Director. The Stadium Authority should adopt the same structure as the City, where the auditor position is separate and independent from the Finance Director to prevent the appearance of any conflict of interest.

## **City General Fund Use for Operation and Maintenance of the Stadium**

It is unclear whether unreimbursed City general funds are used for Stadium operations and maintenance in violation of Measure J.

The Grand Jury received information that some city employees were told by superiors to improperly charge Stadium activities to the City. The Grand Jury interviewed numerous people but was unable to corroborate this information. A comprehensive Measure J compliance audit should include a review of the billing and tracking procedures used when City employees perform Stadium business.

## **Public Safety Cost Threshold**

Public Safety is both important and expensive for any large event. The increase of worldwide terrorism has resulted in heightened security with related costs that will continue to escalate.

Measure J placed a threshold on public safety cost reimbursements of \$170,000 per NFL game beginning with the 2014 season and increasing four percent annually. StadCo has been reimbursing the City up to this public safety cost threshold. According to publicly available reports, the actual public safety costs for the ten games of the 2014 NFL season exceeded the \$1.7 million threshold by over \$600,000. As stipulated in Measure J Attachment C, Principal Terms of Public Safety Agreement, these overages were paid from the Measure J Stadium Authority Discretionary Fund (Discretionary Fund).

The Discretionary Fund is partially funded by non-NFL ticket surcharges. If the Discretionary Fund exceeds one million dollars, a review of the fund by the Stadium Authority may result in a portion of the declared excess being transferred to the City general fund.

For a concert or other non-NFL events at the Stadium, the City is reimbursed by the promoter for all public safety costs it incurs. These include police, fire, traffic management, and parking support.

A provision in Measure J and the Stadium lease agreement between StadCo and the Stadium Authority provides for a renegotiation of the public safety reimbursement threshold with StadCo after any three consecutive years of public safety cost overages. If the overages continue through the 2016 NFL season, the City may invoke this renegotiation clause.

## **Conclusions**

The Grand Jury was given information that City employee hours spent on Stadium

operations and maintenance may have been improperly allocated to the City. This has also been widely reported in the media. The Grand Jury interviewed many people but was not able to verify this assertion. As discussed above, the City has already begun efforts to have a comprehensive third-party audit of Measure J, and the Grand Jury recommends that the audit include a review of City employees' allocation of time between Stadium and City business.

The Grand Jury is concerned about the oversight position of Stadium Authority Auditor being held by the Stadium Authority Finance Director. The Stadium Authority should adopt the same structure as the City, where the auditor position is separate and independent from that of the finance director to prevent the appearance of any conflict of interest.

If the public safety cost overage continues through the 2016 NFL season, the City should exercise its contractual right under the stadium lease agreement to open negotiations with the Stadium Authority and StadCo for a possible increase in the public safety cost threshold. This is also stated in Measure J.

A comprehensive audit focused on compliance with Measure J and the use of City of Santa Clara general funds should be conducted immediately. The audit should include a review of the billing and tracking procedures used when City employees perform Stadium business. The results of the audit should be presented to the Santa Clara City Council in open session.

## **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.

#### **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.

#### **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.

#### **Recommendation 1d**

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

### **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.*

### **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.



## Glossary

**Forty Niners Santa Clara Stadium Company LLC:** a Delaware limited liability company formed as an affiliate of the San Francisco Forty Niners NFL football team.

**Forty Niners Stadium Management Company LLC:** a Delaware limited liability company formed as an affiliate of the Forty Niners Santa Clara Stadium Company LLC. Also referred to as ManagementCo or Stadium Manager.

**Levi's Stadium:** a sports venue that may also be used for concerts, other spectator events, and private and corporate events. The stadium is located at 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054.

**ManCo:** Forty Niners Santa Clara Stadium Management Company LLC.

**Measure J:** Santa Clara Stadium Taxpayer Protection and Economic Progress Act.

**Santa Clara Stadium Authority:** The managing entity created by Measure J to construct and own Levi's Stadium while insulating the City of Santa Clara taxpayers from any financial liability deriving from Levi's Stadium construction, maintenance and operation.

**Santa Clara Stadium Taxpayer Protection and Economic Progress Act:** Ballot Measure J, passed by the voters of the City of Santa Clara in June 2010. This measure altered the City of Santa Clara charter and created the Santa Clara Stadium Authority.

**Silicon Valley:** An area of California including parts of Santa Clara County, San Mateo County, and Alameda County and containing a large concentration of high-tech companies.

**StadCo:** Forty Niners Santa Clara Stadium Company LLC.

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## **Interviews**

Eleven interviews were conducted between November 11, 2015 and March 9, 2016.

This report was **ADOPTED** by the 2015-2016 Santa Clara County Civil Grand Jury on this 15 day of June, 2016.



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Gil Zamora  
Foreperson