City of Santa Clara
The Center of What's Possible

AGENDA ITEM #: 8.C

AGENDA REPORT

Date: August 24, 2017

To: Stadium Authority Board

From: Stadium Authority Executive Director

Subject: Comprehensive Audit of Stadium

EXECUTIVE SUMMARY

On July 25, 2016, Stadium Authority Board retained the services of Harvey M. Rose Associates, LLC (Auditor) to perform an audit of Stadium operations to ensure compliance with the 2010 voter approved Measure J. The Board received a presentation from the Auditor at the study session earlier today.

The final audit report has findings, conclusions and recommendations to improve billing, invoicing, and other such processes so that no city funds remain unreimbursed for both NFL and Non-NFL events at the Stadium.

ADVANTAGES AND DISADVANTAGES OF ISSUE

Acceptance of the report with recommendation will provide guidance to the City to be in full compliance of Measure J.

ECONOMIC/FISCAL IMPACT

While the fiscal impact cannot be quantified, the adoption of the report and implementation of recommendation will ensure full reimbursement to the City's General Fund for costs associated with Stadium work.

RECOMMENDATION

That the Authority accept the final report titled, "Comprehensive Audit of Stadium Authority Finances" dated August, 2017 prepared by Harvey M. Rose Associates, LLC.

APPROVED:

Rajeev Batra

Rajeev Batra
Executive Director for Stadium Authority

Documents Related to this Report:
1) Comprehensive Audit of Stadium Authority Finances

Comprehensive Audit
Of
Stadium Authority Finances

Prepared for the
Stadium Authority Board
Santa Clara Stadium Authority
City of Santa Clara

Prepared by:

Harvey M. Rose Associates, LLC

August, 2017

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HMR

August 21, 2017

Chair Lisa Gilllmor and Members
Stadium Authority Board
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, California 95050

Dear Chair Gillmor and Members of the Stadium Authority Board:

Harvey M. Rose Associates, LLC (HMR) is pleased to submit this report on our Comprehensive Audit of Stadium Authority Finances. This report presents our audit findings, conclusions and recommendations pertaining to the Santa Clara Stadium Authority.

Thank you for the opportunity to serve your Board. Please contact us at any time if you have questions or would like further information about the contents of this report.

Sincerely,

Fred Brousseau

Fred Brousseau
Principal

Copy: Rajeev Batra, Interim Executive Director

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Executive Summary

Harvey M. Rose Associates, LLC was retained by the City of Santa Clara to conduct a *Comprehensive Audit of Stadium Authority Finances.* The Stadium Authority is a separate entity from the City of Santa Clara, governed by a Stadium Authority Board which consists of the City Council, and managed by an Executive Director (the City Manager). The Stadium Authority was responsible for building and now owns and operates Levi's Stadium. Because the Stadium Authority is a separate legal entity from the City, the City is not liable for the debts or obligations of the Stadium Authority.

The goals of this audit were as follows:

- Review City policies to ensure compliance with Measure J.
- Confirm that all City resources allocated to Santa Clara Stadium Authority activities have been fully reimbursed.
- Identify all revenues and expenses associated with non-NFL events at the Stadium, and confirm that the City has been fully reimbursed for non-NFL events.
- Provide information on non-NFL event revenues and expenses so that the Stadium Authority Board has a more complete understanding of the financial performance of Levi's Stadium.
- Validate parking receipts and off-site parking fees from City-owned property used for NFL and non-NFL events.

Measure J, also known as The Santa Clara Stadium Taxpayer Protection and Economic Progress Act, was passed by the voters of the City of Santa Clara on June 8, 2010. Measure J established the framework and requirements for the construction and operation of a Stadium suitable for professional football by adding Section 17.20 to the City Code. A Joint Exercise of Powers Agreement was executed in February 2011 between the City and the Redevelopment Agency of the City of Santa Clara to establish the Santa Clara Stadium Authority.

Audit Limitation: One of the objectives of this audit, review of non-NFL event revenues and expenses, could not be conducted as originally anticipated. Further, a number of other revenue and expense items could not be reviewed and reported on because the Forty Niners Stadium Management Company (ManCo), the company under contract with the Stadium Authority and the Stadium Management Company to manage the Stadium, would not allow the audit team to review and report on their records for non-NFL events or parking revenue without signing a non-disclosure agreement that would have prohibited presentation of information from those records in a public document such as this audit report. We did not sign such an agreement and,

after that request was made, we did not review or analyze any records maintained by ManCo or include their contents in this report.

Summary of audit results

Compliance with key agreements

- **Numerous aspects of the agreements between the Stadium Authority and the 49ers entities (Forty Niners 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 plan and budget documents pertaining to the operations and costs of the Stadium. Specific required documents which the Stadium Authority has no record of receiving and approving during the audit review period include:**

  1) **An annual Operation and Maintenance Plan, to be prepared by ManCo, detailing the required condition of the Stadium and incorporating:**

     a. **a draft and final one year and five year projected shared Stadium expense budget,**
     b. **an annual public safety budget, and**
     c. **a draft one year and five year projected capital expenditure budget.**

  2) **A parking plan.**

  3) **An annual statement of Stadium operations prepared by a third party qualified certified public accountant detailing Stadium revenues and expenses, shared expenses, net non-NFL event revenue, capital expenditures, distributions to and from the various Stadium Authority funds and reserves, and other financial information.**

  4) **A detailed Stadium marketing plan.**

- **While an Operation and Maintenance Plan and other documents were provided to the Stadium Authority Executive Director while this audit was in progress, there are no records showing they were provided to the Stadium Authority during the audit review period. The documents provided after the audit review period have not been formally provided to the Board nor has a determination been made regarding whether they satisfy the requirements in the agreements.**

- **The Stadium Authority did not establish effective contract administration procedures during the audit review period to ensure and report contract compliance to the Board and public in a number of key areas, including monitoring the Stadium Manager to ensure it provided all information and planning documents to the Stadium Authority as required in the various agreements and that those documents were presented or reported on to the Board.**

- **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.**

Fiscal issues

- **We estimate that at least $229,239 of City staff time was spent on Stadium activities during the audit review period but not reimbursed by Stadium sources. As a result, the City's General Fund covered Stadium costs in violation of Measure J.**

- **City staff identified additional time on Stadium work that was potentially unreimbursed but City records did not allow for estimating the time and cost of those reported activities as part of this audit.**

- **The Fire Department conducted its own analysis of unreimbursed staff time spent on Stadium activities before this audit commenced. That analysis identified, and the General Fund was reimbursed for, staff costs valued at $92,932.73, which was subsequently reimbursed by the 49ers entities and the Stadium Authority.**

- **The General Fund was retroactively reimbursed another $21,525.62 by the Stadium Authority due to a provision in the Memorandum of Understanding for Fire Department managers, allowing for retroactive pay for some of their Stadium-related work that had previously gone unreimbursed.**

- **Since the City costs retroactively reimbursed to the General Fund were also covered by our analysis, subtracting these amounts from our estimated total costs leaves $114,781 in net unreimbursed costs for the audit review period.**

- **A City Manager Directive distributed to all City staff in August 2016 was the first citywide communication to staff regarding charging for Stadium-related work. This should be contributing to a reduction or elimination of unreimbursed City staff time for Stadium-related work.**

- **Approximately $894,228 in Construction Fund monies were used to cover public safety City staff time spent on Stadium activities during FYs 2014-15 and 2015-16. This avoided using the General Fund for these activities but this funding source was not disclosed in those years' budgetary documents. The costs covered were never presented to the Stadium Authority Board for approval.**

- **A review of City parking revenues found that the City has not been paid $718,803.37 by StadCo for use of the Santa Clara Gold and Tennis Club for Stadium parking through July 2016. This matter between StadCo and the City was still not resolved as of the writing of this report.**

A summary of these fiscal issues is as follows:

Issue	*Amount*
Not all City staff time spent on Stadium activities was reimbursed during the audit review period.	Estimate of at least $229,239 in unreimbursed City staff costs.
Prior to the audit, a Fire Department review identified $92,932.73 in in unreimbursed staff costs for which the General Fund has since been reimbursed. General Fund was retroactively reimbursed for Fire Department manager costs of $21,525.73. Reimbursed costs also identified by independent audit analysis. After reimbursement, net costs identified by audit are $114,781.	$114,781 net unreimbursed City staff costs.
Construction Fund monies used for public safety and operations costs but not disclosed in those years' budgetary documents.	$894,228.
City has not yet received $718,803.37 in disputed fees for use of Golf Course for Stadium parking in 2016.	$718,803.37 in unpaid parking fees.

Deficiencies and lack of transparency in Stadium Authority budgetary documents

- **Stadium Authority budget documents and financial status reports provided to the Board were insufficient during the first two years of Stadium operations. Key information critical to the Stadium Authority's and City's finances were not presented in the budgetary documents.**

- **Though non-NFL events represent tens of millions of dollars in Stadium Authority revenues and costs each year, the only information provided in the Board's budgetary documents is a single line item: net revenue from non-NFL events, reported as $5.2 million for FY 2014-15 and $6 million for FY 2015-16.**

- **The minimal information reported on non-NFL event revenue and costs does not provide the Board or staff with enough information to assess the costs, revenues, and profitability of non-NFL events and to determine what should potentially be changed to ensure maximum net revenue. This is important not only for the Stadium Authority's finances, but for the City's General Fund as well since half of the revenue from non-NFL events is paid to the City.**

- **Transfers between the Stadium Authority's Operating Fund, Capital Expenditure Fund, Debt Service Fund and Discretionary Fund were incompletely and inconsistently reported in budgetary documents during the audit review period. This put the Board at a disadvantage in approving and reviewing funds available for purposes such as capital improvements and repairs, payment of debt service, and others.**

  - **The transfer of and use of approximately $100 million from the Stadium Construction Fund to the Debt Service Fund for debt payoff in FY2014-15 and 2015-16 was not clearly presented in the budgetary documents.**

- **Though required in the Stadium Lease, the Stadium Authority's budgetary documents lack a comprehensive public safety budget for NFL and non-NFL events. Such a budget should detail all Stadium public safety funding sources and expenses. Actual funding amounts and costs should also be fully and regularly reported to the Board so it can assess the public safety agencies' performance and management of their Stadium work and to ensure management accountability for public safety operations.**

- **The Stadium Authority budgets for FY 2016-17 and FY 2017-18 have improved in terms of information presented.**

Stadium procurement

- **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.**

Stadium parking revenue and management

- **The Stadium Authority lacks controls and procedures to verify the accuracy of 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. 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.**

How report is organized:

A summary of findings is presented at the beginning of each report section, followed by more detailed discussions of methods used and data analyzed. Specific findings and recommendations are provided in each section subsequent to the presentation of pertinent information. Compilations of all findings and recommendations are presented at the end of each section.

Introduction

Harvey M. Rose Associates, LLC was retained by the Santa Clara Stadium Authority to conduct a *Comprehensive Audit of Stadium Authority Finances.* Measure J, approved by Santa Clara voters in 2010, called for the creation of the Santa Clara Stadium Authority (Stadium Authority) to own, develop, construct, operate, and maintain a new football stadium to be leased to the San Francisco 49ers. The City of Santa Clara (City) and the City of Santa Clara Redevelopment Agency entered into a Joint Exercise of Powers Agreement (JPA Agreement) that established the Santa Clara Stadium Authority. The JPA Agreement was later amended to add the Bayshore North Project Enhancement Authority as a member of the Stadium Authority. After the dissolution of redevelopment agencies throughout California as a result of Assembly Bill No. XI 26, the Successor Agency of the City of Santa Clara assumed the obligations of the City of Santa Clara Redevelopment Agency under the JPA Agreement in 2012. The Stadium Authority exists as a public body that is separate and distinct from the City of Santa Clara and is structured so that the City is not liable for the debts or obligations of the Stadium Authority.

During the 2012 fiscal year, the Stadium Authority and Forty Niners SC Stadium Company LLC (StadCo), a Delaware limited liability company, entered into a series of agreements in connection with the construction of the Stadium. Stadium construction began in April 2012 and was substantially completed in July 2014.

The City owns the land upon which the Stadium was constructed and leases it to the Stadium Authority under a ground lease. The Stadium Authority owns the Stadium, but StadCo owns certain tenant improvements. The Stadium Authority leases the Stadium to StadCo for the six-month NFL season, August through January, for an initial lease term of 40 years. The Stadium Authority and StadCo have engaged Forty Niners Stadium Management Company LLC (ManCo), an affiliate of StadCo, to manage the Stadium year-round under the Stadium Management Agreement, which has an initial term of 25 years plus a 15 year renewal option.

Scope

The purpose of the audit was to:

1. Review policies, procedures, and financial and personnel data to verify that City General Fund monies were not expended for any Stadium Authority activities, which is prohibited under Measure J;

2. Confirm that City resources allocated through the General fund have been reimbursed from Stadium Authority monies; and
3. Analyze and report revenues and expenses associated with non-NFL events to provide a more complete understanding of the financial performance of the Stadium, allowing the Stadium Authority Board to direct strategic planning for operation of the Stadium.

The audit was to cover:

1. City polices on ensuring compliance with Measure J;
2. City procedures defining the use of City employees for Stadium Authority Activities and the recording of City employee time in personnel and accounting systems;
3. City personnel time card and account code crosschecks to validate that employee time spent on Stadium Authority activities was billed to the Stadium Authority;
4. A calculation of hours spent by categories of employees on Stadium Authority activities;
5. The allocation of material costs at the Stadium between the Stadium Authority and the 49ers legal entities;
6. A validation of parking receipts and off-site parking fees from City-owned property used for NFL and non-NFL events; and
7. A detailed breakout and validation of Stadium Authority revenues and expenses from non-NFL events.

The scope of the audit covered two full fiscal years, from April 1, 2014 to March 31, 2016, as the Stadium Authority fiscal year runs from April 1 to March 31. Three additional months, through June 30, 2016, were included in our analysis of unreimbursed staff time to allow us to sample from more non-NFL events and to incorporate the impact of the passage of time on the amount of time staff allocated to routine Stadium-related activities.

Methodology

We performed the following audit procedures:

- Conducted an entrance conference with Stadium Authority Board members and management.
- Conducted initial interviews with the Finance Director and staff, the City Attorney, and outside counsel.

- Conducted a survey of all City department heads to determine the role their departments play in supporting the Stadium.
- Conducted interviews with department heads and staff in the City departments most involved in Stadium related activities.
- Conducted interviews with representatives from StadCo and ManCo and made several site visits to the Stadium.
- Reviewed the relevant agreements in connection with the Stadium including the Ground Lease, the Stadium Lease Agreement, the Stadium Operations Agreement, the Stadium Management Agreement, the Joint Exercise of Powers Agreement, the Design Build Construction Agreement, the Construction Agency Agreement, Parking Rights Agreements, the Deposit and Disbursement Agreement, the Naming Rights Agreement, the Non-Relocation Agreement, and the Disposition and Development Agreement, among others.
- Assessed Stadium Authority's and the 49ers entities' compliance with pertinent agreements.
- Reviewed public information and documents and staff work papers related to the Stadium Authority operating budget and finances, including Stadium Authority budgetary documents (proposed budgets and quarterly financial status reports), annual financial statements audited by a certified public accountant, online presentations, and City Council records.
- Reconciled the Stadium Authority's profit and loss statements for FY 2014-15 and FY 2015-16, which served as base documents for the annual audit, to the budget documents and the quarterly financial status reports for the same fiscal years.
- Identified the authority for each line item in the operating budget to verify compliance with corresponding governing agreements or contracts.
- Selected a sample of Stadium procurement transactions from FY 2014-15 and FY 2015-16 and reviewed these transactions and supporting backup documentation on-site with City Finance Department staff.
- Surveyed and interviewed staff in all City departments, some anonymously as allowed for by the City for this audit, to identify potential areas of work for the Stadium that may have gone unreimbursed. Interviewed staff and reviewed documents in various departments about timekeeping practices and methods of identifying time requirements for pertinent tasks.

- Reviewed key department documents and interviewed staff to determine days of the week and average amounts of staff time spend on recurring Stadium-related work activities.
- Obtained and reviewed City payroll records to determine the extent to which staff time spent on Stadium-related activities were recorded and billed for reimbursement.
- Compiled salary and benefits data to cost out staff time spent on unreimbursed Stadium related work activities.
- Reviewed a separately conducted Fire Department analysis of unreimbursed Fire Department staff time spent on Stadium related work activities.
- Collected and analyzed Stadium parking data available from the City Community Development Department and the Finance Department.
- Provided biweekly written and oral status reports for the duration of the field work phase of the audit (through March 2017).
- Submitted a draft report, with findings and recommendations, to the Stadium Authority Audit Committee, Stadium Authority/City staff and the 49ers entities on May 25, 2017. All parties receiving the draft report provided written comments; we also conducted an in-person exit conference with City Finance Department staff on June 26, 2017 and a follow-up meeting with the Fire Department.

Audit Limitation: Although the audit team met with representatives from the 49ers entities (StadCo and ManCo) during the project and conducted some preliminary document review at their site, no records or data reviewed at these meetings is disclosed in this report unless we also obtained the same information from other sources. ManCo did not allow the audit team to collect or report the contents of their documents in a public audit report without signing a nondisclosure agreement and agreeing to keep the information confidential.

Acknowledgements

Harvey M. Rose Associates, LLC (HMR) would like to acknowledge members of the Stadium Authority Board and its Audit Ad-hoc Steering Committee and staff of the Mayor's Office, the City Manager's office, the Finance Department, the City Attorney, and the public safety departments, among others. Requests for information, records, and data were met promptly and thoroughly by City staff members throughout the audit period. City employees worked cooperatively with the audit team during interviews and provided helpful information.

Background: Key Stadium Legislation and Agreements

Measure J, also known as *The Santa Clara Stadium Taxpayer Protection and Economic Progress Act*, was passed by the voters of the City of Santa Clara on June 8, 2010. Measure J established the framework and requirements for the construction and operation of a Stadium suitable for professional football by adding Section 17.20 to the Santa Clara Municipal Code. A Joint Exercise of Powers Agreement was executed in February 2011 between the City and the Redevelopment Agency of the City of Santa Clara to establish the Santa Clara Stadium Authority; the agreement was amended in June 2011 to add the Bayshore North Project Enhancement Authority and in November 2012 to reflect the dissolution of the Redevelopment Agency.

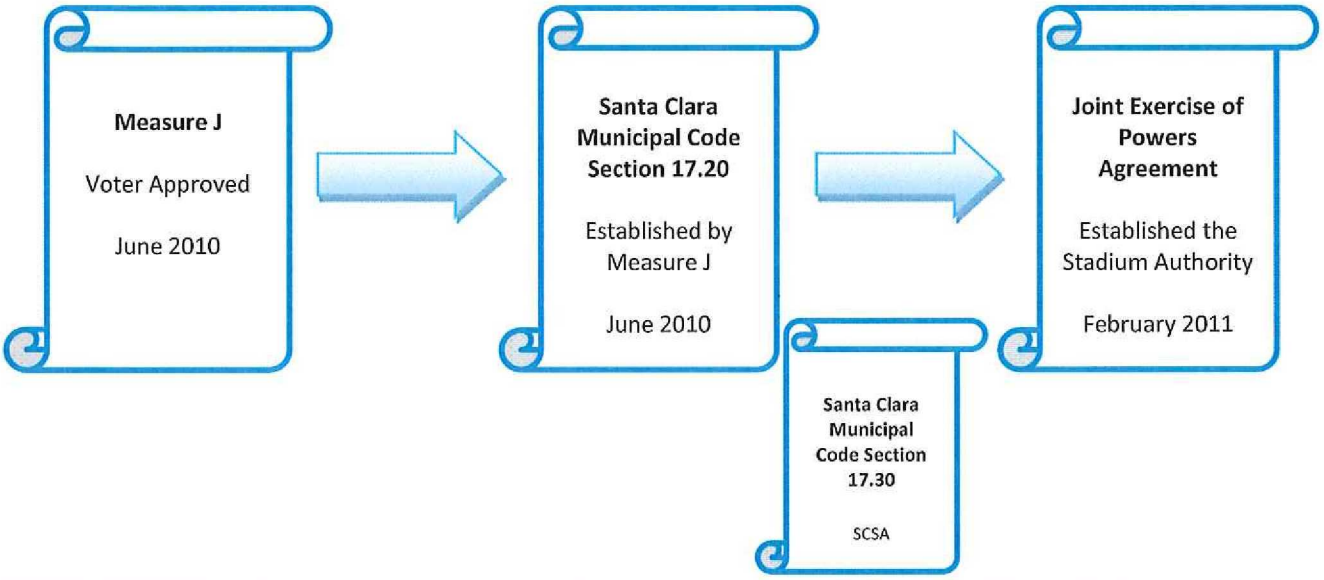
The City of Santa Clara, the Santa Clara Stadium Authority, and affiliates of the San Francisco 49ers NFL franchise have entered into numerous leases and other agreements for the management, operation, and use of the Stadium and adjacent parking lots. These include:

- A lease agreement ("Ground Lease") between the City and the Stadium Authority for the use of City land to construct a Stadium suitable for professional football.
- A lease agreement ("Stadium Lease") between the Stadium Authority and Forty Niners SC Stadium Company, LLC for exclusive use of the Stadium and related facilities, parking spaces, personal property, and air rights generally from August 1 to January 31 each year for an initial term of 40 years.
- A team sublease between the Forty Niners SC Stadium Company and the 49ers NFL Franchise.
- A Stadium Management Agreement between the Stadium Authority, the Forty Niners Stadium Management Company, LLC, and the Forty Niners SC Stadium Company, LLC that establishes the responsibilities of the Stadium Manager to provide management services year-round at the Stadium and to handle the marketing and booking of non-NFL events at the Stadium on behalf of the Stadium Authority.
- A non-relocation agreement between the Stadium Authority and the 49ers NFL Franchise to ensure that the team will play its home games at the Stadium.
- A Stadium Operations Agreement between the Stadium Authority and the Forty Niners SC Stadium Company, LLC that provides standards for certain Stadium operations, including scheduling Stadium events, preparing and approving plans and budgets, procurement guidelines, and rules and regulations for Stadium access.
- Public parking agreements between the City, Stadium Authority, and the Forty Niners SC Stadium Company, LLC, which assist in meeting the parking needs for Stadium events.

Approval of Measure J and Establishment of the Stadium Authority

Measure J, passed by the voters of the City of Santa Clara in June 2010, established the framework for the development, construction, occupancy, and operation of a Stadium (since named "Levi's Stadium") on City-owned land for use by the 49ers NFL franchise. Exhibit i.1 summarizes the purpose of Measure J as well as associated amendments to the Santa Clara Municipal Code and the execution of a Joint Exercise of Powers Agreement between the City and the Redevelopment Agency, which established the Stadium Authority.

Exhibit i.1: Overview of Measure J, Associated Santa Clara Municipal Code Sections, and JPA Agreement



Measure J, also known as "The Santa Clara Stadium Taxpayer Protection and Economic Progress Act," establishes the framework and requirements for the construction and operation of a stadium suitable for professional football.

Measure J included a non-binding "term sheet," which set forth basic preliminary terms of a proposed transaction between the City, the Redevelopment Agency, and Forty Niners SC Stadium Company , LLC to develop a stadium that would be the home field of the San Francisco 49ers NFL franchise. Measure J stated that the stadium shall not proceed until and unless the parties have negotiated, executed, and delivered mutually acceptable agreements.

Santa Clara Municipal Code Chapter 17.20, titled "Professional Football Stadium Ground Lease," was established by the passage of Measure J in June 2010.

SCMC Chapter 17.20 includes 13 required terms for a ground lease for a stadium, including the creation of a joint powers authority to be known as the Santa Clara Stadium Authority.

SCMC Chapter 17.20 also prohibits the use of any City general funds or enterprise funds to develop the stadium or to operate and maintain the stadium with a limited exception.

Later, in November 2012 the City Council enacted SCMC Chapter 17.30 to formalize policies and procedures for Stadium Authority procurement.

The City and the Redevelopment Agency of the City of Santa Clara entered into a joint exercise of powers agreement (JPA) in February 2011 in order to establish the Santa Clara Stadium Authority.

Under the JPA, the City Council serves as the Stadium Authority Board and the City Manager serves as the Executive Director. The Stadium Authority is liable for all stadium obligations.

The JPA was amended twice: first in June 2011 to add the Bayshore North Project Enhancement Authority as a member of the JPA, and second in November 2012 to reflect the dissolution of the Redevelopment Agency.

Measure J

Measure J, also known as "The Santa Clara Stadium Taxpayer Protection and Economic Progress Act," provided a path forward for the City to develop City-owned land for a Stadium suitable for professional football games and other events. Measure J included key provisions to prevent the City's general or enterprise funds from being used for construction or operation of the proposed Stadium,[1] including an amendment of the Santa Clara Municipal Code and an attached non-binding term sheet, which outlined basic terms of a proposed transaction to develop a Stadium for the San Francisco 49ers NFL franchise.[2]

The passage of Measure J amended the Santa Clara Municipal Code to add Chapter 17.20, which included 13 required terms for a Ground Lease for a Stadium as described in more detail below.

The preliminary terms memorialized in the Stadium Term Sheet to be negotiated between the City, the Redevelopment Agency, and the Forty Niners SC Stadium Company, LLC included:

- The City and the Redevelopment Agency would enter into a joint powers agreement to create a Stadium Authority. The Stadium Authority would be governed by a Stadium Authority Board consisting of the City Council and managed by an Executive Director (the City Manager). The Stadium Authority would build, own, and operate the Stadium. Further, the Stadium Authority would be a separate legal entity from the City and the Redevelopment Agency, meaning that neither the City nor the Redevelopment Agency would be liable for the debts or obligations of the Stadium Authority.

- The City and Stadium Authority would enter into a disposition and development agreement with the Forty Niners SC Stadium Company, LLC, which would establish the conditions necessary before the beginning of the Stadium construction and the amount and timing of funding for construction by the Redevelopment Agency, Community Facilities District,[3] Stadium Authority, and the Forty Niners SC Stadium Company, LLC.

- The City would enter into a Ground Lease with the Stadium Authority for an initial term of 40 years to construct and operate the Stadium. The Forty Niners SC Stadium Company, LLC would concurrently lease the Stadium from the Stadium Authority and the 49ers NFL Franchise would concurrently sublease the Stadium from the Forty Niners

[1] Measure J included an exception for use of City funds for activities undertaken at the City's discretion, including the City's relocation of the Tasman Substation.

[2] The term sheet provided a general framework for subsequent negotiation of definitive agreements, according to the City Attorney's impartial analysis of Measure J, dated March 3, 2010.

[3] Under Measure J, the City was to form a Mello-Roos Community Facilities District that would include all hotel properties in the vicinity of the Stadium.

SC Stadium Company, LLC. The 49ers NFL Franchise would also enter into a non-relocation agreement with the Stadium Authority.

- Further, the Measure J term sheet specified that the Ground Lease between the City and the Stadium Authority would:
    - Require the Stadium Authority to pay "ground rent" to the City. The ground rent would consist of "base rent" totaling $40,875,000 over the 40-year initial term and "performance based rent" based on a formula.
    - Require the payment of a $0.35 fee per football ticket up to $250,000 per year for a City senior and youth park, recreation, and library programs.
- The Measure J term sheet also specified that the Stadium Lease would require the Forty Niners SC Stadium Company, LLC to pay the Stadium Authority:
    - Rent sufficient to cover the "ground rent" owed to the City from the Stadium Authority and Stadium operating and maintenance expenses;
    - A capital improvements reserve; and,
    - Reimbursement of reasonable City public safety and traffic management costs.

Santa Clara Municipal Code Chapter 17.20

Chapter 17.20, entitled "Professional Football Stadium Ground Lease," was added to the Santa Clara Municipal Code by the passage of Measure J. Chapter 17.20 stipulates 13 key provisions of Measure J that were to be minimum requirements of a Ground Lease by the City. These provisions, briefly summarized, include:

1. Any Ground Lease of City property for development and operation of a Stadium shall be with a joint powers authority between the City and the Redevelopment Agency to be known as the Santa Clara Stadium Authority.
2. The City shall not use or pledge any money from the City's General Fund or enterprise funds for development of the Stadium.[4]
3. The City shall not subordinate its interest in the Stadium site or in any other property or in the ground rent to any financing or subsequent refinancing of the Stadium, and no

[4] Measure J and Santa Clara Municipal Code Chapter 17.20 provide for an exception to this provision if the City decides to relocate or reconfigure the electrical substation in the vicinity of the Stadium site.

City General Fund monies or enterprise fund monies may be pledged as collateral for any Stadium Authority financing or subsequent refinancing.

4. The initial term of the Ground Lease (between the City and the Stadium Authority) shall be 40 years.

5. Construction of the Stadium shall not begin unless a private tenant has entered into a Stadium Lease with the Stadium Authority that provides use of the Stadium as the home of one or two professional football teams and other events.

6. The Ground Lease shall require payment by the Stadium Authority to the City's General Fund of fixed based rent totaling $40,875,000 in nominal dollars over the 40 year term of the Ground Lease. There are further provisions for annual fixed based rent and an increase in rent if a second team makes a long-term commitment to play its home games at the Stadium.

7. The Ground Lease shall require payment by the Stadium Authority to the City's General Fund of performance-based rent, which together with the fixed based rent, the City Council has determined is projected to provide fair market rent to the City. The performance-based rent shall be based on a formula that provides for sharing of the revenues less expenses of non-NFL events at the Stadium.

8. The Ground Lease shall cap the contributions to the construction costs of the Stadium at $40 million, exclusive of debt service and other financing costs and payments to the City for development fees.

9. Neither the Ground Lease nor any other agreement related to the development of the Stadium shall rely on the imposition of any new or increased taxes for the development, operation, or maintenance of the Stadium with the exception of a special hotel tax within the Community Facilities District.

10. Neither the City nor its Redevelopment Agency shall be liable for the obligations of the Stadium Authority.

11. The private tenant's lease (the Stadium Lease) shall require the private tenant (Forty Niners SC Stadium Company, LLC) to pay any cost overruns incurred in construction of the Stadium.

12. The private tenant's lease (the Stadium Lease) shall require the private tenant (Forty Niners SC Stadium Company, LLC) to pay rent to the Stadium Authority that the City

Council has determined will provide the Stadium Authority with funds required to pay the ground rent and operating and maintenance expenses of the Stadium. For this purpose, operating and maintenance expenses shall include:

a. day-to-day expenses of operating and maintaining the Stadium ;

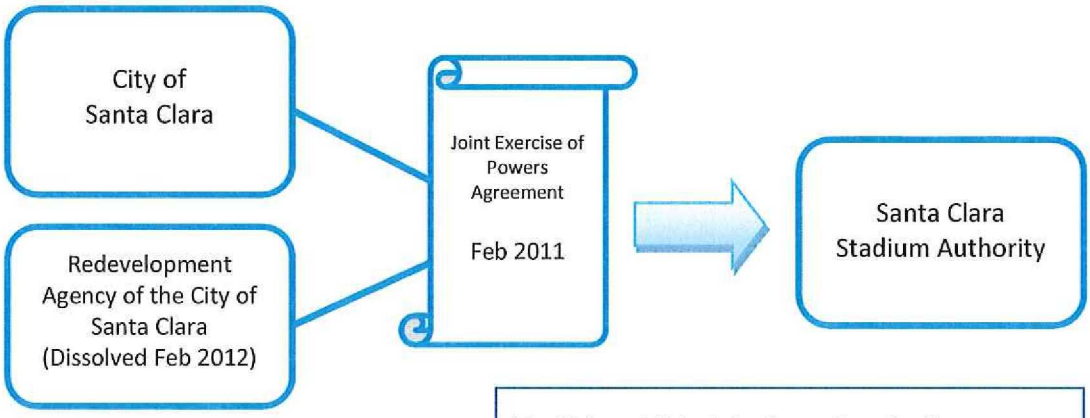
b. deposits to a reserve for capital improvements; and,

c. reimbursements of reasonable costs incurred by the City in providing public safety and traffic management related to NFL events and non-NFL events.

13. Following the opening of the Stadium the City shall receive, in addition to the ground rent, a fee equal to $0.35 per ticket on each ticket for professional football games in the Stadium up to a maximum of $250,000 per year.

Exhibit i.2 below illustrates the establishment of the Santa Clara Stadium Authority with the execution of the Joint Exercise of Powers Agreement.

Exhibit i.2: Establishment of the Santa Clara Stadium Authority



The City of Santa Clara and the Redevelopment Agency of the City of Santa Clara entered into a Joint Exercise of Powers Agreement (JPA) in February 2011 to establish the Santa Clara Stadium Authority.

The Bayshore North Project Enhancement Authority was added to the JPA in June 2011.

The Redevelopment Agency was dissolved by state law in February 2012 and was replaced with the Successor Agency to the Redevelopment Agency of the City of Santa Clara.

The JPA established the Santa Clara Stadium Authority in accordance with Measure J and Chapter 17.20 of the Santa Clara Municipal Code. The JPA stipulations included that:

- Neither the City nor the Redevelopment Agency shall be liable for the obligations of the Stadium Authority.
- The governing board shall be the seven members of the City Council and the City Manager shall be the Executive Director.
- The Finance Director of the City shall be the Treasurer and Financial Auditor.
- The City Attorney shall be the Stadium Authority legal counsel.

Joint Exercise of Powers Agreement (JPA)

The Joint Exercise of Powers Agreement (JPA), executed between the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara, established the Santa Clara Stadium Authority. The JPA included numerous provisions for the administration of the Stadium Authority covering:

1. The **purpose and powers** of the Stadium Authority, including:

    a. The boundaries and powers of the Stadium Authority and

    b. A statement that debts, liabilities, and obligations of the Stadium Authority shall not be debts, liabilities, and obligations of the City or Redevelopment Agency of Santa Clara.

2. The **organizational structure** of the Stadium Authority, including:

    a. The governing body of the Stadium Authority (to be the City Council) and its operations;

    b. The Stadium Authority Executive Director (to be the City Manager) and the powers and responsibilities of this position;

    c. The Stadium Authority Treasurer and financial auditor, to be the Finance Director of the City; and

    d. The Legal Counsel for the Stadium Authority, to be the City Attorney of the City.

3. The **financing** of the Stadium Authority operations, including:

    a. The Board shall adopt an annual operating budget which shall contain a detailed budget for the succeeding year and a projection of operating expenses and revenues over the succeeding five year period. The annual budget must also contain an estimate of operating revenue for the upcoming fiscal year as well as projected costs of operating, maintaining, and repairing the Stadium and all costs attributable to operating parking lots and structures under the control of the Stadium Authority and for public safety costs.

    b. The use of funds from the newly formed Community Facilities District;

c. The Redevelopment Agency was expected to contribute up to $40 million for construction of the Stadium plus up to $1.7 million to the City for development fees related to the construction of the Stadium.

d. Neither the City nor the Redevelopment Agency shall have any obligation to contribute any funds to the construction, operation, or maintenance of the Stadium or the costs and expenses of the administration of the Stadium Authority. In addition, the Stadium Authority shall reimburse the City the direct and indirect costs of City employees performing the duties of the Executive Director, the Finance Director/Treasurer/Auditor, the Stadium Authority Counsel, and the Secretary, and for other out of pocket expenses for outside services and other reimbursable expenses authorized by the Stadium Authority. Expenses of the Stadium Authority shall be paid from operating revenue, rent, and other revenues generated by the Stadium.

e. Upon approval of the Board, the Stadium Authority may issue bonds, including revenue bonds, but neither the Redevelopment Agency nor the City shall be obligated to such bonds and no revenue, funds, or property of either shall be pledged toward repayment of any Stadium Authority bonds.

f. The Stadium Authority may pay any excess revenue (excess of the amount needed to meet its obligations to pay Stadium related costs and public safety costs or unless otherwise restricted by contract) to the City pursuant to the Ground Lease.

4. **Other obligations** of the Stadium Authority, including:

a. Construction of a Stadium through a design build agreement;

b. The Stadium Authority shall be responsible for operation of the Stadium ;

c. The Stadium Authority shall be responsible for reimbursing the City for all public safety costs incurred by the City as a result of the Stadium to the extent such costs are not otherwise paid for or reimbursed through other fees or charges. Further, the City and the Stadium Authority shall enter into a public safety agreement, which shall be updated regularly to provide for the payment of such public safety costs.

d. The Stadium Authority shall participate with the City and other public entities as well as the Forty Niners SC Stadium Company, LLC in the development and implementation of a Transportation Management and Operation Plan to address traffic, transit, pedestrian, and bicycle movements related to Stadium events as well as parking management and operations.

e. The Stadium Authority shall adopt an annual capital expenditure plan, which will include an annual projection of capital expenditures as well as a five year projection of anticipated expenditures.

5. **Accounting and Audits**, including:

   a. The Treasurer/Auditor (City Finance Director) shall establish funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Stadium Authority. Further, the Treasurer/Auditor shall annually give a complete written report of all financial activities within 120 days after the close of each fiscal year.

   b. The records and the accounts of the Stadium Authority shall be audited annually by an independent certified public accountant designated by the Executive Director (City Manager).

6. **Rescission, Termination, Withdrawal, and Assignment**, including:

   a. That the Stadium Authority shall continue to exercise the powers conferred upon it by the JPA and that the JPA may be rescinded and the Stadium Authority may be terminated by unanimous consent of the members. In addition, any surplus funds on hand after the termination of the Stadium Authority shall be paid out to the City. Further, the facilities, rights, and interests of the Stadium Authority shall be transferred to the City.

7. **General Provisions**, including that the JPA may be amended and the JPA shall be binding upon the successors of the parties to the agreement.

1st Amendment to the JPA

The JPA was amended in June 2011 for the first time to add the Bayshore North Project Enhancement Authority as a party to the JPA.

2nd Amendment to the JPA

The JPA was amended in November 2012 to reflect the dissolution of the former Redevelopment Agency of the City of Santa Clara and to clarify the implementation of the procurement policies and procedures adopted that same month by the City Council, including increasing the Executive Director's authority to approve expenditures from $50,000 or less to $250,000 or less. The 2nd amendment to the JPA also changed the Stadium Authority fiscal year from July 1st–June 30th to April 1st–March 31st.

Santa Clara Municipal Code Chapter 17.30: Stadium Authority Procurement Policy

In November 2012 the City Council amended the Santa Clara Municipal Code to add Chapter 17.30, entitled "Stadium Authority Procurement Policy." Chapter 17.30 formalized Stadium Authority policies and procedures for the procurement of supplies, goods, and equipment. The Chapter also provides some guidance on the approval of services contracts.

Key provisions of Chapter 17.30 include:

- The Executive Director (City Manager) is the appointed purchasing officer of the Stadium Authority, but may delegate his authority to a designee.

- Informal bidding procedures are required for purchases of supplies, goods, and equipment in the amount of $250,000 or more, but less than $1 million. Board approval is required.

- Formal bidding procedures and Board approval are required for purchases of supplies, goods, and equipment in the amount of $1 million or more.

- The Executive Director (City Manager) is authorized to purchase and execute contracts for professional, nonprofessional, and personal services required by the Stadium Authority for contracts for $250,000 or less per contract. Contract amounts above $250,000 must be approved by the Board.

- The procurement policies and procedures contain exclusions for (1) agreements with professional sports teams and with lessees and licenses for events in the Stadium, such as concerts and sporting events in the Stadium; (2) contracts for materials and supplies required during the construction of the Stadium project related to the construction of the Stadium project; and (3) other instances such as contracts with other government agencies, the acquisition or disposal of real property, and contracts for professional services in connection with threatened or pending litigation.

- The Executive Director (City Manager) has the authority to waive or modify any provision of the procurement policies and procedures without any further action of the Board.

FINDING i.A: Santa Clara Municipal Code Chapter 17.30 establishes processes and controls for Stadium Authority procurement, but allows the Executive Director (City Manager) to waive or modify any provision without any further action of the Board, which may allow an Executive Director to bypass certain provisions or the Chapter in its entirety without notifying the Stadium Authority Board.

RECOMMENDATION i.A: The Stadium Authority Board should remove Section 17.30.010(d) from Santa Clara Municipal Code Chapter 17.30 of the Municipal Code or revise the section to require Board approval before the Executive Director waives or modifies any provisions of Chapter 17.30.

1. Compliance with Stadium Authority Agreements

Section 1 Summary:

- **The Stadium Authority has entered in to various agreements with the City of Santa Clara and the 49ers entities governing the use, operations, financial arrangements, and management of Levi's Stadium. The 49ers entities are Forty Niners SC Stadium Company (StadCo) and the Forty Niners Stadium Management Company, LLC (ManCo) (the 49ers entities).**
- **A review of key aspects of the agreements for Fiscal Years (FYs) 2014-15 and 2015-16 found numerous areas of non-compliance by both StadCo and ManCo and an absence of adequate contract administration practices by the Stadium Authority. As a result, the effectiveness of the Stadium Authority Board's fiscal stewardship and overall governance role was negatively affected during that period.**
    - **There is no Stadium Authority record showing that the 49ers entities produced and delivered, and the Stadium Authority approved, the following key financial and operational documents to the Stadium Authority as required in the agreements for the two years reviewed:**
        - **i. An annual Operation and Maintenance Plan, to be prepared by ManCo, detailing the required condition of the Stadium and incorporating: 1) a draft and final one year and a five year projected shared Stadium expense budget, 2) an annual public safety budget, and 3) a draft one year and five year projected capital expenditure budget.**
        - **ii. A parking plan**
        - **iii. An annual statement of Stadium operations**
        - **iv. A detailed Stadium marketing plan**
- **An Operation and Maintenance Plan and other documents were provided to the Stadium Authority Executive Director while this audit was in progress, but there are no records indicating the Plan documents were provided to the Stadium Authority during the audit review period or that they have since been formally provided to the Board or determined to satisfy the requirements in the pertinent agreements.**
- **The Stadium Authority did not establish effective contract administration procedures to ensure and report contract compliance to the Stadium Authority Board and public in a number of key areas, including:**

- Monitoring the Stadium manager company (ManCo) and ensuring that the documents listed above were received, responded to when called for, and/or recorded as received and adopted by the Stadium Authority.
- Ensuring and reporting to the Board if the use of excess Stadium Authority revenue complied with allocation specifications in the agreements.
- Ensuring and documenting that meetings with the 49ers entities required in the agreements took place, including: quarterly meetings on ManCo's marketing efforts and financial performance for non-NFL events, and regular meetings on the financial performance of Stadium event parking lots.

- Some of the provisions in the agreements do not appear to be in the best interest of the Stadium Authority and should be considered for proposed amendments to the agreements:
  - The provision in the Stadium Lease agreement that establishes a threshold amount of $1.7 million per year reimbursed by StadCo for City NFL public safety costs, less off-site parking permit fees, adjusted annually. The City's actual annual costs have been much higher than the established threshold, resulting in the use of the Stadium Authority's Discretionary Fund to make up the difference and avoid incurring General Fund costs.
  - A provision in the Stadium Lease that allocates concession revenue from NFL events to the 49ers entities and concession revenue from non-NFL events to the Stadium Authority, except in cases where actual revenue is less than any minimum annual guarantee amount, in which case the difference between actual revenue and the minimum annual guarantee due from non-NFL events goes to the 49ers entities and none to the Stadium Authority.
  - A provision in the Stadium Lease that requires the Stadium Authority to pay a fixed amount for Stadium insurance, without any required share specified for StadCo, unlike the other arrangements for shared expenses, which are generally proportionately split or at least specified in the agreements.
  - A provision in the Management Agreement that delegates authority to the Stadium Authority Executive Director rather than the Board for approving the various plan, budgets, and other documents (other than the operating budget) that the agreements require be submitted by the 49ers entities and adopted by the Stadium Authority. This delegation of authority has resulted in the Board not receiving much of the information in the required documents and not

having an opportunity as the Stadium governing body to assess the impact of the information on Stadium operations or finances.

- **A provision in the Management Agreement that allows ManCo to acquire property or services from its affiliates but only if the prices charged are competitive with those in the field. This provision does not require that goods and services received from an affiliate of ManCo be truly competitively priced.**

This section is composed of the following subsections:

Subsection	Page
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B. Stadium Lease	35
C. Management Agreement	58
D. Operations Agreement	70
Conclusions and Findings	73
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Key Stadium Leases and Agreements

A series of leases and other agreements were executed in March 2012 between the City of Santa Clara, the Santa Clara Stadium Authority, Forty Niners SC Stadium Company, LLC, and Forty Niners Stadium Management Company, LLC. The leasehold structure consists of:

- A **Ground Lease** between the City of Santa Clara and the Santa Clara Stadium Authority for the use of City-owned land for the development, construction, and operation of a Stadium suitable for professional football and other events.

- A **Stadium Lease** between the Santa Clara Stadium Authority and Forty Niners SC Stadium Company, LLC for use of the Stadium and Stadium ancillary property; tenant parking spaces; Stadium personal property; and, all air rights and air space above the Stadium and Stadium site.

- A **Team Sublease** between Forty Niners SC Stadium Company, LLC and Forty Niners Football Company (the NFL Franchise team) for use of the Stadium to play all home games.

The ancillary agreements to the leases include:

- A **Stadium Management Agreement** between the Santa Clara Stadium Authority, Forty Niners Stadium Management Company, LLC, and Forty Niners SC Stadium Company, LLC for the provision of management services for the Stadium on a continual, year-round basis, including the day-to-day operations and maintenance of the Stadium. The agreement also covers the marketing and booking of non-NFL events at the Stadium by the Stadium management company.

- A **Revolving Loan Agreement,** which was a condition of entering into the Stadium Management Agreement. Under the revolving loan agreement the Forty Niners Stadium Management Company, LLC agreed to provide the Stadium Authority with a $25 million line of credit. This agreement was created to provide an additional financial protection in order to prevent any impacts of Stadium costs on the City's General Fund.

- A **Non-relocation Agreement** between the Stadium Authority and the Forty Niners Football Company to ensure the team will play its home games at the Stadium for 40 years.

- A **Stadium Operations Agreement** between the Stadium Authority and the Forty Niners SC Stadium Company, LLC that establishes certain standards, procedures, and protocols for the operation of the Stadium.

- Various **public parking agreements,** which the City has entered into with the Stadium Authority and the Forty Niners SC Stadium Company, LLC to assist in meeting the parking needs for Stadium events.

- A **Concessions Operating Agreement** between the Forty Niners Stadium Management Company, LLC and a concessionaire (Centerplate).

- A **Naming Rights Marketing Agreement** between the Stadium Authority and the Forty Niners SC Stadium Company, LLC, which grants the Forty Niners SC Stadium Company, LLC exclusive rights to market the right to designate the name of the new Stadium.

- A **Naming Rights Agreement** between the Stadium Authority and Levi Strauss for the name of the new Stadium to be "Levi's Stadium" in return for Levi Strauss making annual payments to the Stadium Authority starting at $5.7 million per year and increasing three percent each year for the term of the naming rights agreement.

Exhibit 1.1 below illustrates the leasehold structure of the Stadium project as well as ancillary agreements related to the operation of the Stadium entered into by the parties.

Within Exhibit 1.1, lease agreements are represented by the following symbol:

Within Exhibit 1.1, ancillary agreements are represented by the following symbol:

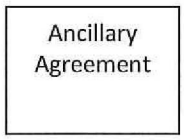
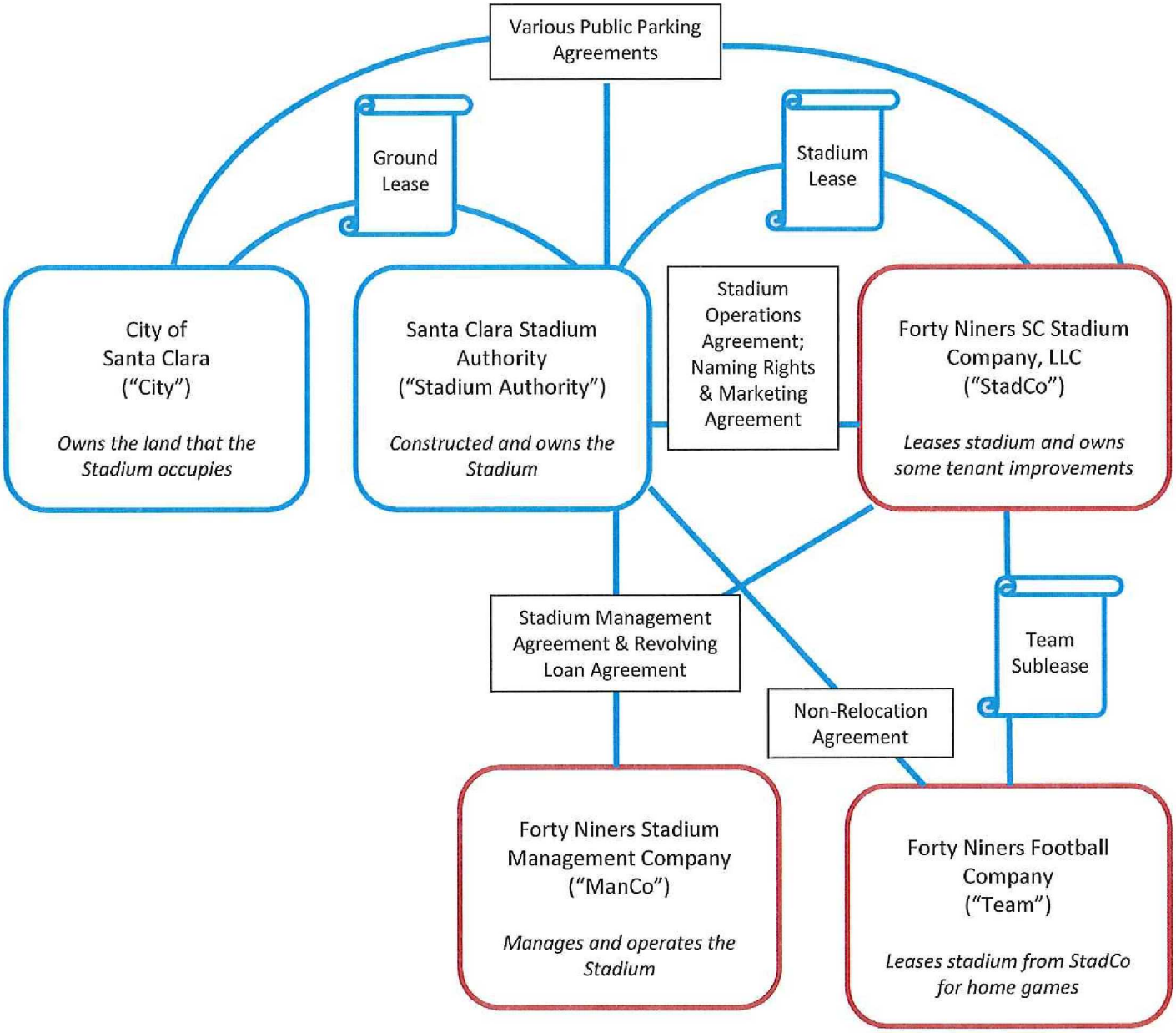


Exhibit 1.1: Overview of Stadium-Related Leases and Agreements



A. Ground Lease

In March 2012 the City and Stadium Authority entered into a Ground Lease for parcels at the southwest corner of Tasman Boulevard and Centennial Drive for the construction of a Stadium suitable for professional football games and other events.

The initial term of the Ground Lease is 40 years with five four-year successive options to extend the term after the initial term has expired. The term and execution of the Ground Lease is concurrent with the Stadium Lease agreement between the Stadium Authority and the Forty Niners SC Stadium Company, LLC ("StadCo").

Fixed Ground Rent

The Ground Lease requires that rent be paid from the Stadium Authority to the City in the form of "fixed ground rent" and "performance based rent." The annual fixed ground rent amounts to $40,875,000 over a 40 year period and is set by a schedule included in Section 4.3.1 of the Ground Lease and reproduced in Exhibit 1.2 below.

Exhibit 1.2: Annual Fixed Ground Rent Owed to the City from the Stadium Authority for Initial 40 Year Term

Lease Year(s)	Annual Fixed Ground Rent
1	$180,000
2	$215,000
3	$250,000
4	$285,000
5	$320,000
6	$355,000
7	$390,000
8	$425,000
9	$460,000
10	$495,000
11-15	$1,000,000
16-20	$1,100,000
21-25	$1,200,000
26-30	$1,300,000
31-35	$1,400,000
36-40	$1,500,000
40-Year Total	**$40,875,000**

Source: Section 4.3.1 "Initial Term" of the Lease Agreement by and between the City of Santa Clara and the Santa Clara Stadium Authority (the "Ground Lease").

Performance Based Rent

In addition to annual fixed ground rent, the Stadium Authority must annually pay performance based rent according to a formula established in Sections 1.93, 1.94, and 1.95 of the Ground Lease. Performance based rent for each lease year is defined in Section 1.93 as the greater of (a) zero dollars ($0.00), or (b) the following: (i) 50 percent of the net income from lease year non-NFL events less (ii) the sum of the performance-based rent credits. The basic performance based rent formula is illustrated in Exhibit 1.3 below.

Exhibit 1.3: Ground Lease Performance Based Rent Overview

Performance based rent is the greater of either:

A. **$0.00**

OR

B. **50% of Non-NFL Event Net Income**

"Non-NFL Event Revenues" minus "Non-NFL Event Expenses"

less

Performance Based Rent Credits

"Non-NFL event net income" is defined as the non-NFL event revenue for the lease year minus the non-NFL event expenses for the lease year.

As shown in Exhibit 1.3 above, half of non-NFL event net income goes to performance-based rent payments; the other half is Stadium Authority revenue.

"Non-NFL event revenues" is defined by Section 1.84 of the Ground Lease as all revenues received by the Stadium Authority in accordance with the Stadium Lease in the lease year, but excluding any parking revenues from the Tasman Drive Garage.

"Non-NFL event expenses" is defined by Section 1.83 of the Ground Lease as:

1. Direct costs and expenses incurred in the conduct of non-NFL events, including the costs of utilities, security, public safety, and costs to install and remove temporary facilities.

2. Direct costs and expenses incurred that exceed the costs and expenses that would have been incurred in operating the Stadium absent the hosting of non-NFL events, including:

    a. Expenses incurred in marketing and promoting the Stadium as a venue for non-NFL events, including reasonable administrative expenses;

b. Costs incurred to obtain or provide parking for persons attending non-NFL events, including a parking charge ($1.00 per space used for each non-NFL event in the Main Lot) payable to StadCo;

c. Costs of negotiation, collection, and enforcement of contracts relating to actual or potential non-NFL events; and,

d. Costs of alterations, capital repairs, and compliance work directly attributable to, or required as a result of, non-NFL events.

Non-NFL event expenses are intended to include the incremental portion of those costs and expenses that vary with the actual or planned nature or scope of non-NFL events and related marketing efforts, but are intended to exclude the fixed portion of such costs and expenses that would be incurred even if the Stadium were not operated for non-NFL events. Non-NFL event expenses also exclude costs or expenses reimbursed by insurance and all expenses related to operating or maintaining the Tasman Drive Garage parking structure.

"Performance based rent credits" is defined in Section 1.94 as the sum of the following:

(a) 50 percent of the annual fixed ground rent; plus

(b) The amount, if any, by which the public safety costs exceed the NFL event public safety costs threshold for such lease year, and are paid to City by StadCo pursuant to the public safety plan;[1] plus

(c) Following the tax allocation termination date, the amount of the received property tax revenue that is received by the City in any lease year and attributable to any and all possessory interests in the Stadium ; plus

(d) The amount of any credit for disproportionate taxes for such lease year; plus

(e) Any "permitted credits carry-forward" (as defined below) applicable to such lease year.

"Permitted credits carry-forward" is defined by Section 1.95 of the Ground Lease as the total amount, if any, of the performance based rent credits listed in (a), (b), (c), and (d) above that have not previously been applied in the calculation of performance-based rent. Performance-

[1] Note that all public safety costs over the established public safety cost threshold of $170,000 per NFL event in Lease Year 2014-15 and $176,800 in Lease Year 2015-16 have been paid by the Stadium Authority, not StadCo.

based rent credits listed in (a), (b), and (c) above expire if not used within the lease year or the five succeeding lease years. Performance-based rent credits listed in (d) above do not expire and can be carried-forward until used. Further, to the extent available in any lease year, the performance based rent credits listed in clauses (a), (b), and (c) above are applied against performance based rent before application of any available performance based rent credits listed in (d) above.

Public Safety Plan and Public Safety Costs

Section 8.1 of the Ground Lease states that the **public safety plan** and the Stadium Lease (between the Stadium Authority and StadCo) shall include provisions for the Stadium Authority to reimburse the City (either directly or by requiring StadCo to reimburse the City) for public safety costs that exceed fees received by the City from the holders of off-site parking permits that are attributable to NFL games. In other words, the City's total reimbursable (by the Stadium Authority and StadCo) public safety costs are reduced by off-site parking fee revenue for NFL events, which is paid for by parking operators. In FY 2015-16, for example, total public safety costs were reduced by $290,403 in off-site parking fee revenue for the purposes of determining the amount to be reimbursed. However, as discussed further below, StadCo's liability for public safety costs for NFL events is capped at $170,000 per each NFL event (which is partially reduced by off-site parking fee revenue) for the first year of operation, or $1.7 million per year assuming ten events per year, adjusted by 4 percent per year.

Section 1.103 of the Ground Lease defines the public safety plan as the plan to be adopted by the City and Stadium Authority from time to time in consultation with the City's Chief of Police and StadCo and that shall describe the procedures for traffic management, security, and public safety during and for a reasonable period before and after NFL games and other large events at the Stadium. Further, Section 1.1.03 states that the public safety plan shall include provisions for determining staffing levels and related operations equipment for police and fire personnel stationed in and around the Stadium, as well as private security.

Section 1.103 of the Ground Lease defines **public safety costs** as the actual and reasonable costs incurred by the City for police, traffic control, fire, emergency services, and similar services provided for NFL games in the Stadium in accordance with the public safety plan, including a fair share of public safety capital expenditures attributable to NFL games (as determined by the Stadium Lease between the Stadium Authority and StadCo). The decision to expend funds on public safety capital is discretionary; no public safety capital expenses were budgeted or expended for public safety capital costs in FYs 2014-15 or 2015-16.

Discretionary Fund

Section 8.4 of the Ground Lease requires that the Stadium Authority establish a **Discretionary Fund** to be funded by 50 percent of the four dollar surcharge imposed on each ticket to all non-NFL events. The Stadium Authority may use the Discretionary Fund to pay "discretionary expenses," which are defined by Section 1.36 of the Ground Lease to include costs and expenses incurred by the Stadium Authority that are not approved by either: (1) StadCo as part of the annual shared Stadium expense budget[2] or the capital expenditure budget,[3] or (2) ManCo in the line of credit agreement. This provision allows the Stadium Authority to cover unreimbursed NFL public safety costs that exceed the threshold or capped amount with its discretionary funds, which it did for both FYs 2014-15 and FY 2015-16 when $743,255 and $669,902 was paid, respectively, from this fund to reimburse the City for NFL public safety costs in excess of the capped amounts.[4]

The Ground Lease allows for discretionary funds to be used for other purposes, including for transfers to the City's General Fund if certain conditions are met. The allowable uses of discretionary funds are illustrated in Exhibit 1.4 below.

Section 8.4 of the Ground Lease specifies that if the unallocated amount of the Discretionary Fund exceeds $1 million, then, in consultation with StadCo, the Stadium Authority will determine if adequate provision has been made for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan. If the remaining balance in the Discretionary Fund still exceeds $1 million after adequate provision has been made for replacement of and upgrades to capital improvements contemplated under the public safety plan, then up to one half of such excess may be transferred to the City's General Fund with an equal amount transferred to the Stadium Authority's Operating Fund.

As discussed in Section 2 of this report, no discretionary funds have been transferred to the City's General Fund as of mid FY 2016-17. The Stadium Authority has used discretionary funds to reimburse the City for NFL public safety costs in excess of the $1.7 million maximum annual amount that the 49ers entities are required to pay, thereby covering the difference between

[2] The annual shared stadium expense budget is defined in the Stadium Lease between the Stadium Authority and the Forty Niners Stadium Management Company (ManCo) and described in the Stadium Lease sub-section of this report section.

[3] The capital expenditure budget is defined in the Stadium Lease between the Stadium Authority and the Forty Niners Stadium Management Company (ManCo) and described in the Stadium Lease sub-section of this report section.

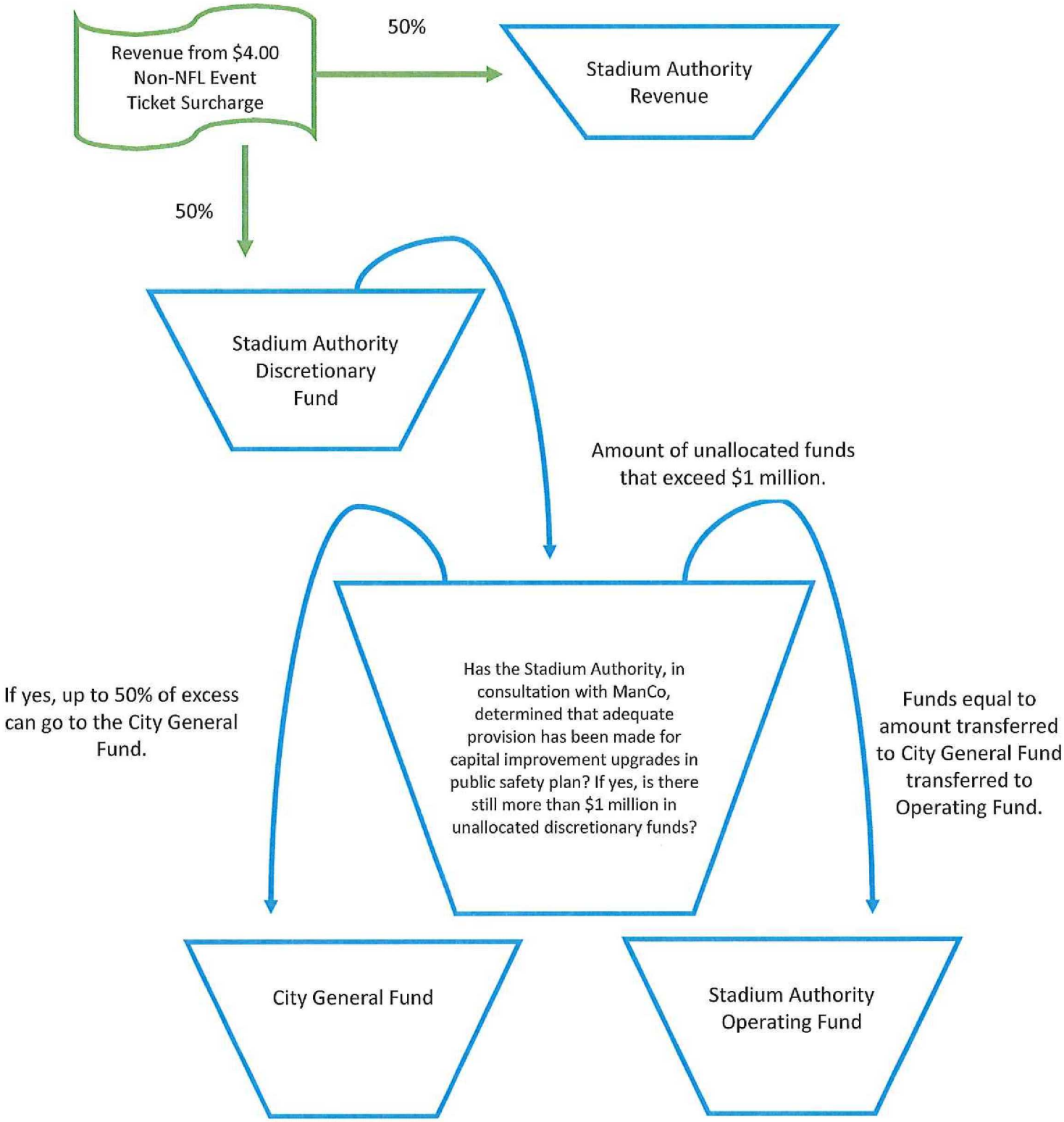
[4] Note: these figures reflect costs allocated to the year that they were incurred, not the year that they were paid to the City.

the capped amount paid by the 49ers and actual public safety costs incurred. In both FYs 2014-15 and 2015-16, this use has brought the Discretionary Fund balance down below $1 million, thus leaving no funds available to transfer to the City's General Fund or for public safety capital improvements.

FINDING 1.A: The Stadium Authority is using non-NFL revenue to reimburse the City for NFL expenses in the form of public safety costs because those costs have exceeded and will likely continue to exceed the threshold, or capped amount, established in the Stadium Lease for which StadCo is responsible at $1.7 million per year (adjusted annually). The Stadium Lease Agreement allows for renegotiation of the amount reimbursed by StadCo after three years of the Stadium opening.

RECOMMENDATION 1.A: The Stadium Authority Board should direct the Executive Director to request the public safety costs threshold be adjusted through negotiations with StadCo to reflect actual costs to the City for providing public safety services for NFL events.

Exhibit 1.4: Ground Lease Provision for Use of Excess Discretionary Funds



Senior and Youth Program Fee

Section 8.2 of the Ground Lease requires the Stadium Authority to charge (or require StadCo or its subtenants to charge) a fee of $0.35 on each ticket for each NFL game held in the Stadium during the term of the Stadium Lease (between the Stadium Authority and StadCo) and to pay the annual proceeds collected, up to a maximum of $250,000 per lease year, to the City as additional rent. Section 8.2 also states that the City agrees to use the funds received from this charge (known as the "City of Santa Clara Senior and Youth Fee") to fund City programs for parks and recreation and libraries, including, without limitation, senior activities and the Youth Championship Team Fund.

B. Stadium Lease

In March 2012 the Stadium Authority and the Forty Niners SC Stadium Company ("StadCo") entered into a lease ("Stadium Lease") for exclusive use of the Stadium and ancillary property; tenant parking spaces; Stadium personal property; and, all air rights and air space above the Stadium and Stadium site during NFL seasons (August 1–January 31). In June 2013, the agreement was amended and restated in conjunction with a refinancing of the Stadium.

The initial term of the Stadium Lease is 40 years with five four-year successive options to extend the term after the initial term has expired. The term and execution of the Stadium Lease is concurrent with the Ground Lease agreement between the City and the Stadium Authority.

Facility Rent

Article 6 of the Stadium Lease requires that facility rent of $24.5 million be provided to the Stadium Authority for each year of the lease. Article 6 also provides for a one-time adjustment of the facility rent if, as of April 1, 2015 (or, if later, within 30 days after the final amount of the Stadium Authority development costs is determined), the amount of either the debt service on the project debt or the then estimated operating expenses of the Stadium are either more or less than the estimated amounts set forth in the formulas and assumptions used to calculate the facility rent in Exhibit J of the Stadium Lease. As of the writing of this report, StadCo is seeking to reduce the facility rent due to the Stadium Authority based on this provision of the Stadium Lease.

Stadium Operations: Obligations of the Stadium Authority, StadCo, and ManCo

Article 7 of the Stadium Lease outlines the operation, maintenance, and repair obligations of the Stadium Authority, StadCo, and Forty Niners Stadium Management Company, LLC (ManCo). Article 7 states that the **Stadium Authority's obligations** for operation, maintenance, and repair include:

- Operating and maintaining (or causing to be operated and maintained) the Stadium premises (excluding StadCo's exclusive facilities) as well as the appurtenant improvements[5] in the condition required by the Stadium Operation and Maintenance Plan.

[5] Appurtenant improvements include the South Lot, the San Tomas Aquino Creek pedestrian bridges, and the Main Lot stadium improvements.

- Perform (or cause to be performed) capital repairs in or to the premises or the appurtenant improvements, when required, with funds available in the Stadium Capital Expenditure Reserve, Operating Expense Reserve, and if applicable, the Demolition Reserve Excess. The reasonable costs of such capital repairs not paid from those sources shall be a shared Stadium expense. However, if the costs of such capital repairs arise directly from any Stadium Authority event,[6] the cost of such capital repairs shall constitute Stadium Authority event expenses and shall be paid by the Stadium Authority.

The process for determining capital repair requirements is defined in Section 10.3 of the Stadium Lease. That section calls for ManCo to prepare a draft budget year and a five year capital expenditure plan and provide them to the Stadium Authority for adoption. The plan documents are to include explanations of any variances between proposed budget expenditures and the five year plans.

The annual Stadium Authority operating budgets for FYs 2014-15 and 2015-16 each included one year capital expenditure budgets, but not the five year forecasts required by the Stadium Lease or required explanations of any variances between the budget year and the five year plans. The Management Agreement between the Stadium Authority, ManCo, and StadCo, discussed further below, allows for Stadium Authority approval to be executed by the Stadium Authority Executive Director rather than the Stadium Authority Board. However, there is no documentation in Stadium Authority records indicating that the Executive Director received and approved the proposed one year and five year capital plans prepared by ManCo during FYs 2014-15 and 2015-16.

[6] Stadium Authority events are defined in Exhibit A of the Stadium Lease as collectively, non-NFL events and civic events. Non-NFL events are defined in Section 4.7.1 of the Stadium Lease to include events such as concerts, conferences, and sporting events other than NFL events. Civic events are defined in Section 4.7.2 of the Stadium Lease to include non-for-profit civic or other community events.

FINDING 1.B: Though required in the Stadium Lease, there is no Stadium Authority record of draft five year capital expenditure plans and explanations of variances between the five year and one year capital plans in the budget being provided to the Stadium Authority by ManCo, or adopted by the Stadium Authority, for FYs 2014-15 and 2015-16. The absence of such information hampers the Stadium Authority's ability to assess the financial condition of the Stadium facility and to plan for needed improvements in future years.

RECOMMENDATION 1.B: The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to notify ManCo that the absence of five year capital expenditure plans for FYs 2014-15 and 2015-16 was a breach of Section 10.3 of the Stadium Lease and that ManCo is required to provide such plans under the lease for the current and all future Stadium Authority fiscal years.

StadCo's obligations for Stadium related operation, maintenance, and repairs as defined in Section 7.12 of the Stadium Lease include operating and maintaining (or causing to be operated and maintained) StadCo's exclusive facilities, including the Stadium commercial areas and any tenant improvements[7] in the **required condition** at its sole cost and expense.[8] However, StadCo is not obligated to perform capital repairs to the tenant improvements outside of StadCo's exclusive facilities, so long as StadCo, at its sole cost and expense, removes such tenant improvements and restores the affected portions of the premises to the required condition.

ManCo's obligations for Stadium -related operation, maintenance, and repairs as defined in Section 7.2 of the Stadium Lease include:

- Overseeing the day-to-day operations and maintenance of the Stadium.
- Preparing the **Stadium Operation and Maintenance Plan**, including the **annual shared Stadium expense budget, annual public safety budget**, and the **capital expenditure**

[7] Tenant Improvements is defined in Exhibit A of the Stadium Lease as the improvements within tenant's exclusive facilities and any other improvements within the stadium that are owned by, and constructed at the cost of, tenant or any tenant transferee. Tenant's Exclusive Facilities is defined in Exhibit A of the Stadium Lease as: (a) the stadium commercial areas, including the Team Store and the Hall of Fame; (b) the tenant's administrative space; (c) locker rooms and related training space; (d) the stadium audio/video facilities; (e) the owners' club, including the team suite; (f) the suite tower; and, (g) other areas designated for the exclusive use of the tenant, the team, any second team or other tenant parties.

[8] The required condition of the stadium is defined in Section 7.1.1 of the stadium lease as the facility condition required by the Stadium Operation and Maintenance Plan.

plan, which are to be presented annually to the Stadium Authority and StadCo for their consideration and approval.

Stadium Operation and Maintenance Plan and the Required Condition

Definitions for the Stadium Lease presented in its Exhibit A call for the **Stadium Operation and Maintenance Plan** to be designed to achieve a safe and well-maintained Stadium and to include the standards for management and operation of the Stadium, including the required security, staffing, and other required elements of hosting Stadium events. These elements are collectively referred to as the **required condition** throughout the Stadium Lease.

Further descriptions and references to the Stadium Operation and Maintenance Plan in the Stadium Lease include:

- Section 7.1.1 states that the Stadium Authority's operation, maintenance, and repair obligations include operating and maintaining (or causing to be operated and maintained) the Stadium premises and appurtenant improvements in the condition required by the Stadium Operation and Maintenance Plan (the "required condition"), which shall establish procedures and policies for operating and maintaining the Stadium complex in accordance with good, sound, and prudent engineering practices, taking into account the age and the remaining useful life of the Stadium.

- Section 7.2 states that the Stadium Manager (ManCo) shall be responsible for preparing the Stadium Operation and Maintenance Plan, including the annual shared Stadium expense budget, annual public safety budget, and the capital expenditure plan. Section 7.2 states that these shall be presented annually to the Stadium Authority and StadCo for their consideration and approval.

- Section 8.1 states that shared Stadium expenses shall be more particularly described in the Stadium Operation and Maintenance Plan, annual shared Stadium expense budget, and public safety plan.

- Section 8.5.1 states that the annual shared Stadium expense budget should be consistent with the requirement that the Stadium premises and the appurtenant improvements be maintained in the required condition established by the Stadium Operation and Maintenance Plan. *Note: No documentation has been produced indicating that ManCo or Stadium Authority staff reported to the Board whether the required condition is being met during the audit review period.*

- Section 8.5.2 describes when and how amendments may be made to the Stadium Operation and Maintenance Plan, including additional shared Stadium expenses in connection with an emergency or other circumstances not reasonably foreseeable at the time the Stadium Operation and Maintenance Plan for such lease year was adopted, indicating that an annual plan is to be otherwise adopted by the Stadium Authority.

FINDING 1.C: Though required to do so by the Stadium Lease, there is no Stadium Authority record that ManCo submitted, and the Stadium Authority approved, an annual Operation and Maintenance Plan in FYs 2014-15 and 2015-16. The plan, which is to detail the "required condition" of the Stadium and its methods of upkeep, is a key document for the Board and staff to review to assist in determining funding levels and assessing Stadium operations. A redacted copy of the plan document, provided to the Stadium Authority Executive Director while this audit was in progress, has not been formally provided to the Stadium Authority Board as ManCo required that the document be kept confidential.

RECOMMENDATION 1.C: The Stadium Authority Board should direct the Executive Director to provide a copy of the Operation and Maintenance Plan to the Stadium Authority Board for review, in closed session if deemed necessary for public safety reasons by the Stadium Authority counsel.

FINDING 1.D: The Stadium Lease requires that the Operation and Maintenance Plan prepared by ManCo and submitted to the Stadium Authority include an annual Public Safety Budget. At approximately $5.7 million in FY 2015-16, public safety costs are one of the Stadium's largest expenses, but a budget for these costs were not submitted to the Stadium Authority in total or approved by the Board for the two years within the scope of this audit.

RECOMMENDATION 1.D: The Stadium Authority Board should require that Stadium Authority staff and ManCo prepare an annual public safety budget in conjunction with the City's public safety departments detailing both NFL and non-NFL event public safety costs for submission to and adoption by the Board.

Concession Revenue

Section 7.3.2 of the Stadium Lease outlines the allocation of concession revenue between StadCo and the Stadium Authority. The section states that StadCo's share of the concession revenue includes:

- Concession operations within StadCo's exclusive facilities;[9]
- Concession operations during the Tenant Season (generally, August 1–January 31); and,
- Concession operations in connection with NFL events during the Stadium Authority Season (generally, February 1–July 31)

The section further states that the following revenue types will also be considered revenue of StadCo:

- Revenues from retail activities associated with the Stadium commercial areas;
- Tenant service revenue;
- Tenant telecommunications revenue; and,
- NFL advertising and sponsorship revenue.

The section states that the Stadium Authority's share of concession revenue includes:

- Concession operations during the Stadium Authority season (generally, February 1–July 31) excluding those within StadCo's exclusive facilities and concession operations in connection with NFL events; and
- Concession operations in connection with Stadium Authority events during the Tenant Season (generally, August 1–January 31).

In addition, the section states that if any concession agreement requires a guaranteed minimum payment by the concessionaire and, for any lease year, the amount of such guaranteed minimum payment is greater than the amount of the payment otherwise required

[9] Tenant's Exclusive Facilities is defined in Exhibit A of the Stadium Lease as: (a) the Stadium commercial areas, including the Team Store and the Hall of Fame; (b) the tenant's administrative space; (c) locker rooms and related training space; (d) the Stadium audio/video facilities; (e) the owners' club, including the team suite; (f) the suite tower; and, (g) other areas designated for the exclusive use of the tenant, the team, any second team, or other tenant parties.

to be made by such concessionaire, then the amount of the excess will be revenue of StadCo whether the event was NFL or non-NFL.

FINDING 1.E: According to the Stadium Lease, StadCo receives concession revenues generated during the NFL season and the Stadium Authority receives concession revenues generated during the non-NFL season plus those from non-NFL events that take place during the NFL season. However, if a concessionaire's minimum rental payment is more than the concessionaire is otherwise required to pay, the difference between the actual payment and the minimum guaranteed amount all goes to StadCo according to the Stadium Lease. It is unknown how frequently such circumstances occur as the audit team was not allowed by ManCo to review the agreements between individual concessionaires operating at the Stadium and the master concessionaire.

RECOMMENDATION 1.E: The Stadium Authority Board should direct the Executive Director to renegotiate provisions of the Stadium Lease so that the Stadium Authority receives a share of any concessionaire revenue that exceeds the minimum guaranteed amount from non-NFL events.

Stadium Parking

Section 7.4 of the Stadium Lease includes provisions for Stadium parking for NFL events and non-NFL events. The section generally assigns responsibility for NFL event parking to StadCo and non-NFL event parking to the Stadium Authority, although both entities may and do delegate responsibility for managing parking to ManCo. This lease section requires that each year StadCo deliver a draft NFL parking plan to the Stadium Authority that is compliant with the Traffic Management and Operation Plan (TMOP) and the mitigation measures and conditions of approval and is subject to the approval of the City Director of Community Development. The lease generally assigns responsibility for the annual non-NFL event parking plan to the Stadium Authority.

ManCo and other private parking lot operators must apply to the City for off-site parking permits every year for each lot that provides parking for NFL and non-NFL events at Levi's Stadium. These applications include details about parking lot locations, number of spaces available, events for which they will be operating, hours of operation, compliance with rules covering noise, signage, and lighting, compliance with the Americans with Disabilities Act, and other information. While these applications individually contain much of the information that

might be expected in the required parking plan, they are individual documents and therefore the information is not rolled up into any summary document, other than a single spreadsheet document that provides a total of the number of parking spaces available. The parking permit applications are not delivered to the Stadium Authority as required in the Stadium Lease agreement. They are filed with the City's Community Development Department but not formally forwarded to the Stadium Authority as a consolidated plan.

FINDING 1.F: The Stadium Lease calls for StadCo to prepare a draft parking plan annually for NFL events, to be reviewed and approved by the City Director of Community Development. A formal consolidated draft parking plan was not produced or delivered to the Stadium Authority during FYs 2014-15 or 2015-16. ManCo and City staff report that they consider the annual off-site parking permit applications ManCo files each year, each of which contains data on the subject parking facilities, to be a substitute for the plan. However, without a consolidated plan document, it is not possible for the Stadium Authority Board and staff to readily see the full picture and adequacy of the available and utilized parking facilities.

RECOMMENDATION 1.F: The Stadium Authority Board should direct the Executive Director to notify StadCo that a formal consolidated draft parking plan must be produced and delivered to the Community Development Department and to the Board for review and approval as required under the Stadium Lease.

Section 7.4 of the Stadium Lease allows for the Stadium Authority and StadCo to employ a single third-party operator to manage and operate Stadium parking for NFL games and other Stadium events. In this instance StadCo has the right and responsibility to solicit and select a Stadium parking operator and negotiate the Stadium Parking Management Agreement, both of which are subject to the Stadium Authority's approval.

A more detailed description of Stadium parking agreements, arrangements, and finances is included in Section 4 of this report.

Public Safety Plan

Section 7.5.1 of the Stadium Lease requires ManCo to prepare the initial public safety plan in consultation with the City's Chief of Police, the Stadium Authority, and StadCo, and for the plan to then be adopted by the Stadium Authority and the City. The section also requires the

Stadium Authority and the City (including the Police Chief), in consultation with StadCo, to update the public safety plan as needed from time to time.

FINDING 1.G: While the Chief of Police reports that the public safety plan has been presented in closed session and that his department and other public safety departments have adhered to the public safety plan, there is no documentation of adoption of the original public safety plan by the Stadium Authority, as required by the Stadium Lease.

RECOMMENDATION 1.G: The Stadium Authority Board should direct the Chief of Police to present the public safety plan to the Stadium Authority Board for review and formal approval (in closed session if deemed necessary by Stadium Authority counsel) and to present any updates to the public safety plan to the Stadium Authority Board for review and documented adoption.

Public Safety Costs

Sections 7.5.2 through 7.5.6 of the Stadium Lease include provisions for the reimbursement of certain public safety costs[10] borne by the City that are attributable to NFL games as well as the establishment of a public safety cost threshold. Section 7.5.2 includes a requirement that StadCo reimburse the City for the amount by which public safety costs attributable to NFL games (including a fair share of public safety capital expenditures attributable to NFL games) exceed the fees received by the City from the holders of off-site parking permits that are attributable to NFL games.

Section 7.5.3(b) of the Stadium Lease sets the public safety costs threshold for the first lease year at $170,000 for each pre-season, regular season, and post-season NFL game played at the Stadium during that lease year (the "per game factor"). The section allows for a 4 percent adjustment each lease year in the per game factor. With ten NFL games typically played in the Stadium per year, the original maximum payment amount would be $1.7 million per year, and then adjusted annually by 4 percent.

Section 7.5.3 allows for two main options for reimbursing the City for public safety costs in excess of the public safety costs threshold. Either:

[10] The Stadium Lease defines public safety costs as the actual and reasonable costs of police, traffic control, fire, emergency services and similar services provided by the City for NFL games in the Stadium for each lease year in accordance with the public safety plan, including a fair share of public safety capital expenditures attributable to NFL games.

1. The Stadium Authority may reimburse the City using monies from the Stadium Authority Discretionary Fund or from net hotel community facilities district revenue; or

2. The Stadium Authority may reimburse the City using other revenue sources, which would then constitute "credited public safety costs." Credited public safety costs are to be included among the performance-based rent credits for purposes of determining the amount of performance-based rent payable by the Stadium Authority to the City pursuant to the Ground Lease.

Section 7.5.4 of the Stadium Lease includes two provisions for the possible adjustment of the public safety costs threshold. These provisions include:

1. The public safety costs threshold may be increased if the NFL mandates specific new or expanded security measures that substantially increase public safety costs in connection with NFL games and the reasonable costs of such new or expanded measures will cause the public safety costs threshold to be exceeded.

2. If unanticipated circumstances other than new or expanded security measures mandated by the NFL cause public safety costs for NFL games to exceed the public safety costs threshold over any three consecutive lease years, then, at the request of the City in accordance with the public safety plan, the Stadium Authority, StadCo, and the City will engage in good faith negotiations with respect to a possible increase in the public safety costs threshold.

In addition to the public safety costs reimbursed within the public safety costs threshold, Section 7.5.5 of the Stadium Lease includes provisions for StadCo to provide reimbursement of:

- Up to $750,000 (in addition to $250,000 paid in advance by StadCo in consideration for granting an easement of certain property for Stadium parking[11]) to establish a special events unit and to develop procedures and protocols for the implementation of the public safety plan as well as agreements with surrounding jurisdictions, to be reimbursed for the two year period starting the year before the Stadium opened;

[11] As approved by the Stadium Authority Board on January 10, 2012 by adopting a resolution to execute a parking agreement between the City, Stadium Authority, the Forty Niners SC Stadium Company, LLC, and Cedar Fair L.P., and to grant a non-exclusive easement for parking purposes.

- The rental cost from third parties of barricades and radios used for public safety purposes in connection with NFL events; and,
- Any police escorts or additional security requested for the 49ers team or visiting team players.

Shared Stadium Expenses

Article 8 of the Stadium Lease defines shared Stadium expenses, lists expenses that are excluded from shared Stadium expenses, and describes the payment of shared Stadium expenses and the budgeting, accounting, and auditing of shared Stadium expenses. Section 8.1 defines shared Stadium expenses as costs paid by the Stadium Authority in operating, managing, and maintaining the premises and the appurtenant improvements. Exhibit 1.5 below shows the expenses that are included and excluded from shared Stadium expenses.

Exhibit 1.5: Expenses Included and Excluded from Shared Stadium Expenses

Shared Stadium Expenses:

- **Day-to-Day expenses** of operating and maintaining the premises and the appurtenant improvements (e.g. cleaning, sweeping, repairs, painting, removing garbage, landscaping, and security).
- **Insurance expenses** including for liability, casualty, property, and other coverages (excludes extraordinary expenses directly related to a tenant event or Stadium Authority event).
- **Capital repairs and capital expenditures** to the extent not funded by the Stadium capital expenditure reserve, operating expense reserve, or demolition reserve excess.
- **Stadium management fees** paid to ManCo, excluding any management fees that are included in Stadium Authority event expenses.
- **Other specified shared expenses** that are specifically described in the Stadium Lease as constituting shared Stadium expenses.

Excluded Expenses:

- **Utilities expenses** for utilities used or consumed in or on the premises (generally, utilities consumed during the tenant season shall be paid by StadCo and utilities consumed during the Stadium Authority season shall be paid by the Stadium Authority).
- **Excluded claims** leading to any fines, penalties, interest, costs, or expenses.
- **Debt service** paid by the Stadium Authority of any kind.
- **Other maintenance expenses** for which the Stadium Authority and StadCo are directly responsible, including operating and maintaining exclusive facilities.
- **Stadium Authority overhead**: administration and other related costs associated with operating the business of the Stadium Authority, including costs incurred by the Stadium Authority for accounting and legal matters.
- **Direct expenses** that the Stadium Authority or StadCo agree to pay directly to ManCo from time to time.
- **Other excluded expenses** specifically excluded, including tenant event expenses, Stadium Authority event expenses, and Stadium Authority discretionary expenses.

Section 8.3 of the Stadium Lease outlines the payment of shared Stadium expenses, including the proportionate share for each type of shared Stadium expense by the Stadium Authority and StadCo. Generally, shared Stadium expenses are split evenly (50 percent to be paid by the Stadium Authority and 50 percent to be paid by StadCo). However, Section 8.3 delineates the following shares for shared Stadium expenses that are not split evenly:

- **Insurance:** For the first lease year (April 1, 2014–March 31, 2015), the Stadium Authority's share of the insurance expense was $2,550,000. On the commencement of the second and each succeeding lease year, the Stadium Authority insurance share is increased by 3 percent; provided however, that for any lease year when the attendance at ticketed non-NFL events exceeds 750,000, the Stadium Authority and StadCo are to cooperate in good faith to equitably adjust the Stadium Authority insurance share to reflect the increased attendance at non-NFL events.

- **Groundskeeping Services:** StadCo is to pay 70 percent and the Stadium Authority is to pay 30 percent.

FINDING 1.H: Insurance is the only Stadium Authority shared expense identified in the Lease Agreement for which the Stadium Authority pays a defined amount rather than a share of the total cost. The agreement requires that the Stadium Authority pay a fixed amount starting at $2.6 million in the first year of operations and adjusted annually, regardless of the full insurance premium cost. Unlike all the other expenses shared between StadCo and the Stadium Authority, the amount that StadCo is paying for Stadium insurance is not reported in the operating budget or other Stadium Authority documents. This is inconsistent with Section 4.6 of the Management Agreement, which requires that the Stadium Authority budget include the StadCo budget.

RECOMMENDATION 1.H: The Stadium Authority Board should direct the Executive Director to formally notify StadCo that the total cost for stadium insurance must be disclosed in the shared stadium expenses budget pursuant to Section 4.6 of the Management Agreement and, based on the disclosure, consider proposing to StadCo an amendment to the Stadium Lease to remove the provision that the Stadium Authority pay a fixed amount of insurance costs, with StadCo paying an unknown amount.

Annual Statement of Stadium Operations

Section 8.3.3 of the Stadium Lease requires the Stadium Authority to furnish (or cause ManCo to furnish) to StadCo an Annual Statement of Stadium Operations prepared by a third-party independent certified public accountant selected by the Stadium Authority and approved by StadCo within 90 days of the end of the lease year (or Stadium fiscal year, which ends March 31 each year). Section 4.2 of the Management Agreement establishes the requirement that the Stadium Manager (ManCo) furnish the Annual Statement of Stadium Operations, prepared by a qualified, third party certified public accountant selected by StadCo and approved by the Stadium Authority, to the Stadium Authority and StadCo within ninety days following each fiscal year.

The Annual Statement of Stadium Operations must include the following:

- Stadium Authority revenue;
- StadCo's proportionate share of shared Stadium expenses;
- Shared Stadium expenses;
- The amount of StadCo's payments for estimated shared Stadium expenses;
- Stadium Authority expenses;
- Capital expenditures;
- Net income from non-NFL events; and,
- Distributions to and from the operating expense reserve, Stadium capital expenditure reserve, and renovation/demolition reserve.

If the Annual Statement of Stadium Operations finds that StadCo contributed more or less than its proportionate share of shared Stadium expenses, reconciliation should occur within 30 days after StadCo's receipt or delivery of the annual statement.

The Annual Statement of Stadium Operations is separate and distinct from the Stadium Authority's annual audit of Stadium records. The definition of Stadium records and the rights and process for the Stadium Authority's access to these records for audit by a qualified, third party independent certified public accountant are detailed in Section 8.4.2 of the Stadium Lease.

FINDING 1.I: An Annual Statement of Stadium Operations detailing financial results for the year was not furnished by ManCo for FYs 2014-15 or 2015-16, as required by the Stadium Lease and Management Agreements. The Stadium Lease requires that the Stadium Authority prepare an Annual Statement of Stadium Operations (or cause ManCo to do so). Pursuant to that requirement, the Management Agreement between the Stadium Authority, StadCo, and ManCo specifically requires that ManCo prepare the Annual Statement of Stadium Operations within 90 days of the end of each fiscal year.

RECOMMENDATION 1.I: The Stadium Authority Board should direct the Executive Director to formally notify StadCo and ManCo that ManCo is in breach of the Management Agreement because it did not furnish Annual Statements of Stadium Operations for FYs 2014-15 and 2015-16, and to require that such statements be provided for those years, for FY 2016-17 and each year thereafter.

As mentioned above, Section 8.4 of the Stadium Lease includes a provision that gives StadCo the right, through a qualified, third-party independent certified public accountant, to audit the Stadium records. The section further gives the Stadium Authority the right, through a qualified, third-party independent certified public accountant, to arrange for a second audit if the Stadium Authority does not agree with the results of the audit conducted on behalf of StadCo. Section 8.4.2 of the Stadium Lease requires that the annual audit be completed with 180 days of receipt of the Annual Statement of Stadium Operations, which is required to be completed within 90 days of the end of the Stadium fiscal year, resulting in a requirement that the annual audit be completed within 270 days of fiscal year end (180 + 90 days). The annual audits for FYs 2014-15 and 2015-16 were both delivered within the required timeframe, but the separate Annual Statements of Annual Operations were not provided to the Stadium Authority by ManCo.

Annual Shared Stadium Expense Budget

Section 8.5 of the Stadium Lease establishes a process for annual adoption of a shared Stadium expense budget by the Stadium Authority and StadCo. The section requires that the Stadium Authority cause ManCo to deliver a detailed draft budget of shared Stadium expenses for the upcoming lease year to the Stadium Authority and StadCo. The section further prescribes:

- The detailed draft budget for the upcoming lease year should include a good faith and reasonable projection of shared Stadium expenses over the succeeding five-year period.
- Within 45 days following receipt of the draft budget, the Stadium Authority and StadCo are to provide comments on the draft budget, and StadCo should specify whether any of the line items included in the draft budget should be excluded from shared Stadium expenses and/or whether any of the agreed-upon line items should be reduced.
- If the Stadium Authority or StadCo disapprove all or any portion of the draft budget, their comments should describe the basis with reasonable specificity.
- The section further lays out steps for resolution of any disagreement between the Stadium Authority and StadCo.

FINDING 1.J: Detailed annual shared Stadium expense one year budgets and five year projections were not prepared nor submitted to the Stadium Authority by ManCo for FYs 2014-15 and 2015-16, although these documents were required by the Stadium Lease. A draft one year document was retrieved for FY 2014-15 by a City staff member from their email records. The Stadium Authority's FY 2016-17 budget did include a detailed shared stadium expense breakout but no five year projections.

RECOMMENDATION 1.J: The Stadium Authority Board should direct the Executive Director to send formal notification to ManCo and StadCo that ManCo was in apparent breach of the Stadium Lease requirement that a one year budget and five year projection of shared Stadium expenses be provided on an annual basis to the Stadium Authority and demanding that ManCo provide such budgets and projections for the current and all future years. The Executive Director should be directed to provide a written response to ManCo each year on the draft budget submitted by ManCo.

Capital Repairs

Article 10 of the Stadium Lease establishes the planning and financial practices for capital repairs and replacements at the Stadium site. Article 10 specifically requires that:

- The Stadium Authority annually adopt a **capital expenditure plan** as part of the Stadium Operation and Maintenance Plan.
- The Stadium Authority establish and maintain a capital expenditure reserve account for holding, applying, investing, and transferring the Stadium capital expenditure reserve. The Stadium Authority must also hold and disburse the funds required to be deposited in accordance with the annual capital expenditure plan.
- ManCo annually deliver a detailed draft projection of capital expenditures (**"draft capital expenditure plan"**) for the upcoming lease year as well as a five-year projection of anticipated capital expenditures to the Stadium Authority and StadCo for review, comment, and mutual approval (*See Finding 1.B above)*. Article 10 (Section 10.4) also requires that the draft capital expenditure plan:
    - Contain ManCo's proposed capital repairs to be made to the premises or the appurtenant improvements during the upcoming lease year;
    - Describe in reasonable detail any material discrepancies between ManCo's proposed capital expenditures for the upcoming lease year and the five-year projection of anticipated capital expenditures included in the previous year's capital expenditure plan (*See Finding 1.B above)*; and,
    - Include any capital expenditures for public safety that ManCo proposes be made consistent with the then in effect public safety plan.

Article 10 also includes provisions for the use of Stadium Authority excess revenues, limitations on the use of the Stadium capital expenditure reserve (such as for tenant improvements), and amending the draft capital expenditure plan.

Stadium Authority Revenue

Article 12 of the Stadium Lease defines the Stadium revenue that the Stadium Authority will be entitled to (**"Stadium Authority revenue"**). The article states that Stadium Authority revenue includes:

- All revenue from operation of the Stadium during the Stadium Authority season (generally, February 1–July 31);
- Facility rent and StadCo's proportionate share of shared Stadium expenses paid by StadCo for the lease year (April 1–March 31);
- One half of the proceeds of the $4.00 non-NFL ticket surcharge;
- Proceeds from the City of Santa Clara Senior and Youth Program fee ($0.35 per ticket for NFL games up to $250,000);
- All Stadium naming rights revenue;
- Net revenues from the sale of Stadium builders licenses;[12]
- Net hotel CFD (Community Facilities District) revenue;
- Stadium Authority Parking Revenue, which consists of:
    - All net revenues from the operation of the public parking facilities for Stadium Authority events; and
    - All revenue sharing or parking surcharge revenues received by the Stadium Authority for Stadium Authority events from contracts with private parking lot owners in the vicinity of the Stadium;
- Stadium Authority concession revenue (concession revenue from operations during non-NFL events);
- Non-NFL event revenue, including:
    - All revenues from the sale of tickets for non-NFL events;
    - All revenues received by the Stadium Authority from the promoter or sponsor of any non-NFL event, including amounts paid by promotor or other sponsor for the right to use and occupy the Stadium for such non-NFL event (but not including occupancy of suites for non-NFL events and any associated premiums); and
    - All non-NFL event service revenue;
- Non-NFL event advertising revenue; and,

[12] Stadium Builders Licenses (SBLs) are the licenses issued to persons pursuant to the SBL agreement for the right to purchase season tickets for NFL games in the stadium in which the 49ers are the home team, and a preferential right to purchase tickets for non-NFL events.

- Other Stadium Authority revenue such as reimbursements of past, present, or future Stadium Authority expenses, such as insurance proceeds or similar amounts paid by third parties, if not previously taken into account to reduce Stadium Authority expenses.

Though not included in the Stadium Lease, a 10 percent surcharge on all NFL tickets is another source of Stadium Authority revenue but it is established in the Non-relocation Agreement rather than the Stadium Lease.

Tenant (StadCo) Revenue

Article 13 of the Stadium Lease defines the Stadium revenue that StadCo (the "tenant") will be entitled to (**"tenant revenue"**). The article states that tenant revenue includes:

- All NFL event revenue, including NFL ticket revenue (exclusive of the City of Santa Clara Senior and Youth Program Fee);
- All suite premium revenue;
- All NFL advertising and sponsorship revenue;
- All tenant concession revenue;
- All tenant service revenue (excluding services provided exclusively for and during non-NFL events);
- All tenant telecommunications revenue;
- All gross income and revenue from tenant's incidental uses;
- All revenue received by tenant from the use of the Stadium commercial areas, including revenue from subleases of the Stadium commercial areas;
- All gross income and revenues, royalties, license fees, receipts, and other consideration of whatever kind or nature realized by, from, or in connection with the operation of the Franchise, whether or not arising from activities in or at the Stadium complex, including all revenue from NFL broadcast rights, intellectual property rights, and domain name rights;
- Tenant parking revenue, which consists of all net revenues from the operation of the public parking facilities for tenant events, and all revenue sharing or parking surcharge revenues received by StadCo for tenant events from contracts with private parking lot owners in the vicinity of the Stadium, including the main lot parking charge.

Excess Stadium Authority Revenues

Article 14 of the Stadium Lease stipulates the distribution priorities of any excess Stadium Authority revenues for any lease year prior to a "Tenant Season Expansion Date."[13] The article specifies that excess Stadium Authority revenues shall be distributed in the following order:

1. **Management Company Revolving Loan:** First, as provided in the Revolving Credit Agreement, any excess Stadium Authority revenues shall be used to pay off the then outstanding balance, if any, of the Management Company revolving loan.

2. **Funding of Future Stadium Authority Expenses:** Second, if, as of the end of the particular lease year, the balance of the Operating Expense Reserve[14] is less than $2 million, then the Stadium Authority shall transfer such excess revenues to the Operating Expense Reserve in an amount equal to the lesser of:

    a. The amount necessary to increase the amount of the Operating Expense Reserve to $2 million; or

    b. $1 million.

3. **Stadium Capital Expenditure Reserve:** Third, the next $1 million of excess Stadium Authority revenues in any such lease year shall be transferred to the Stadium Capital Expenditure Reserve.

4. **Operating Expense Reserve:** Fourth, as of the end of the particular lease year, the balance of the Operating Expense Reserve is less than $10 million, and then the Stadium Authority shall transfer such excess Stadium Authority revenues to the Operating Expense Reserve in order to increase the balance to $10 million.

5. **Prepayment of Subordinated Loan:** Fifth, the Stadium Authority shall use any additional excess revenues to prepay any outstanding principal balance on the subordinated loan in accordance with the StadCo Obligations Agreement.

[13] Per Section 5.1 of the Stadium Lease, the Stadium Authority may elect to expand the "tenant season" to consist of the entire lease year, from April 1 through the next succeeding March 31 (the "Stadium Authority Put Right").
[14] The "operating expense reserve" is a reserve retained by the Stadium Authority to fund Stadium Authority expenses, excluding debt service on the permitted landlord financing.

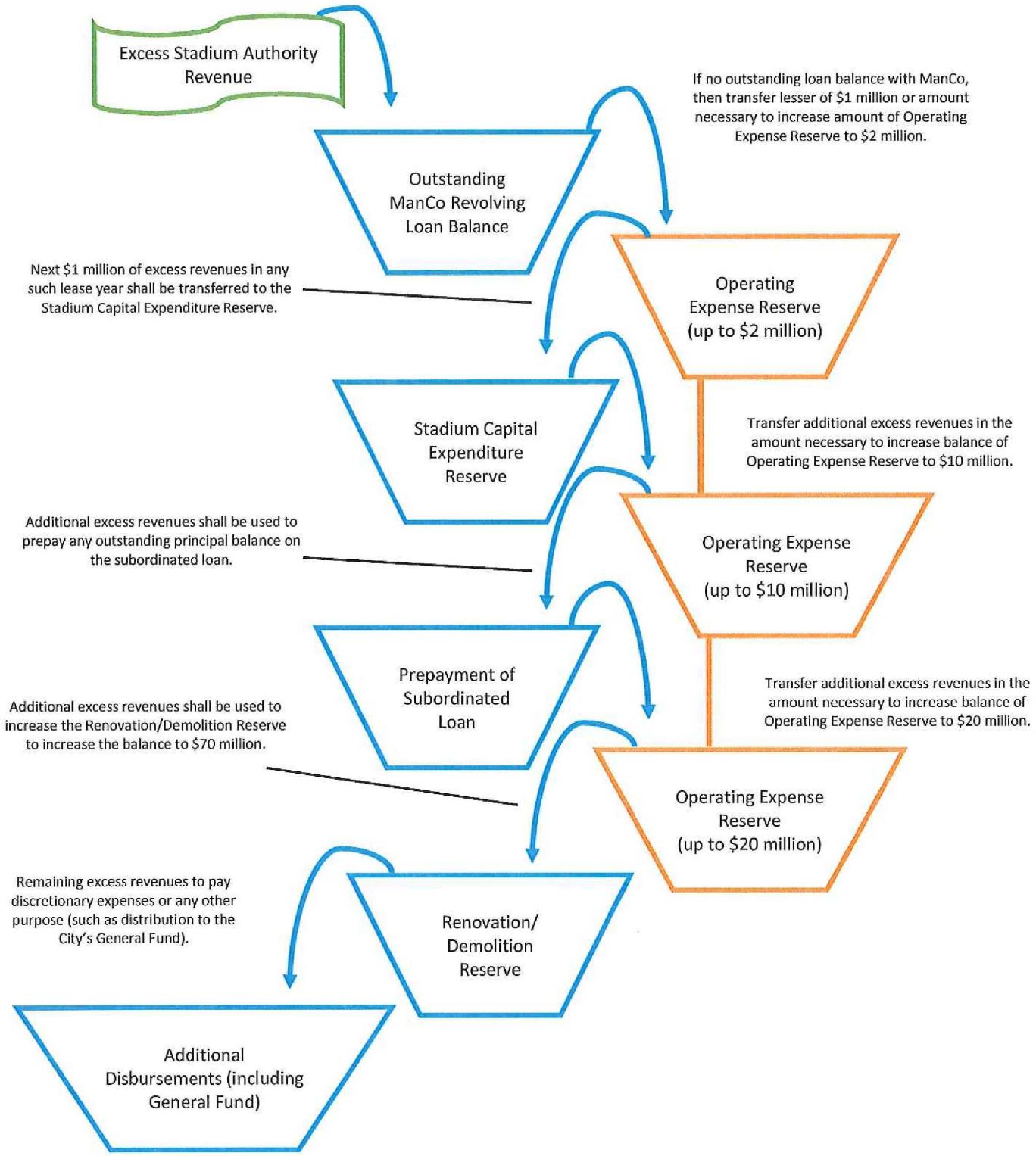
6. **Additional Operating Expense Reserve Amounts:** Sixth, if, as of the end of the particular lease year, the balance of the Operating Expense Reserve is less than $20 million, then the Stadium Authority shall transfer the additional excess Stadium Authority revenues to the Operating Expense Reserve in the amount necessary to increase the balance of the Operating Expense Reserve to $20 million.

7. **Renovation/Demolition Reserve:** Seventh, if, as of the end of the particular lease year, the balance of the Renovation/Demolition Reserve is less than $70 million, then the Stadium Authority shall transfer the additional excess Stadium Authority revenues to the Renovation/Demolition Reserve in order to increase the balance to $70 million.

8. **Additional Disbursements:** After distribution to the first seven priorities listed above, the Stadium Authority has the right to use the remaining excess revenues in such lease year, if any, to pay Stadium Authority discretionary expenses or for any other purposes, including the distribution to the City's General Fund.

The requirements contained in Article 14 of the Stadium Lease for the allocation of excess Stadium Authority revenues are illustrated in Exhibit 1.6 below.

Exhibit 1.6: Allocation of Excess Stadium Authority Revenues



FINDING 1.K: The Stadium Authority's annual operating budget and quarterly financial reports did not disclose during the audit review period whether or not the Stadium Authority is adhering to Stadium Lease requirements pertaining to the allocation of excess Stadium Authority revenue to its various reserves, as required in the Stadium Lease. Beginning and ending balances and amounts added and deleted from each reserve during the year were not disclosed in the budget, quarterly financial reports, or annual audits for the Board, staff, and public to determine compliance with Stadium Lease requirements.

RECOMMENDATION 1.K: The Stadium Authority Board should direct the Executive Director and Treasurer to work with ManCo to require that the annual operating budget and quarterly financial status reports disclose sufficient information to ensure that staff and the Board can determine whether the Stadium Authority is adhering to Stadium Lease requirements contained in Article 14 regarding the allocation of excess Stadium Authority revenue.

The Stadium Authority's compliance with excess Stadium Authority revenue requirements during FYs 2014-15 and 2015-16 in Article 14 of the Stadium Lease is discussed in more detail in Section 2 of this report.

C. Management Agreement

In March 2012 the Stadium Authority, the Forty Niners SC Stadium Company, LLC ("StadCo"), and the Forty Niners Management Company ("ManCo") entered into a Stadium Management Agreement ("Management Agreement") for ManCo to provide private management services at the Stadium on behalf of the Stadium Authority and StadCo on a continual, year-round basis, including overseeing day-to-day operations and maintenance of the Stadium. The Management Agreement also requires ManCo to handle the marketing and booking of non-NFL events at the Stadium on behalf of the Stadium Authority.

The initial term of the Management Agreement is 25 years. The Stadium Authority may opt to extend the term for one additional 15-year period.

Stadium Manager Duties

The duties of ManCo as the Stadium manager are articulated in Article 2 and Article 3 of the Management Agreement. Article 2 establishes ManCo's pre-opening obligations, which were outside the scope of this audit and therefore are not detailed in this report, as well as operational management duties and responsibilities starting on the commencement date of the Stadium Lease. Sections 2.6.1 through 2.6.24 list the specific Stadium management duties and responsibilities of the Stadium manager (ManCo).

Article 3, which was partially revised by the first amendment to the Management Agreement, detailed the marketing, promotion, and booking services to be provided by ManCo for non-NFL events (see *1st Amendment to the Management Agreement* subsection below for details on the revisions made to Article 3). Article 3 also detailed the Stadium Authority's right, and the procedures for exercising its right, to replace ManCo as the Stadium manager. Article 3 specifically requires that ManCo:

- Market, promote, schedule, and book non-NFL events and other activities at the Stadium in accordance with the scheduling procedures;[15] and negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements:
    - With persons who desire to schedule events, performances, telecasts, broadcasts, or other transmissions in, from, or to the Stadium or who desire otherwise to use the Stadium or any part thereof; or

[15] The scheduling procedures are described in Section 2 of the Stadium Operations Agreement between the Stadium Authority and Forty Niners SC Stadium Company LLC ("StadCo").

- That pertain to the use, operation, and occupancy of the Stadium or any part thereof, other than contracts, use agreements, licenses, and other agreements StadCo has the right to negotiate, execute, and perform under the Stadium Lease.

- Prepare and provide the marketing plan, required by Section 4.10 of the Management Agreement, to the Stadium Authority.

More details on marketing plan requirements, and Stadium Authority and ManCo's compliance with those requirements, are presented below in the discussion of the 1st amendment to the Management Agreement.

Records and Accounting Procedures Required of ManCo

Article 4 of the Management Agreement details the records that must be retained and the accounting procedures to be used by ManCo. Article 4 requires that ManCo maintain complete and accurate books and records relating to the net income from non-NFL events, in accordance with generally accepted accounting and management practices. Article 4 further requires that ManCo maintain complete and accurate records of all Stadium Authority revenue, shared Stadium expenses, Stadium Authority expenses, net income from non-NFL events, the cost of capital repairs, distributions to and from the operating expense reserve, the Stadium capital expenditure reserve, and any additional information required to prepare the annual statement of Stadium operations.

Article 4 also requires that ManCo maintain an accounting system in accordance with generally accepted accounting procedures, on an accrual basis, consistently applied.

Budgets and Reports to be Provided by ManCo

Though there are some differences, Article 4 of the Management Agreement is mostly consistent with requirements of the Lease agreement in detailing six[16] deliverables as part of four statements, budgets, and plans that ManCo is required to provide to the Stadium Authority on a regular basis. These six deliverables are as follows and summarized in Exhibit 1.7 below: (1) annual statement of Stadium operations; (2) Stadium Operation and Maintenance Plan; (3) annual operating budget; (4) annual shared Stadium expense budget; (5) draft capital expenditure plan; and, (6) marketing plan.

[16] In addition, Article 4 of the Management Agreement requires ManCo to advance funds necessary to fund and pay the operating costs and expenditures projected in the Transitional Budget. However, the scope of this audit does not include transitional expenses.

Exhibit 1.7: Summary of Budgets and Reports Required by the Management Agreement

Deliverable	Management Agreement Section	Timeframe of Preparation/ Delivery by ManCo	Description
Annual Statement of Stadium Operations	4.2	Furnished to Stadium Authority and StadCo within 90 days following each fiscal year (within 90 days of March 31st each year)	The requirements for this annual statement are detailed in Section 8.3.3 of the Stadium Lease: • Stadium Authority revenue • Tenant's (StadCo's) proportionate share of shared Stadium expenses • Shared Stadium Expenses • Amount of StadCo's payments for estimated shared Stadium expenses • Stadium Authority expenses • Capital expenditures • Net income from non-NFL events • Distribution to and from the operating expense reserve, Stadium capital expenditure reserve, and renovation/demolition reserve
Stadium Operation and Maintenance Plan *(Including Marketing Plan)*	4.5 & 4.10	Prepared in accordance with the terms and conditions in the Stadium Lease. Stadium Lease states that ManCo shall present the plan annually to the Stadium Authority for approval.	Section 7.2 of the Stadium Lease states that the Stadium Manager (ManCo) shall be responsible for preparing the Stadium Operation and Maintenance Plan, including the annual shared Stadium expense budget, annual public safety budget, and the capital expenditure plan. Section 7.2 states that all these documents shall be presented annually to the Stadium Authority and StadCo for their consideration and approval. Under Section 4.10 of the Management Agreement, the Stadium Operation and Maintenance Plan shall also include a marketing plan. Section 4.10 further requires that the marketing plan set forth in reasonable detail ManCo's plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL events for the Stadium.

Deliverable	Management Agreement Section	Timeframe of Preparation/ Delivery by ManCo	Description
Annual Operating Budget ("Stadium Operations Budget") *(Including Annual Shared Stadium Expense Budget)*	4.6 & 4.7	Prepared annually for each fiscal year with annual Stadium Authority budget subject to prior review and approval of Stadium Authority.	Section 4.6 of the Management Agreement states that ManCo will prepare an annual operating budget ("Stadium operations budget") for the Stadium for each fiscal year to meet the scope of services and objectives under the Management Agreement. Under Sections 4.6 and 4.7 of the Management Agreement, the Stadium operations budget must include: 1. An annual Stadium Authority budget, which meets the scope of services performed by ManCo on behalf of the Stadium Authority and includes all Stadium Authority expenses in connection with the Stadium; and 2. An annual StadCo Budget, which meets the scope of services performed by ManCo on behalf of StadCo and includes all StadCo operating expenses in connection with the services covered by the Management Agreement. 3. An annual shared Stadium expense budget together with a good faith and reasonable projection of shared Stadium expenses over the succeeding five year period.
Draft Capital Expenditure Plan	4.8	Delivered to Stadium Authority and StadCo prior to each fiscal year.	Section 4.8 of the Management Agreement states that ManCo shall deliver a draft capital expenditure plan to the Stadium Authority and StadCo prior to each fiscal year. Section 4.8 further requires that the draft capital plan include: 1. A detailed draft projection of capital expenditures for the upcoming fiscal year as well as a five year projection of anticipated capital expenditures;

Deliverable	Management Agreement Section	Timeframe of Preparation/ Delivery by ManCo	Description
			2. ManCo's proposed capital repairs to be made to the premises during the upcoming fiscal year; 3. A description in reasonable detail of any material discrepancies between ManCo's proposed capital expenditures for the upcoming fiscal year and the five year projection included in the previous year's capital expenditure plan; and, 4. Any capital expenditures for public safety that ManCo proposes be made consistent with the then approved public safety plan.

FINDING 1.L: The Management Agreement's requirement that "reasonably detailed" annual marketing plans, produced by ManCo and setting forth their plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL events for the Stadium, was not met as such plans were not provided to the Stadium Authority for FYs 2014-15 and 2015-16.

RECOMMENDATION 1.L: The Stadium Authority Board should direct the Executive Director to notify ManCo that previous annual marketing plans were inadequate as they did not set forth reasonably detailed plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL activities. The Board should further direct the Executive Director to notify ManCo that future marketing plans must include such details and be reviewed for sufficient detail by the Executive Director before being presented to the Board.

Stadium Manager Fees and Expenses

Article 7 of the Management Agreement defines the fees and expenses that may be charged by the Stadium manager (ManCo). Article 7 provides for a base management fee, a marketing and booking fee, and Stadium manager expenses to be charged to the Stadium Authority and sometimes to StadCo.

Section 7.2 provides that ManCo may charge a base fee ("Base Management Fee") of $400,000 per year paid in 12 monthly installments throughout the fiscal year. Section 7.2 further states that the base management fee shall be increased annually at the close of each fiscal year by 3 percent of the then current base management fee.

Section 7.3 provides that ManCo may include an incentive component for its marketing and booking services performed. Section 7.3 further states that the terms of the marketing and booking fee, including the timing of payment, the amount and/or any formula used in its calculation, and any escalation factor, shall be agreed to by each of the parties in writing.[17]

Section 7.4 states that the Stadium Authority and StadCo shall provide funds to pay any manager operating expenses and any other of ManCo's actual costs and expenses in connection with its services. Section 7.4 states that these expenses shall comprise a portion of the Stadium operations budget.

1st Amendment to the Management Agreement

The Management Agreement was first amended in November 2012 to establish the terms of a marketing and booking incentive fee to be paid to ManCo, to clarify the contracting and procurement authority of ManCo, and to make certain other amendments.

1st Amendment to the Management Agreement: Marketing and Booking Fee and Duties

Section 3 of the 1st amendment to the Management Agreement establishes formulas for the calculation of the marketing and booking fee to be paid to ManCo. Section 3 includes two formulas: the first formula is for the first three fiscal years of Stadium operations and the second formula is for the fourth fiscal year and continuing thereafter during the term of the Management Agreement.

The formula for the first three fiscal years includes a benchmark of $5 million in the first year, which escalates 3 percent in the second and third fiscal years. The marketing and booking fee is

[17] The terms of the marketing and booking fee were established in the first amendment to the Management Agreement dated November 13, 2012.

based on the amount by which net income from non-NFL events exceeds the marketing and booking fee benchmark with higher marginal percentages based on defined brackets. Following the third fiscal year, the defined ranges are changed to "tier ceilings," which continue to escalate by three percent each year, but with different range amounts. The end result of the transition from the first formula to the second formula is that ManCo is rewarded more generously at certain amounts as the marginal rate brackets ceilings are lowered and the five percent rate is eliminated.

Exhibit 1.8 below illustrates the two formulas established by the 1st amendment to the Management Agreement.

Exhibit 1.8: Management and Booking Fee Formulas Established by 1st Amendment to the Stadium Management Agreement

First Three Fiscal Years		Following the Third Fiscal Year	
Amount by which net income from non-NFL events exceeds marketing and booking fee benchmark[a]	**Marginal Rate**	**Amount by which net income from non-NFL events exceeds marketing and booking fee benchmark[b]**	**Marginal Rate**
$1 - $1,000,000	5%	$1 - First Tier Ceiling[c]	10%
$1,000,001 - $2,000,000	10%	First Tier Ceiling–Second Tier Ceiling[d]	15%
$2,000,001 - $7,000,000	15%	Second Tier Ceiling and above	20%
$7,000,001 and above	20%		

[a] The benchmark was set at $5 million in the first fiscal year and increases annually by 3 percent of the then current marketing and booking fee.

[b] The benchmark beginning in the fourth year is based on the same amount that was established in the first year with three percent compounding increases each year. The benchmark for the fourth fiscal year would therefore be equal to $5,463,635.

[c] The first tier ceiling is set at $2 million for the fourth year with annual increases of 3 percent of the then current first tier ceiling.

[d] The second tier ceiling is set at $4 million for the fourth year with annual increases of 3 percent of the then current second tier ceiling.

FINDING 1.M: Though non-NFL event records are reviewed by Stadium Authority staff, detailed records were not provided to the Stadium Authority by ManCo for Stadium Authority records or budget in FYs 2014-15 and 2015-16 to enable the Stadium Authority to assess non-NFL event financial performance, including incentive payments to ManCo.

RECOMMENDATION 1.M: The Stadium Authority Board should direct the Executive Director to confer with the Finance Director/Treasurer to determine what financial information would be necessary to assess non-NFL event financial performance, including incentive payments to ManCo, and then notify ManCo regarding what additional information will be required on an ongoing basis.

Section 3 in the 1st amendment to the Management Agreement also deletes Section 3.2 of the original Stadium Management Agreement, which detailed ManCo's marketing and booking duties and responsibilities. Section 3.2 of the first amendment to the Stadium Management Agreement states that:

- ManCo shall prepare and provide the Stadium Authority with the marketing plan required by Section 4.10 of the Stadium Management Agreement;
- ManCo shall use commercially reasonable efforts, consistent with the marketing plan, to market, promote, schedule, and book non-NFL events and other activities at the Stadium in accordance with the scheduling procedures; and
- The Stadium Authority agrees that ManCo shall have full authority and discretion to:
    - Determine which non-NFL events shall be booked in accordance with scheduling procedures; and
    - Negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements with the persons who desire to conduct such non-NFL events or who desire otherwise to use the Stadium other than those that StadCo has the right to negotiate, execute, and perform under the Stadium Lease.

Section 3.3 of the first amendment to the Stadium Management Agreement requires ManCo to meet and confer at least quarterly with the Stadium Authority Executive Director (City Manager) to report on the status of:

- ManCo's efforts related to marketing and promoting non-NFL events;
- Any ongoing negotiations with respect to non-NFL events;
- Financial performance and other matters relating to past non-NFL events; and
- The development of the marketing plan for the succeeding fiscal year.

In addition, Section 3.3 requires the Stadium Authority to furnish the Stadium Authority Executive Director, within 45 days of each non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, with written revenue or other reports relating to non-NFL events as the parties may agree from time to time.

FINDING 1.N: Meetings that took place between ManCo and Stadium Authority staff during the audit review period were not recorded or documented as marketing meetings, although staff reports that marketing topics such as those required in the Management Agreement may have been discussed. Further, although ManCo provides access for Stadium Authority staff to view certain revenue and expenditure data on non-NFL events, ManCo has not provided the Stadium Authority with written revenue reports for non-NFL events with attendance projected to exceed 25,000 as required by Section 3.3 of the Management Agreement.

RECOMMENDATION 1.N: 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.

1st Amendment to the Management Agreement: Delegation of Contracting Authority

Section 2 of the 1st amendment to the Stadium Management Agreement includes provisions for the delegation of contract authority from the Stadium Authority Executive Director (City Manager) to ManCo. These provisions include that ManCo shall have the full authority and discretion to select providers, and to negotiate, approve, enter into and administer contracts for the purchase of supplies, materials and equipment, and services pursuant to the Stadium Authority Procurement Ordinance (Section 17.30 of the City Code). However, the 1st amendment requires that ManCo provide the Stadium Authority with information regarding all Stadium procurement contracts with amounts greater than $100,000 within 30 days of execution of such contracts. Further, Section 2 of the amendment requires that all contracts that ManCo enters into on behalf of the Stadium Authority must contain terms and conditions generally consistent with those contained in approved forms of the procurement ordinance. If ManCo desires to enter into a contract with terms and conditions that are materially different, then ManCo must obtain the Stadium Authority Executive Director's (City Manager) prior approval.

Section 2 of the first amendment to the Stadium Management Agreement allows ManCo to transact Stadium Authority business, including acquiring property or services from its affiliates, but "only if the prices charged and services rendered are competitive with those obtainable from others rendering services in the field." This provision does not require procedures to ensure that goods and services received from an affiliate of ManCo are truly competitively priced.

FINDING 1.O: Section 2 of the first amendment to the Management Agreement does not include sufficient controls to ensure that goods and services acquired from ManCo affiliates are competitively priced.

RECOMMENDATION 1.O: The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to request an amendment to the Management Agreement that would require formal and/or informal bidding procedures for any transactions with ManCo affiliates or for transactions above a designated threshold to ensure that goods and services received from an affiliate of ManCo are competitively priced.

1st Amendment to the Management Agreement: Parking Agreements

Section 4 of the 1st amendment to the Stadium Management Agreement provides ManCo with full authority and discretion to select the off-site private parking locations for Stadium events, and to negotiate and enter into contracts with private parking lot owners for use of their spaces. In addition, Section 4 requires that ManCo report on the status of: private parking agreements, any ongoing negotiations with private parking lot owners, and the financial performance and other matters relating to the off-site private parking locations for Stadium Authority events at the quarterly meetings with the Stadium Authority Executive Director. Section 4 also gives ManCo the primary right to select a Stadium Parking Operator.

FINDING 1.P: Reports on the financial performance of private parking lots required in the 1st amendment to the Management Agreement may have been orally presented in meetings between Stadium Authority staff and ManCo, as required in the Management Agreement. However, there are no reports or any formal written materials to document such reports being made in Stadium Authority records. Further, while quarterly updates provided by Stadium Authority staff to the Stadium Authority Board include the number of cars parked and amount of fees collected at off-site lots, they do not include financial performance of those lots (e.g. revenue and expenditure data).

RECOMMENDATION 1.P: The Stadium Authority Board should direct the Executive Director to direct ManCo to provide quarterly written reports to the Stadium Authority, to be maintained as permanent Stadium Authority records, detailing parking lot information as required in the first amendment to the management agreement.

2nd Amendment to the Management Agreement

A second amendment to the Stadium Management Agreement was executed on May 9, 2013 primarily to add a provision requiring that no less than 36 major events, or an average of 12 per year, be held at the Stadium in each three year period.[18] Major events are defined in the Naming Rights Agreement as events with attendance of 25,000 or more.

[18] "Three year period" is defined in the Naming Rights Agreement.

3rd Amendment to the Management Agreement

A third amendment to the Stadium Management Agreement was executed on June 19, 2013 to add a revolving credit agreement between the Stadium Authority and ManCo (Exhibit A to the Stadium Management Agreement). The Stadium Authority has not used this line of credit as of August 2017.

4th Amendment to the Management Agreement

A fourth amendment to the Stadium Management Agreement was executed on March 18, 2014 to revise the agreement to add language regarding ManCo's responsibilities for management of Stadium builders licenses (SBLs), which is discussed in more detail in section 2 of this report.

D. Stadium Operations Agreement

In August 2014 the Stadium Authority and the Forty Niners SC Stadium Company, LLC ("StadCo") entered into a Stadium Operations Agreement ("Operations Agreement") to establish standards, procedures, and protocols for the operation of Levi's Stadium as required by the Stadium Lease. These standards, procedures, and protocols include:

- Procedures for the scheduling of Stadium events;
- Procedures and requirements for the preparation and approval of the annual Stadium Operation and Maintenance Plan, annual shared Stadium expense budget, the annual Stadium capital expenditure plan, and the annual statement of Stadium operations;
- Procurement guidelines; and,
- Reasonable rules and regulations regarding Stadium access by suite licensees of their suites and premium Stadium areas.

Scheduling Procedures for Booking Stadium Events

Section 2 of the Operations Agreement establishes procedures for booking Stadium events, including planning meetings between the Stadium Authority, StadCo, and Forty Niners Stadium Management Company, LLC (ManCo) as well as the use of a calendaring system. Section 2.1 states that the Stadium Authority and StadCo will meet with ManCo from time to time to plan and coordinate the scheduling of Stadium events to occur in the following lease year. Section 2.2 states that ManCo shall establish and maintain an official Stadium calendar system, showing all scheduled Stadium events, that is accessible online by StadCo and the Stadium Authority. Section 2.2 further states that this calendaring system shall constitute notice to StadCo and the Stadium Authority of the scheduling of Stadium events and that ManCo will be responsible for establishing and maintaining the official schedule of events and other uses of the Stadium.

FINDING 1.Q: Planning meetings between Stadium Authority staff and ManCo required in the Management Agreement are not documented or reported to the Board, so there are only oral representations by staff that the required planning meetings to plan and coordinate Stadium event scheduling have occurred.

RECOMMENDATION 1.Q: The Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority staff and ManCo be documented and reported quarterly or annually to the Stadium Authority Board.

Preparation and Approval of the Stadium Operation and Maintenance Plan

In addition to references in the other agreements described above, Section 3 of the Operations Agreement provides some guidance on the preparation and approval of the Stadium Operation and Maintenance Plan, including the budgeting of public safety capital expenditures.

Section 3.1 reiterates the Stadium Lease requirement that ManCo holds responsibility for preparing and updating the Stadium Operation and Maintenance Plan and that the plan for each lease year shall include:

- An annual operating budget for the Stadium for the following lease year to meet the scope of services and objectives for the operation and maintenance of the Stadium in accordance with the Stadium Operation and Maintenance Plan;
- The annual public safety budget, which shall include an annual budget for public safety costs, including amortization of public safety capital expenditures; and,
- The capital expenditure plan.

Further, Section 3.1 requires that all elements of the Stadium Operation and Maintenance Plan included in the bullet points above shall be presented annually to the Stadium Authority and StadCo for their respective consideration and approval as described in the Stadium Lease.

Section 3.2 includes provisions on what shall be included in the annual public safety budget; how public safety capital expenditures should be approved; procedures for utilizing the public safety capital expenditure reserve for public safety capital expenditures; and, how StadCo's and the Stadium Authority's shares of public safety costs should be included in the annual public

safety budget and reported in the annual statement of Stadium operations. Section 3.2 provisions are, by and large, consistent with the terms of the Stadium Lease.

FINDING 1.R: The provision in the Management Agreement that various documents, plans, and budgets that ManCo is required to provide to the Stadium Authority can be approved by the Stadium Authority Executive Director limits key information routinely provided to the Board, the Board's oversight role, and the Board's ability to serve as steward of Stadium Authority finances and operations.

RECOMMENDATION 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.

Procurement Guidelines

Section 4 of the Operations Agreement covers procurement guidelines to be used by ManCo, which largely reflect the delegation of contracting authority covered by Section 2 of the 1st amendment to the Stadium Management Agreement. Section 4 additionally states that all property and equipment purchased for use in the Stadium shall be and shall remain the property of StadCo and the Stadium Authority as applicable. Section 4 also additionally states that, except for capital repairs included in any budget prepared by ManCo, or emergency expenditures, ManCo has no authority to make any capital improvements without the prior written consent of StadCo for capital expenditures that affect tenant improvements or the Stadium Authority for all other capital improvements.

Stadium Access for Suite Licensees

Section 5 of the Operations Agreement establishes procedures for Stadium access by suite licensees. Generally, Section 5 allows StadCo to permit each licensee of a suite to use its suite and premium Stadium areas at any time on a year-round basis during normal Stadium business hours provided that: (1) no Stadium Authority event is being held anytime during (or immediately prior to or immediately following) such use of the Stadium and (2) either StadCo or the suite licensee shall pay a fee for the use of the premium Stadium areas in an amount sufficient to cover the operating costs and expenses directly resulting from such use.

Conclusions and Findings

Our review of the key leases and other agreements for management, operation, and use of the Stadium and adjacent parking lots resulted in the following findings:

FINDING 1.A: The Stadium Authority is using non-NFL revenue to reimburse the City for NFL expenses in the form of public safety costs because those costs have exceeded and will likely continue to exceed the threshold, or capped amount, established in the Stadium Lease for which StadCo is responsible at $1.7 million per year (adjusted annually). The Stadium Lease Agreement allows for renegotiation of the amount reimbursed by StadCo after three years of the Stadium opening.

FINDING 1.B: Though required in the Stadium Lease, there is no Stadium Authority record of draft five year capital expenditure plans and explanations of variances between the five year and one year capital plans in the budget being provided to the Stadium Authority by ManCo, or adopted by the Stadium Authority, for FYs 2014-15 and 2015-16. The absence of such information hampers the Stadium Authority's ability to assess the financial condition of the Stadium facility and to plan for needed improvements in future years.

FINDING 1.C: Though required to do so by the Stadium Lease, there is no Stadium Authority record showing that ManCo submitted, and the Stadium Authority approved, an annual Operation and Maintenance Plan in FYs 2014-15 and 2015-16. The plan, which is to detail the "required condition" of the Stadium and its methods of upkeep, is a key document for the Board and staff to review to assist in determining funding levels and assessing Stadium operations. A redacted copy of the plan document, provided to the Stadium Authority Executive Director while this audit was in progress, has not been formally provided to the Stadium Authority Board as ManCo required that the document be kept confidential.

FINDING 1.D: The Stadium Lease requires that the Operation and Maintenance Plan prepared by ManCo and submitted to the Stadium Authority include an annual Public Safety Budget. At approximately $5.7 million in FY 2015-16, public safety costs are one of the Stadium's largest expenses, but a budget for these costs were not submitted to the Stadium Authority in total or approved by the Board for the two years within the scope of this audit.

FINDING 1.E: According to the Stadium Lease, StadCo receives concession revenues generated during the NFL season and the Stadium Authority receives concession revenues generated during the non-NFL season plus those from non-NFL events that take place during the NFL

season. However, if a concessionaire's minimum rental payment is more than the concessionaire is otherwise required to pay, the difference between the actual payment and the minimum guaranteed amount all goes to StadCo according to the Stadium Lease. It is unknown how frequently such circumstances occur as the audit team was not allowed by ManCo to review the agreements between individual concessionaires operating at the Stadium and the master concessionaire.

FINDING 1.F: The Stadium Lease calls for StadCo to prepare a draft parking plan annually for NFL events, to be reviewed and approved by the City Director of Community Development. A formal consolidated draft parking plan was not produced or delivered to the Stadium Authority during FYs 2014-15 or 2015-16. ManCo and City staff report that they consider the annual off-site parking permit applications ManCo files each year, each of which contains data on the subject parking facilities, to be a substitute for the plan. However, without a consolidated plan document, it is not possible for the Stadium Authority Board and staff to readily see the full picture and adequacy of the available and utilized parking facilities.

FINDING 1.G: While the Chief of Police reports that the public safety plan has been presented in closed session and that his department and other public safety departments have adhered to the public safety plan, there is no documentation of adoption of the original public safety plan by the Stadium Authority, as required by the Stadium Lease.

FINDING 1.H: Insurance is the only Stadium Authority shared expense identified in the Lease Agreement for which the Stadium Authority pays a defined amount rather than a share of the total cost. The agreement requires that the Stadium Authority pay a fixed amount starting at $2.6 million in the first year of operations and adjusted annually, regardless of the full insurance premium cost. Unlike all the other expenses shared between StadCo and the Stadium Authority, the amount that StadCo is paying for Stadium insurance is not reported in the operating budget or other Stadium Authority documents. This is inconsistent with Section 4.6 of the Management Agreement, which requires that the Stadium Authority budget include the StadCo budget.

FINDING 1.I: An Annual Statement of Stadium Operations detailing financial results for the year was not furnished by ManCo for FYs 2014-15 or 2015-16, as required by the Stadium Lease and Management Agreements. The Stadium Lease requires that the Stadium Authority prepare an Annual Statement of Stadium Operations (or cause ManCo to do so). Pursuant to that requirement, the Management Agreement between the Stadium Authority, StadCo, and ManCo specifically requires that ManCo prepare the Annual Statement of Stadium Operations within 90 days of the end of each fiscal year.

FINDING 1.J: Detailed annual shared Stadium expense one year budgets and five year projections were not prepared nor submitted to the Stadium Authority by ManCo for FYs 2014-15 and 2015-16, although these documents were required by the Stadium Lease. A draft one year document was retrieved for FY 2014-15 by a City staff member from their email records. The Stadium Authority's FY 2016-17 budget did include a detailed shared stadium expense breakout but no five year projections.

FINDING 1.K: The Stadium Authority's annual operating budget and quarterly financial reports did not disclose during the audit review period whether or not the Stadium Authority is adhering to Stadium Lease requirements pertaining to the allocation of excess Stadium Authority revenue to its various reserves, as required in the Stadium Lease. Beginning and ending balances and amounts added and deleted from each reserve during the year were not disclosed in the budget, quarterly financial reports, or annual audits for the Board, staff, and public to determine compliance with Stadium Lease requirements.

FINDING 1.L: The Management Agreement's requirement that "reasonably detailed" annual marketing plans, produced by ManCo and setting forth their plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL events for the Stadium, was not met as such plans were not provided to the Stadium Authority for FYs 2014-15 and 2015-16.

FINDING 1.M: Though non-NFL event records are reviewed by Stadium Authority staff, detailed records were not provided to the Stadium Authority by ManCo for Stadium Authority records or budget in FYs 2014-15 and 2015-16 to enable the Stadium Authority to assess non-NFL event financial performance, including incentive payments to ManCo.

FINDING 1.N: Meetings that took place between ManCo and Stadium Authority staff during the audit review period were not recorded or documented as marketing meetings, although staff reports that marketing topics such as those required in the Management Agreement may have been discussed. Further, although ManCo provides access for Stadium Authority staff to view certain revenue and expenditure data on non-NFL events, ManCo has not provided the Stadium Authority with written revenue reports for non-NFL events with attendance projected to exceed 25,000 as required by Section 3.3 of the Management Agreement.

FINDING 1.O: Section 2 of the first amendment to the Management Agreement does not include sufficient controls to ensure that goods and services acquired from ManCo affiliates are competitively priced.

FINDING 1.P: Reports on the financial performance of private parking lots required in the 1st amendment to the Management Agreement may have been orally presented in meetings between Stadium Authority staff and ManCo, as required in the Management Agreement. However, there are no reports or any formal written materials to document such reports being made in Stadium Authority records. Further, while quarterly updates provided by Stadium Authority staff to the Stadium Authority Board include the number of cars parked and amount of fees collected at off-site lots, they do not include financial performance of those lots (e.g. revenue and expenditure data).

FINDING 1.Q: Planning meetings between Stadium Authority staff and ManCo required in the Management Agreement are not documented or reported to the Board, so there are only oral representations by staff that the required planning meetings to plan and coordinate Stadium event scheduling have occurred.

FINDING 1.R: The provision in the Management Agreement that various documents, plans, and budgets that ManCo is required to provide to the Stadium Authority can be approved by the Stadium Authority Executive Director limits key information routinely provided to the Board, the Board's oversight role, and the Board's ability to serve as steward of Stadium Authority finances and operations.

Recommendations

RECOMMENDATION 1.A: The Stadium Authority Board should direct the Executive Director to request the public safety costs threshold be adjusted through negotiations with StadCo to reflect actual costs to the City for providing public safety services for NFL events.

RECOMMENDATION 1.B: The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to notify ManCo that the absence of five year capital expenditure plans for FYs 2014-15 and 2015-16 was a breach of Section 10.3 of the Stadium Lease and that ManCo is required to provide such plans under the lease for the current and all future Stadium Authority fiscal years.

RECOMMENDATION 1.C: The Stadium Authority Board should direct the Executive Director to provide a copy of the Operation and Maintenance Plan to the Stadium Authority Board for review, in closed session if deemed necessary for public safety reasons by the Stadium Authority counsel.

RECOMMENDATION 1.D: The Stadium Authority Board should require that Stadium Authority staff and ManCo prepare an annual public safety budget in conjunction with the City's public safety departments detailing both NFL and non-NFL event public safety costs for submission to and adoption by the Board.

RECOMMENDATION 1.E: The Stadium Authority Board should direct the Executive Director to renegotiate provisions of the Stadium Lease so that the Stadium Authority receives a share of any concessionaire revenue that exceeds the minimum guaranteed amount from non-NFL events.

RECOMMENDATION 1.F: The Stadium Authority Board should direct the Executive Director to notify StadCo that a formal consolidated draft parking plan must be produced and delivered to the Community Development Department and to the Board for review and approval as required under the Stadium Lease.

RECOMMENDATION 1.G: The Stadium Authority Board should direct the Chief of Police to present the public safety plan to the Stadium Authority Board for review and formal approval (in closed session if deemed necessary by Stadium Authority counsel) and to present any updates to the public safety plan to the Stadium Authority Board for review and documented adoption.

RECOMMENDATION 1.H: The Stadium Authority Board should direct the Executive Director to formally notify StadCo that the total cost for stadium insurance must be disclosed in the shared stadium expenses budget pursuant to Section 4.6 of the Management Agreement and, based on the disclosure, consider proposing to StadCo an amendment to the Stadium Lease to remove the provision that the Stadium Authority pay a fixed amount of insurance costs, with StadCo paying an unknown amount.

RECOMMENDATION 1.I: The Stadium Authority Board should direct the Executive Director to formally notify StadCo and ManCo that ManCo is in breach of the Management Agreement because it did not furnish Annual Statements of Stadium Operations for FYs 2014-15 and 2015-16, and to require that such statements be provided for those years, for FY 2016-17 and each year thereafter.

RECOMMENDATION 1.J: The Stadium Authority Board should direct the Executive Director to send formal notification to ManCo and StadCo that ManCo was in apparent breach of the Stadium Lease requirement that a one year budget and five year projection of shared Stadium expenses be provided on an annual basis to the Stadium Authority and demanding that ManCo provide such budgets and projections for the current and all future years. The Executive Director should be directed to provide a written response to ManCo each year on the draft budget submitted by ManCo.

RECOMMENDATION 1.K: The Stadium Authority Board should direct the Executive Director and Treasurer to work with ManCo to require that the annual operating budget and quarterly financial status reports disclose sufficient information to ensure that staff and the Board can determine whether the Stadium Authority is adhering to Stadium Lease requirements contained in Article 14 regarding the allocation of excess Stadium Authority revenue.

RECOMMENDATION 1.L: The Stadium Authority Board should direct the Executive Director to notify ManCo that previous annual marketing plans were inadequate as they did not set forth reasonably detailed plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL activities. The Board should further direct the Executive Director to notify ManCo that future marketing plans must include such details and be reviewed for sufficient detail by the Executive Director before being presented to the Board.

RECOMMENDATION 1.M: The Stadium Authority Board should direct the Executive Director to confer with the Finance Director/Treasurer to determine what financial information would be necessary to assess non-NFL event financial performance, including incentive payments to

ManCo, and then notify ManCo regarding what additional information will be required on an ongoing basis.

RECOMMENDATION 1.N: 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.

RECOMMENDATION 1.O: The Stadium Authority Board should direct the Executive Director and Stadium Authority counsel to request an amendment to the Management Agreement that would require formal and/or informal bidding procedures for any transactions with ManCo affiliates or for transactions above a designated threshold to ensure that goods and services received from an affiliate of ManCo are competitively priced.

RECOMMENDATION 1.P: The Stadium Authority Board should direct the Executive Director to direct ManCo to provide quarterly written reports to the Stadium Authority, to be maintained as permanent Stadium Authority records, detailing parking lot information as required in the first amendment to the management agreement.

RECOMMENDATION 1.Q: The Stadium Authority Board should direct the Executive Director to require that all meetings, including the date and purpose of the meetings, between Stadium Authority staff and ManCo be documented and reported quarterly or annually to the Stadium Authority Board.

RECOMMENDATION 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.

2. Stadium Authority Revenues and Expenses

Section 2 Summary:

- **The absence of key financial and management information in documents reporting Stadium revenues, expenses, budgets, and financial status for FYs 2014-15 and 2015-16 has hampered the Stadium Authority Board's ability to effectively fulfill its role as fiscal steward and long-term Stadium planner. The presentation of some information has improved since FY 2015-16, particularly in the FY 2017-18 budget that was prepared while this audit was in progress. Improvements are still needed in some areas.**
- **The Stadium Authority's budget and actual expenditures are reported in budgetary documents on a cash basis, meaning that some revenues and expenses associated with a particular year are not reported in that year due to the timing of the receipt or expenditure of the cash.**

Non-NFL event revenue and expense detail in budgetary documents is inadequate.

- **Non-NFL events are a key revenue source for both the Stadium Authority and the City of Santa Clara's General Fund. However, the information presented in budgetary documents on the costs, revenues, and profitability of non-NFL events is inadequate and cannot provide the Board or staff with an understanding of how well these events are managed.**
- **While tens of millions of dollars are collected and expended for non-NFL events each year, only a single annual net revenue amount for non-NFL events—$5.2 million for FY 2014-15 and $6 million for FY 2015-16—was provided in budgetary documents for FY 2014-15 and FY 2015-16 and in the budget for the current FY 2017-18.**
- **The Board has an interest in the financial performance of non-NFL events because: 1) a $4 surcharge on each non-NFL ticket sold is Stadium Authority revenue and the source of the Stadium Authority's Discretionary Fund, and 2) half of the net revenue from non-NFL events is paid to the City's General Fund.**
- **While non-NFL events were profitable during both years reviewed, Stadium Authority records show that non-NFL event expenses increased at a higher rate than non-NFL event revenue increased between FYs 2014-15 and 2015-16. With the information currently provided by ManCo to the Stadium Authority and presented in its budgetary documents, it is not possible for the Board to determine which costs are increasing, how budgeted and actual revenues and expenses compare, and how costs can be controlled to ensure non-NFL event profitability is maximized.**

- **Records detailing non-NFL event revenues and expenses are maintained by ManCo, who did not allow the audit team access to review and report their contents for this audit without signing a nondisclosure agreement.**

Key information about transfers among Stadium Authority funds is not presented.

- **Details on transfers among the Stadium Authority's Operating, Debt Service, Discretionary, and other funds were not fully presented in budgetary documents during the audit review period. Information to demonstrate compliance with Stadium Lease requirements pertaining to the uses of excess Stadium Authority revenue was also omitted.**
- **Significant prepayments of Stadium debt were made in FYs 2014-15 and 2015-16 using excess cash available after Stadium construction costs were lower than expected. Stadium Authority budgetary documents presented to the Board during this period did not consistently or clearly disclose relevant information regarding this debt prepayment, such as beginning and year-end Debt Service Fund balances; amounts transferred in and out of the Debt Service Fund by source; and amounts paid to each debt instrument. A $100 million transfer of Construction Fund monies to the Debt Service Fund in FY 2014-15 used for debt service payments was not detailed in the budgetary documents.**
- **The year-end financial status report for FY 2015-16, released June 28, 2016, made improvements in the presentation of some information, and did provide more detailed and complete Debt Service Fund figures.**
- **The Stadium Authority's Discretionary Fund, funded from non-NFL event revnues, was used to cover the difference between incurred NFL event public safety costs and the amount paid for by the 49ers entities, which is limited to the baseline $1.7 million per year, adjusted annually, pursuant to the Stadium Lease. The Discretionary Fund balance and activity were not explicitly disclosed in budgetary documents during the audit review period. Similarly, there is no documentation of compliance with the requirement that procurement of public safety capital equipment or transfers to the City's General Fund be considered when the Fund is $1 million or more.**

Key Stadium Authority expense information is lacking in budgetary documents reviewed.

- **At $7.6 million, Stadium Manager Operating Expenses in FY 2015-16 were the Stadium Authority's second largest expenditure line item, after debt service. However, details were not provided in budgetary documents regarding the components of these expenses, including how much was allocated to the Stadium Manager (ManCo), groundskeeping, maintenance, and other expense categories, until March 22, 2016.**

- **Approximately $5.7 million was spent on Stadium public safety in FY 2015-16. However, a complete public safety budget was not presented in Stadium Authority budgetary documents for either FYs 2014-15 or 2015-16, although one is required by the Stadium Lease. Actual public safety expenditures were presented after they were incurred in financial status reports, but the Board had no original budget for comparison to determine whether public safety costs were higher or lower than planned and the source of any variances.**
- **The budget's Other Expenditures line item, at $2.7 million in FY 2015-16, rolls up miscellaneous costs including utilities, City staff time (other than public safety), and materials, supplies and services allocated to Stadium activities. No detail on the components of, or variances between, budgeted and actual costs per category was provided in budgetary documents for these items during the audit review period.**

The Board was asked to approve Stadium Manager Operating Expenses over-expenditures after they were incurred.

- **Actual Stadium Manager Operating Expenses exceeded budgeted amounts by 34 and 17 percent in FY 2014-15 and 2015-16, respectively. The Board was asked to approve the FY 2015-16 increase ten days before the close of the fiscal year. The Board should be presented with proposed increases in costs and approve an amended budget before such costs are incurred.**

Stadium Authority procurement practices need improvement.

- **A sample of Stadium Authority purchases was tested to determine whether the purchases sampled adhered to City and Stadium Authority procurement requirements and to test the adequacy of invoicing and payment documentation. City procurement ordinances appeared to be followed for the transactions reviewed, but invoicing and contract documentation was found insufficient in ten of 29 sample transactions reviewed. Purchases charged to non-NFL events could not be tested because those records are maintained by ManCo, who did not allow their records to be reviewed and reported in this audit report.**

The Stadium Authority's proposed operating budget is presented annually to the Santa Clara Stadium Authority Board for approval. Quarterly financial status reports are prepared at the close of each quarter that displays the year-to-date actual revenues and expenditures compared to budgeted amounts. The year-end quarterly financial status report shows the actual expenditures for the full fiscal year.

The Stadium Authority's budget and actual expenditures are reported in budgetary documents on a cash basis rather than on an accrual basis, meaning that some revenues and expenses associated with a particular year are not reported in that year due to the timing of their receipt or expenditure. As mentioned throughout this section of the report, budgeting and reporting actuals on a cash basis can cause confusion or ambiguity when payments or expenditures are made after the close of a fiscal year. The Stadium Authority in consultation with the Finance Director and other relevant authorities should consider changing the Stadium Authority budget to the accrual basis if it is determined to be the optimal presentation of the Stadium Authority's finances.

Audited Financial Statements

The Stadium Authority's financial statements are audited each year by a certified public accountant in accordance with generally accepted accounting principles, the results of which are presented to the Stadium Authority Board. While the Stadium Authority's budget and actual expenditures are reported in budgetary documents on a cash basis, the audited financial statements are reported on an accrual basis.

The audited financial statements reported operating revenues of $143.2 million and operating expenses of $121 million for FY 2015-16, and operating revenues of $101.4 million and operating expenses of $77.6 million for FY 2014-15. Differences between these amounts and those presented in the budgetary documents are largely due to the inclusion of gross non-NFL revenues and expenditures, depreciation, and amortization in the amounts presented in the audited financial statements, as well as reporting on an accrual basis. As discussed above, Stadium Authority budgetary documents are reported on a cash basis.

Exhibit 2.1 below presents the Stadium Operating Budget during the scope of the audit period. It is a reconfiguration of the information presented in the budget documents and, for actual cash expenditures and revenues, the quarterly financial status reports, supplemented by additional information received by the audit team during the review. Actual accrued expenditures and revenues were provided by the City Finance Department.

Exhibit 2.1: Stadium Operating Budget and Actual Revenues and Expenditures on a Cash and an Accrual Basis

		FY 2014-15					FY 2015-16				
		Initial Budget	Final Budget	Actual (accrual)[a]	Actual (cash)	Over/under (cash)[b]	Initial Budget	Final Budget	Actual (accrual)[a]	Actual (cash)	Over/under (cash)[b]
	Sources: Operating										
	Beginning Balance	*4,955,116*	*4,955,116*		*2,871,388*	*-2,083,728*	*13,654,000*	*46,556,000*		*49,929,433*	*36,275,433*
	Revenue										
1	NFL ticket surcharge	7,937,625	7,937,625	8,366,290	8,366,290	428,665	8,366,000	8,366,000	8,273,378	8,273,378	-92,622
2	SBL proceeds	45,064,242	45,064,242	19,036,376	76,518,482	31,454,240	31,096,000	31,096,000	22,172,884	21,767,743	-9,328,257
3	Interest	–	–	6,391	1,879	1,879	–	–	29,357	18,359	18,359
4	Net revenue from non-NFL events	5,000,000	5,000,000	5,207,553	0	-5,000,000	5,000,000	5,000,000	6,079,016	5,197,175	197,175
5	Intangible license fee	–	–	50,004	2,000,000	2,000,000	–	–	50,004	–	–
6	Naming rights	5,826,100	5,826,100	7,720,044	5,826,100	0	6,000,883	6,000,883	7,720,044	6,000,883	0
7	Sponsorship revenue	325,000	325,000	626,854	216,667	-108,333	541,414	541,414	578,567	822,573	281,159
8	Rent revenue	24,500,000	24,500,000	24,500,004	24,500,000	0	24,500,000	24,500,000	24,500,002	25,625,002	1,125,002
9	Additional rent revenue-early completion	5,000,000	5,000,000	125,000	5,000,000	0	–	–	125,004	–	–
10	Senior/youth fees	230,000	230,000	238,733	238,733	8,733	239,000	239,000	234,439	234,439	-4,561
11	Fanwalk brick revenue	914,884	914,884		197,208	-717,676	112,600	112,600		43,625	-68,975
12	Non-NFL ticket surcharge	771,000	771,000	1,431,540	834,032	63,032	2,194,000	2,194,000	2,477,084	3,053,324	859,324
	Total Revenue	**95,568,851**	**95,568,851**	**67,308,790**	**123,699,391**	**28,130,540**	**78,049,897**	**78,049,897**	**72,239,781**	**71,036,501**	**-7,013,396**
	Total Revenue and Beginning Balance	**100,523,967**	**100,523,967**		**126,570,779**	**26,046,812**	**91,703,897**	**124,605,897**		**120,965,934**	**29,262,037**
	Uses: Operating										
13	Net transfers	76,586,105	76,586,105	66,635,095	66,635,095	-9,951,010	54,563,000	86,365,000	84,573,900	84,573,900	30,010,900
14	Stadium Manager operating expenditures	4,336,295	4,336,295	5,746,917	5,806,843	1,470,548	6,446,000	7,561,000	7,491,525	7,560,537	1,114,537
15	SBL sales and service	–	–	–	–	–	1,574,000	1,574,000	1,288,389	1,573,765	-235
16	Insurance	2,550,000	2,550,000	2,550,022	2,550,022	22	2,626,996	2,626,996	2,626,500	2,626,500	-496
17	Senior/Youth Program fees	230,000	230,000	238,733	238,733	8,733	239,000	239,000	234,439	234,439	-4,561
18	Other expenditures	1,224,067	1,224,067	1,024,359	1,230,652	6,585	3,020,089	2,861,089	3,094,883	2,747,776	-272,313
19	Ground rent	180,000	180,000	979,044	180,000	0	215,000	215,000	979,044	215,000	0
20	Performance rent	2,410,000	2,410,000	2,513,777	0	-2,410,000	2,410,000	2,509,000	2,932,008	[c]2,513,777	103,777
21	Discretionary fund expense	385,500	385,500	743,255	0	-385,500	670,000	715,000	669,902	714,028	44,028
	Total Uses	**87,901,967**	**87,901,967**	**80,431,201**	**76,641,345**	**-11,260,622**	**71,764,085**	**104,666,085**	**103,890,589**	**103,133,827**	**30,995,637**
	Revenue - Uses	**7,666,884**	**7,666,884**		**47,058,046**	**39,391,162**	**6,285,812**	**-26,616,188**		**-31,723,221**	**-38,009,033**
	Revenue and Balance - Uses	**12,622,000**	**12,622,000**		**49,929,434**	**37,307,434**	**19,939,812**	**19,939,812**		**18,206,212**	**-1,733,600**

[a] The accrued revenue and expense totals reported in this table differ from the operating revenues and expenses reported in the audited financial statements primarily because the audited financial statements include gross non-NFL event revenues and expenses, rather than net. Other differences are due to amortization, depreciation, and transfers.

[b] Over/under calculated using the initial budgeted amount rather than the final budgeted amount. The FY 2015-16 budget was amended on March 22, 2016, ten days before the close of the fiscal year.

[c] As discussed later in this section, the performance rent for FY 2014-15 (which was received and reported in the cash budgetary documents in FY 2015-16) as reported in the March 31, 2016 quarterly financial status report ($2,508,588) is incorrect. The actual amount paid was $2,513,777, as calculated by the City Finance Department and the audit team.

Review Methodology

The audit team reviewed public information and documents related to the Stadium Authority operating budget, including approved budgets, actual revenues and expenditures as reported in quarterly financial status reports, audited financial statements, online presentations, and City Council records during the scope of the audit period (April 1, 2014 through March 31, 2016, or FY 2014-15 and FY 2015-16). The audit team also reviewed the relevant agreements and contracts between and among the Stadium Authority, the City of Santa Clara, StadCo, ManCo, other 49ers entities, and other relevant parties for information and requirements related to the Stadium operating budget.

With the assistance of the City Finance Department, the audit team reconciled the Stadium Authority's profit and loss statements for FY 2014-15 and FY 2015-16, which served as base documents for the annual audit, to the budget documents and the quarterly financial status reports for the same fiscal years. The audit team also identified the authority for each line item to verify compliance with corresponding governing agreements or contracts. The audit team then selected a sample of transactions from FY 2014-15 and FY 2015-16 and reviewed these transactions and supporting backup documentation on-site with City Finance Department staff. During the transaction review and in subsequent conversations with City staff, the audit team identified current practices and controls related to the management of the Stadium Authority operating budget, in particular how revenues and expenditures reported by ManCo are validated, which financial records are maintained by the Stadium Authority, and which records are maintained by ManCo.

Descriptions and information related to each line item in the Stadium Authority operating budget are presented in this section, along with any associated findings and recommendations. It should be noted that the review of this section was based on budgetary documents from FY 2014-15 and FY 2015-16, which were the two years reviewed under the scope of this audit. The presentation of budgetary information for subsequent fiscal years has improved, particularly in the FY 2017-18 proposed budget document, which the audit team reviewed and provided suggestions for before it was finalized. Although some of our points and recommendations have already been addressed and implemented in the FY 2016-17 budget and recent financial status reports, they remain relevant with regard to FY 2014-15 and FY 2015-16 materials and the overall provision of important information.

This section is divided in to the following subsections:

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A. Stadium Authority Revenue Detail

Details on each revenue line item are presented below, following the general order in which items were presented in the Stadium Authority budgets for FY 2014-15 and 2015-16 and as shown in Exhibit 2.1 above. Unless adjustments are indicated, all amounts presented are on a cash basis for the corresponding fiscal year and based on the financial status report for the quarter and fiscal year ending March 31, 2016.

1. Revenue: NFL Ticket Surcharge

Exhibit 2.2: NFL Ticket Surcharge Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$7,937,625	$8,366,290	$8,366,000	$8,273,378

Authority: Section 5.1 of the Non-Relocation Agreement between the Stadium Authority and the 49ers states that the 49ers shall collect and remit to the Stadium Authority a surcharge on the price of admission to all NFL home games at the Stadium, excluding NFL playoff games, equal to 10 percent of ticket receipts from NFL home games. The NFL ticket surcharge is a variable revenue source because it depends on the net ticket receipts collected by ManCo. The bases for the NFL ticket surcharges collected in FY 2014-15 and FY 2015-16 are shown in Exhibit 2.3 below.

Exhibit 2.3: NFL Ticket Surcharge Calculation, FYs 2014-15 and 2015-16

	FY 2014-15	FY 2015-16
Gross Receipts	$101,337,688	$100,328,616
Less: Senior/Youth Program Fees	(238,733)	(234,439)
Less: Club Seat Premium*	(17,436,056)	(17,360,394)
Net Receipts	$83,662,899	$82,733,783
Ticket Surcharge - 10% of Net Receipts	**$8,366,290**	**$8,273,378**

Source: City of Santa Clara Finance Department

* Article 5 of the Non-Relocation Agreement states: "For the avoidance of doubt, ticket receipts shall not include, and no NFL ticket surcharge shall be required to be collected with respect to, any of StadCo's revenues as described in Article IV of the Team Sublease." Section 4.1.2 of the Team Sublease states that premium (including club) seat premiums are StadCo's exclusive revenues.

The Stadium Authority receives only summary NFL ticket data for each fiscal year prepared by ManCo, as shown in Exhibit 2.3. City Finance Department staff is permitted to review individual

event ticket receipts on-site at the Stadium, but are not allowed to take copies of those records with them to keep as part of Stadium Authority records and documentation. The Stadium Authority's independent auditing firm also samples NFL ticket receipts during the Stadium's annual financial audit.

FINDING 2.A: The Stadium Authority does not receive a set of records to independently verify and permanently document the accuracy of NFL ticket receipts and, by extension, the amount owed for the NFL ticket surcharge. Visual reviews of such records at the ManCo offices are conducted but rely on staff's assessment of the documents. City staff report that the Stadium Authority's independent auditing firm also samples NFL ticket receipts during the Stadium's annual financial audit. However, neither of these reviews provides the Stadium Authority with permanent records to document the revenue due for the NFL ticket surcharge.

RECOMMENDATION 2.A: The Stadium Authority Board should request that ManCo provide the relevant reports and documentation that back up the NFL ticket surcharge summary report in order to retain permanent verification of the accuracy of the surcharge calculated by ManCo.

2. Revenue: Stadium Builders License Proceeds (SBLs)

Exhibit 2.4: Stadium Builders License Proceeds, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$45,064,242	$76,518,482	$31,096,000	$21,767,743

Authority: Section 12.4 of the Stadium Lease states that the Stadium Authority is entitled to all net revenue from the sale of Stadium Builders Licenses (SBLs). SBLs entitle the license holder to priority rights to buy tickets for Stadium events.

The Stadium Authority and Legends Premium Sales, LLC entered into the Agreement for Stadium Builders License Sales in July 2011, which authorized Legends to provide marketing and sales of SBLs for the Stadium. The term of the Agreement commenced in July 2011 and expired on February 1st of the calendar year following the year in which the Stadium opened. The Fourth Amendment to the Stadium Management Agreement expanded the scope of ManCo's duties to include the following, upon termination of the SBL Sales Agreement with Legends:

- To maintain SBL holder records,
- To monitor the transfer of SBLs,
- To oversee marketing of unsold or defaulted SBLs,
- To administer and enforce the terms and conditions of the SBLs,
- To manage the provision of SBL services,
- To invoice, collect, and distribute the amounts payable under the SBL agreements, and
- To provide relevant information regarding SBLs to StadCo, the team, and non-NFL event sponsors.

SBL proceeds are a variable revenue source because they depend on the payment activity of the SBL holders. As shown above, the budget for FY 2014-15 projected approximately $45 million in SBL proceeds; actual cash revenues were over $76.5 million. According to the Stadium Authority's independent financial statement audit for FY 2015-16, the higher revenues were due to more SBL holders paying off or prepaying their SBLs in FY 2014-15 than anticipated. SBL sales are expected to decline over time.

The SBL proceeds line item presented in the budget is a net number that includes cash proceeds from SBL payments and new sales and interest on financed SBLs, less the credit card fees charged on SBL collections.

Per the terms of the Fourth Amendment to the Stadium Management Agreement outlined above, SBL holders make their SBL payments to ManCo, and ManCo then forwards the payments to the Stadium Authority. The Stadium Authority maintains a life-to-date summary of SBL collections, related credit card and bank fees, net proceeds, and interest on SBL holders' accounts, with all the details for each account holder.

3. Revenue: Interest

Exhibit 2.5: Interest Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$0	$1,879	$0	$18,359

This line item accounts for the bank interest earned on Stadium Authority bank accounts.

4. Revenue: Net Revenue from Non-NFL Events

Exhibit 2.6: Net Revenue from Non-NFL Events, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$5,000,000	$5,197,195	$5,000,000	$6,032,566

Note: Exhibit 2.6 adjusts the actual expenditure amounts so that the calculated amounts are presented in the year in which they were generated, not the year in which revenues were received from ManCo. ManCo remits the net revenue from non-NFL events, less a marketing and booking fee, to the Stadium Authority yearly after the conclusion of each fiscal year. Therefore, since the budget is managed on a cash basis, the net revenue generated by events in FY 2014-15 ($5,197,175) was recorded as actual revenue for FY 2015-16 in budgetary documents and actual revenue was shown as $0 in the financial status reports and budget documents. The net revenue from non-NFL events for FY 2015-16 ($6,032,565) will be recorded as actual revenues for FY 2016-17 in future budgetary documents.

Authority: Net revenue from non-NFL events is derived from various sections of the Stadium Lease and Management Agreements. It consists of non-NFL event revenue, as defined in the Lease Agreement, less non-NFL event expenses, less a marketing and booking fee paid to ManCo pursuant to the Management Agreement.

Section 12.8 of the Stadium Lease states that Stadium Authority non-NFL revenue includes revenue from non-NFL events, namely: (a) all revenue from ticket sales for non-NFL events; (b) all revenues received from the promoter or other sponsor of the non-NFL event, including amounts paid by the promotor or sponsor for the right to use and occupy the Stadium; (c) concession revenues from non-NFL events; (d) non-NFL event advertising revenue; and (e) Stadium Authority parking revenues from non-NFL events.

Non-NFL event expenses are defined in the Lease Agreement's Exhibit A to include public safety, utilities, marketing and promotion costs, administrative costs for non-NFL event parking, any capital repair work attributable to non-NFL events, marketing costs related to event tickets sales, and other variable costs related to non-NFL events.

Section 7.3 of the Stadium Management Agreement states that in addition to a base management fee, the Stadium Authority shall pay ManCo a fee for marketing and booking. The terms of the marketing and booking fee are outlined in Section 3.4 of the First Amendment to the Stadium Management Agreement, which establishes the marketing and booking benchmark as $5 million in the first fiscal year, to increase annually by 3 percent each year thereafter. Each year, the marketing and booking fee is calculated as the amount by which net

income from non-NFL events exceeds the benchmark, multiplied by a marginal percentage rate dependent upon the amount of excess.

Net revenue from non-NFL events is a variable revenue source because it depends on the revenues and expenses of each non-NFL event for a given fiscal year.

Non-NFL Event Revenue Budgetary Information Is Insufficient

Net revenue from non-NFL events represents the difference between non-NFL event revenues and expenses. However, gross non-NFL event revenues and expenses are not provided in Stadium Authority budgetary documents; only a single net revenue amount is presented for the entire fiscal year. Similarly, details on individual revenue and expense categories for non-NFL events, such as ticket sales, concession revenues, and public safety expenses, are not presented, nor are revenues and expenses broken out per event. As a result, the Stadium Authority Board and the public are not able to determine gross non-NFL event revenue and expense totals, average revenues and expenses per event, the relative magnitude of individual revenues and expenses, or how these amounts compare event to event, quarter to quarter, or year to year.

Furthermore, the Stadium Authority budget does not separately present the City's public safety costs for non-NFL events, leaving the Board and the public without information about the level of City public safety resources expected to be allocated to non-NFL Stadium-related work, the extent to which actual public safety costs vary from budgeted amounts, and whether or not all of these costs are reimbursed by ManCo. The Stadium Lease and the Operations Agreement both require that ManCo prepare and annually submit to the Stadium Authority a public safety budget but, as discussed in Section 1 of this report, such a budget was not produced or delivered to the Stadium Authority during the audit review period. Non-NFL event public safety costs were reportedly embedded in the single net revenue from non-NFL events line item in the operating budget, but the presentation of only this net amount masks total public safety costs.

Although NFL event public safety costs are paid directly to the City by ManCo and are not part of the Stadium Authority's operating budget, the Stadium Lease and Operating Agreement do not exclude those public safety costs from the requirement that a public safety budget be produced and delivered to the Stadium Authority annually. It is all the more relevant for the Stadium Authority Board to receive a complete public safety budget each year, including NFL event public safety costs, since the Stadium Authority is covering the portion of those costs that exceed the $1.7 million per year (adjusted annually) cap on ManCo's payments for NFL public safety services. Total actual public safety costs for NFL and non-NFL events for FY 2015-16 were

reported as $5.7 million as of March 31, 2016 in the year-end financial status report for that year.

Detailed records on non-NFL event revenues and expenses were not reviewed for inclusion in this audit, as ManCo would not allow the audit team to review such records without signing a nondisclosure agreement and agreeing to not include such information in this public document. However, the City does collect rolled up non-NFL revenue and expense figures that are shown in Exhibit 2.7 below. The breakdown of annual non-NFL event revenue and expenses, ManCo's marketing and booking fee and the impact of the non-NFL event revenue benchmark are presented in Exhibit 2.7.

Exhibit 2.7: Net Revenue from Non-NFL Events Calculations, FYs 2014-15 and 2015-16

	FY 2014-15	FY 2015-16
Non-NFL Event Revenue	$50,980,519	$89,754,081
Non-NFL Event Expense	45,772,966	83,675,065
Net Non-NFL Event Revenue	**$5,207,553**	**$6,079,016**
Net Non-NFL Event Revenue Benchmark	*$5,000,000*	*$5,150,000*
Amount above benchmark	207,553	929,016
Marketing and Booking Fee (5% of amt. over benchmark)	10,378	46,451
Amount Owed SCSA (net – fee)	**$5,197,175**	**$6,032,566**

Source: City Finance Department

Note: The FY 2014-15 amounts are presented in FY 2015-16 Stadium Authority budgetary documents and the FY 2015-16 amounts are presented in FY 2016-17 Stadium Authority budgetary documents because the budget is managed on a cash basis and ManCo remits the net revenue from non-NFL events to the Stadium Authority yearly after the conclusion of each fiscal year.

Through their Management Agreement, the Stadium Authority and ManCo have agreed that ManCo is tasked with marketing, promoting, and booking the Stadium for non-NFL events. These duties include negotiating, booking, and executing contracts, use agreements, licenses, and other agreements with parties who wish to schedule events at the facility. ManCo's work is to be performed in accordance with scheduling procedures spelled out in the agreements between the Stadium Authority and the 49ers entities. The non-NFL events booked by ManCo are to be consistent with a marketing plan prepared by ManCo and agreed to by the Stadium Authority. According to the Management Agreement, the marketing plan is to provide in reasonable detail the Stadium Manager's plans to develop, implement, and monitor marketing, booking, advertising and promotion of non-NFL events.

The Management Agreement defines "maximizing the Stadium's revenues" as a goal of ManCo's efforts at coordinating, advertising, licensing, marketing, and public relations for the

Stadium. However, without more financial detail in the budget and quarterly financial status reports, it is not possible for the Stadium Authority Board or the public to assess whether the net revenue from non-NFL events is being maximized and whether changes in costs or revenue arrangements are warranted in the interest of maximizing revenues.

As an example of how more detailed information on net revenue from non-NFL events would be useful, comparisons of gross non-NFL event revenue and expenses for FYs 2014-15 and 2015-16—information that was not presented in the Stadium Authority budgets or quarterly financial status reports for those years—show that total gross revenue increased year to year by 76 percent, but that the increase in total gross expenses was greater, at 83 percent.

The same pattern occurs when looking at average revenues and expenses per event: average gross revenue per non-NFL event increased year to year by 53 percent, but the increase in average expenses per non-NFL event was greater, at 59 percent. Average net revenue per non-NFL event barely increased (a 1 percent change) year to year. The average marketing and booking fee retained by ManCo per event increased by 290 percent from FY 2014-15 to FY 2015-16.

Exhibit 2.8 presents dollar and percent changes and averages from FY 2014-15 to FY 2015-16. Average numbers are calculated using total events, both large-scale ticketed and smaller non-ticketed events; ManCo does not provide enough detail on non-NFL event revenue and expenses to separate the two event types.

Exhibit 2.8: Average Non-NFL Event Revenues and Expenses and Changes FYs 2014-15 and 2015-16

	FY 2014-15	FY 2015-16	$ Change	% Change
Non-NFL Event Revenue	$50,980,519	$89,754,081	$38,773,562	76%
Non-NFL Event Expense	$45,772,966	$83,675,065	$37,902,099	83%
Preliminary Net	$5,207,553	$6,079,016	$871,463	17%
Less Marketing and Booking Fee [1]	$10,378	$46,451	$36,073	348%
Net Non-NFL Event Revenue	$5,197,175	$6,032,566	$835,391	16%
Number of Events (ticketed and non-ticketed) [2]	195	224	29	15%
Average Non-NFL Event Revenue per Event	$261,439	$400,688	$139,249	53%
Average Non-NFL Event Expense per Event	$234,733	$373,549	$138,816	59%
Average Marketing & Booking Fee per Event	$53	$207	$154	290%
Average Net Non-NFL Event Revenue per Event	$26,652	$26,931	$279	1%

Source: City Finance Department

[1] 5% of amount over pre-set benchmark.

[2] The number of events reported in this schedule counts both large-scale ticketed events and smaller non-ticketed special events (weddings, corporate events, etc.). There were 9 large-scale ticketed events and 186 smaller events in FY 2014-15, and 17 large-scale ticketed events and 207 smaller events in FY 2015-16. The average numbers reported above are used to illustrate revenue and expense trends year over year; revenues and expenses for the large-scale events are likely to be significantly higher and the revenues and expenses for the small-scale events are likely to be significantly lower than the averages presented in this exhibit. ManCo does not provide per-event revenues and expenses or separate out revenues and expenses for smaller non-ticketed events from large-scale ticketed events, which would allow for a more precise calculation that includes only revenues and expenses for large-scale ticketed events.

More detailed information, such as average revenues and expenses per event, would help the Stadium Authority Board and staff understand the economics of non-NFL events and be better able to work with ManCo to determine where and if costs could be reduced to achieve better financial results. Any such improvements would not only positively impact Stadium Authority revenue but would also positively impact the City's General Fund, as half the net revenue from non-NFL events is paid from the Stadium Authority to the City as performance-based rent, pursuant to the Ground Lease between the City and the Stadium Authority.

Exhibit 2.9 shows the impact that varying levels of non-NFL event expense reduction, from between 5 to 15 percent, would have on the Stadium Authority's net revenue from non-NFL events. Assuming gross revenue remained unchanged, the additional net revenue for the Stadium Authority would range from approximately $3.9 to $11.9 million. For the City, half of this additional amount, less any performance-based rent credits, would be paid to the General Fund from the Stadium Authority as part of performance-based rent. Contributions to the City's

General Fund through performance-based rent would increase by between approximately $1.9 million to $6 million per year under the scenarios presented in Exhibit 2.9.

Exhibit 2.9: Impact of Reducing Non-NFL Event Expenses on Stadium Authority Revenue and Contributions to City's General Fund

If Revenue Remained... [1]	If Expenses Reduced by:	Total Expenses would be:	Leaving Net Revenue after Benchmark [2]	And Increasing Net SCSA Revenue by:	Additional Contributions to the General Fund
$89,754,081	0%	$83,675,065	$6,032,565	$0	$0
89,754,081	5%	79,491,312	10,007,131	3,974,566	1,987,283
89,754,081	7.5%	77,399,435	11,994,414	5,961,848	2,980,924
89,754,081	10%	75,307,559	13,981,696	7,949,131	3,974,566
89,754,081	15%	71,123,805	17,956,262	11,923,697	5,961,848

[1] Actual FY 2015-16 net non-NFL event revenue

[2] Equal to 5% of net revenue amount in excess of $5,150,000 for FY 2015-16.

ManCo only provides yearly non-NFL event rollup figures to the Stadium Authority Board, as discussed above and shown in Exhibit 2.6. City Finance Department staff are permitted to review individual event revenues and expenses on-site at the Stadium, but are not allowed to take copies of the records to keep as permanent supporting documentation for this revenue source, and do not present any of this detailed non-NFL event information in budgetary documents.

According to City Finance Department staff, during their on-site review ManCo provides access to line item details and the backup documentation (for example, reports from TicketMaster showing online ticket revenue), and Finance Department staff tie the supporting documentation to the line item detail shown for each event. Staff conducts this review process for each event. Staff does not make copies or record amounts on any of the documents reviewed.

FINDING 2.B: Important non-NFL event financial information is not presented in the current and past Stadium Authority operating budgets. This omission leaves the Stadium Authority Board, staff, and the public without the data needed to assess and monitor the financial performance of these events. Providing only a single net non-NFL event revenue line item (approximately $5 million in FY 2014-15 and $6 million in FY 2015-16) obscures the tens of millions of dollars in revenues and expenses from non-NFL events including ticket sales, parking and concession revenues, event promotion costs, and the City's non-NFL event public safety costs.

RECOMMENDATION 2.B: The Stadium Authority Board should negotiate with ManCo to establish a level of detail regarding non-NFL event revenue and expenses that can be provided in City reports, public documents, and permanent records to be kept by the Stadium Authority without compromising ManCo's ability to book and negotiate deals with non-NFL event acts and performances. The Board should direct staff to include this level of detail for both budgeted and actual revenues and expenses in the annual proposed budget and the quarterly financial status reports to allow the Board and public to monitor the performance of non-NFL events and ManCo's performance in managing and executing the events.

FINDING 2.C: Because net revenue from non-NFL events is the basis for the performance rent that is due to the City of Santa Clara, the financial performance of non-NFL events directly impacts the City of Santa Clara's finances. Omitting critical information related to net non-NFL revenue also obscures the basis of and opportunities for improvement of the performance rent due to the City of Santa Clara, which was approximately $2.5 million in FY 2015-16.

RECOMMENDATION 2.C: The Stadium Authority Board should require that a detailed breakdown of performance rent calculations and payments to the City of Santa Clara be included in the budget and quarterly financial status reports using additional information provided by ManCo.

5. Revenue: Intangible License Fees

Exhibit 2.10: Intangible License Fee Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$0	$2,000,000	$0	$0

Authority: Exhibit G of the Stadium Lease contains the Intangible Property License Agreement. This Agreement details the licenses granted by the Stadium Authority to StadCo for intangible property rights, including the power to sublicense certain property rights (notably excluding Stadium naming rights and sponsorship rights). Per Article 4 of the Intangible Property License Agreement, StadCo paid a one-time intangible license fee of $2 million to the Stadium Authority in FY 2014-15.

The Intangible License Fee was a fixed, one-time revenue source. The Stadium Authority received the $2 million payment in FY 2014-15. It was not budgeted for in that year.

6. Revenue: Naming Rights Revenue

Exhibit 2.11: Naming Rights Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$5,826,100	$5,826,100	$6,000,883	$6,000,883

Authority: Section 12.3 of the Stadium Lease states the Stadium Authority is entitled to all revenues paid for the naming rights to the Stadium. Section 5 of the Stadium Naming Rights Agreement between the Stadium Authority and Levi Strauss details the rights fees payable to the Stadium Authority by contract year. According to the schedule, Levi Strauss is to make annual payments to the Stadium Authority starting at $5.74 million in the initial contract year (the contract was approved in May 2013) and increasing by 3 percent each year for an initial term of 20 years.

Payment for the naming rights to the Stadium is a fixed revenue source, as specified in the Stadium Naming Rights Agreement. Section 5(c) of the Stadium Naming Rights Agreement indicates that for each contract year, semi-annual equal installments are due on or before March 1 and October 1 of the contract year. Because the Stadium Authority fiscal year begins April 1 and actual revenues and expenditures are recorded in Stadium Authority budgetary documents on a cash basis rather than an accrual basis, the budgeted and actual revenues from

naming rights revenue each fiscal year presented in budgetary documents do not appear to correspond to the values listed in the Naming Rights Agreement, but the values correspond across fiscal years. Exhibit 2.12 below shows how payments have been received by Stadium Authority fiscal year and demonstrate that the full amounts due have been paid.

Exhibit 2.12: Naming Rights Revenue Summary

		Collections by Stadium Authority Fiscal Year				
Payment Due Date	**Contract Year Fee**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**Total Collected**
March 1, 2014	$5,740,000	$2,870,000				$5,740,000
October 1, 2014			$2,870,000			
March 1, 2015	$5,912,200		$2,956,100			$5,912,200
October 1, 2015				$2,956,100		
March 1, 2016	$6,089,566			$3,044,783		$6,089,566
October 1, 2016					$3,044,783	
Fiscal Year total		**$2,870,000**	**$5,826,100**	**$6,000,883**	*See note*	

Source: City Finance Department

Note: The 2016-17 total is not shown because the Contract Year 2017 fee is not included in the table.

7. Revenue: Sponsorship Revenue

Exhibit 2.13: Sponsorship Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	**Actual**	**Budgeted**	**Actual**
$325,000	$216,667	$541,414	$822,573

Authority: SBL holders are allowed to transfer their Stadium Builders Licenses (SBLs) under certain conditions. The Website Marketing Agreement between STR Marketplace, LLC and the Stadium Authority allows STR Marketplace, LLC to establish, manage, and operate a secondary market website to facilitate SBL transfers. Buyers and sellers on the STR website each pay a 10 percent commission to STR on sales facilitated on the website.

In exchange for use of the Levi's Stadium trademarks and links on the Stadium Authority website, STR pays the Stadium Authority a minimum fee of $325,000 each year of the three-year agreement. If STR's commission on SBL sales exceeds $650,000 in any year, STR also pays 50 percent of the amount in excess over $650,000 to the Stadium Authority.

Sponsorship, or STR, revenue is a variable revenue source because it depends on the activity of SBL holders on the marketplace managed by STR. According to the Finance Department, STR

pays monthly fees to the Stadium Authority of $27,083 (one-twelfth of the minimum fee of $325,000). If STR's commissions exceed $650,000 in a year, STR pays the remainder owed at the close of the agreement year. Variances between the budgeted and actual revenues are due to a partial year in FY 2014-15 (the Stadium Authority began receiving minimum monthly payments in June 2014) and to the accrual of FY 2014-15 revenues in excess of $650,000 at the beginning of FY 2015-16.

8. Revenue: Rent Revenue

Exhibit 2.14: Rent Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$24,500,000	$24,500,000	$24,500,000	$25,625,002

Authority: Section 6.1.1 of the Stadium Lease states that for each year in the initial 40 year term, StadCo shall pay the Stadium Authority fixed rent of $24.5 million. There are no adjustments to this amount over the term unless both parties agree to a change. As of July 2017 this amount is the subject of arbitration under the terms of the lease.

Rent is a fixed revenue source. Actual rent revenues were $24.5 million as budgeted in FY 2014-15. According to the FY 2015-16 end-of-year quarterly financial report, actual cash rent revenues were $25,625,000 in FY 2015-16, or $1,125,000 higher than annual rent, because of an early payment on FY 2016-17 rent from StadCo. The additional amount applies to the following year's rent obligations.

9. Revenue: Additional Rent: Early Completion Revenue

Exhibit 2.15: Additional Rent: Early Completion Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$5,000,000	$5,000,000	$0	$0

Authority: Because substantial completion of the Stadium occurred at least a week before the first NFL preseason game in August 2014, StadCo paid the Stadium Authority a one-time incentive fee of $5,000,000 in accordance with Section 6.6 of the Stadium Lease.

The early completion rent was a fixed, one-time revenue source. The Stadium Authority received the $5 million payment in FY 2014-15.

Revenue: Senior and Youth Program Fee Revenue

Exhibit 2.16: Senior and Youth Program Fee Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$230,000	$238,733	$239,000	$234,439

Authority: Section 12.2 of the Stadium Lease states that StadCo shall collect a fee of $0.35 per NFL ticket sold on behalf of the Stadium Authority. Once transferred from StadCo to the Stadium Authority, these fees are payable from the Stadium Authority to the City of Santa Clara as the Senior and Youth Program fees.

Totals for the Senior and Youth Program fees collected in FY 2014-15 and FY 2015-16 are shown in Exhibit 2.17 below.

Exhibit 2.17: Senior/Youth Fees Collected in 2014-15 and 2015-16

	FY 2014-15	FY 2015-16
No. of tickets sold	682,095	669,826
Program fees: $0.35/ticket	$238,733	$234,439

Source: City Finance Department

The Senior and Youth Program fee is a variable revenue source because it depends on the number of NFL tickets sold, as reported by ManCo. However, because the fees effectively pass through the Stadium Authority and on to the City of Santa Clara, they do not have a net effect on the Stadium Authority expenditure budget but, rather, affect the City's budget.

The Stadium Authority receives only summary NFL ticket data from ManCo. City Finance Department staff is permitted to review individual event ticket receipts on-site at the Stadium, but are not allowed to take copies of these records with them for Stadium Authority revenue documentation. As a result, the City does not have records to verify the accuracy of the Senior and Youth Program fees collected and transmitted to the City.

See Finding and Recommendation 2.A and Finding and Recommendation 2.I which address this matter.

10. Revenue: Fanwalk Revenue

Exhibit 2.18: Fanwalk Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$914,884	$197,208	$112,600	$43,625

Authority: Per the Agreement for Professional Services between the Stadium Authority and Fund Raisers, Ltd., Fund Raisers implemented the commemorative brick program at the Stadium. Through the program, the public purchased bricks that could be engraved with personal messages, which were then installed at the Stadium site. Revenues were used for Stadium construction. Under the agreement, Fund Raisers managed all aspects of the sale, fabrication, and delivery of the bricks, and submitted revenues to the Stadium Authority. The Stadium Authority was responsible for the initial start-up cost for the program of $6,500; all other costs associated with the Agreement were paid from the proceeds of the sales of the bricks. Excess proceeds were distributed to the Stadium Authority for costs of construction.

Fanwalk revenue was variable and time-limited. All sold bricks have been installed, and no more bricks are being sold. The revenues earned in FY 2015-16 are the tail end of the program, and as of September 30, 2016 no additional revenues had been received for FY 2016-17. As can be seen, actual FY 2014-15 Fanwalk revenue of $197,208 was substantially lower than the budgeted amount of $914,884, reportedly due to all available walkway space being sold.

11. Revenue: Non-NFL Event Ticket Surcharge Revenue

Exhibit 2.19: Non-NFL Event Ticket Surcharge Revenue, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$771,000	$834,032	$2,194,000	$3,053,324

Authority: Section 12.1 of the Stadium Lease states that the Stadium Authority shall impose a $4 surcharge on tickets for non-NFL events. According to the lease, one half of the proceeds from the surcharge are Stadium Authority general revenue, separate from the net revenue from non-NFL events rollup. The lease requires that the other half of the proceeds from the non-NFL ticket surcharge be allocated to the Stadium Authority Discretionary Fund.

The non-NFL ticket surcharge, like the NFL ticket surcharge, is a variable revenue source because it depends on the total number of tickets sold to non-NFL events in a given lease year, as reported by ManCo.

Revenue from the non-NFL event ticket surcharge is presented in its entirety in the Operating Fund budget as a Stadium Authority revenue line item, although half of the surcharge is deposited in a separate bank account as the Discretionary Fund. The Discretionary Fund balance and activity were not reported on separately in budgeting materials until the quarterly financial status reports for the 2016-17 fiscal year (see discussion of Transfers below).

The Stadium Authority receives only summary non-NFL ticket data for each fiscal year from ManCo. City Finance Department staff is permitted to review individual event ticket receipts on-site at the Stadium, but are not allowed to take copies of the records with them to serve as documentation supporting the basis of this revenue source.

FINDING 2.D: Stadium Authority staff can review non-NFL event ticket documentation at ManCo offices and the Stadium Authority's independent auditor samples non-NFL ticket receipts during the Stadium's annual financial audit. However, ManCo does not allow Stadium Authority staff to copy or keep any permanent records verifying non-NFL event ticket receipts and, by extension, the amounts received for the non-NFL event ticket surcharge.

RECOMMENDATION 2.D: The Stadium Authority Board should require that ManCo provide reports and documentation that can be kept in Stadium Authority records, consistent with confidentiality provisions in the agreements, that back up the non-NFL ticket surcharge summary report in order to verify that the surcharge calculated by ManCo is accurate.

B. Transfers among Stadium Authority Funds

12. Transfers among Funds

Exhibit 2.20: Transfers out of Stadium Operating Fund, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$76,586,105	$66,635,095	$54,563,000*	$84,573,900

*An amendment to the FY 2015-16 budget increased this amount to $86,365,000. The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

Authority: The net transfers out of the Stadium Authority Operating Fund are dictated primarily by three provisions of the Stadium Lease: 1) required transfers to the Capital Expenditure Budget Reserve, 2) the required allocation of Excess Stadium Authority Revenues, and 3) a required allocation to the Discretionary Fund.

The Stadium Lease in Section 10.2.1 requires that a baseline $2 million be transferred to the Capital Expenditure Budget Reserve each year, increasing annually by 3 percent. The budgetary documents for FYs 2014-15 and 2015-16 show that such transfers were made into the fund and that no funds were transferred out or expended on capital repairs or projects.

A second provision of the Stadium Lease in Article 14 details the priorities and required amounts for allocations of any excess Stadium Authority revenues. These revenues, which are defined in the Stadium Lease, are to be allocated to: an Operating Fund Reserve, the Capital Expenditure Budget Reserve (in addition to the $2 million baseline transfer mentioned above), a Renovation/Demolition Reserve, prepayments of certain Stadium Authority debt, and, lastly, discretionary expenses for any other purpose, including contributions to the City's General Fund. It is not possible to determine from the audited financial statements or budgetary documents (including year-end quarterly status reports) for FYs 2014-15 and 2015-16 whether or not these distributions were made consistent with the Stadium Lease agreement requirements,[1] with one exception: budgetary documents for those years do present transfers into the Capital Expenditure Budget Reserve.

A third Stadium Lease provision in Section 12.1 requires that the Stadium Authority transfer half of its non-NFL event ticket surcharge revenue to the Discretionary Fund, as stated earlier in

[1] A review of bank statements from FY 2014-15 and 2015-16 confirms that these transfers occurred in accordance with the Stadium Lease, as discussed in more detail later in this section.

the discussion of Stadium Authority revenues. The Discretionary Fund can be used for discretionary expenses defined in the Ground Lease to include Stadium Authority costs and expenses that were neither (1) approved by StadCo as part of the annual shared stadium expense budget[2] or the capital expenditure budget[3] nor (2) approved by ManCo in the line of credit agreement. The budgetary documents for FYs 2014-15 and 2015-16 show Discretionary Fund expenditures but not total amounts transferred in and out or beginning and year-end fund balances.

Though not a requirement of the Stadium Lease or the other agreements between the Stadium Authority and the 49ers entities, the Stadium Authority also maintains a separate Debt Service Fund, through which funds are collected and expended on Stadium debt service. Most of the transfers out of the Operating Fund in FYs 2014-15 and 2015-16 were to the Debt Service Fund for Stadium debt service payments.

Reporting Stadium Authority fund transfers and activity and demonstrating compliance with pertinent requirements of the Stadium Lease and other agreements were weaknesses of the Stadium Authority budgets and quarterly financial reports in FYs 2014-15 and 2015-16. The budgetary documents did not clearly show how much was available at the beginning of the year in each fund, how much was transferred in and out of each fund, and how much remained at the end of the year. This information is important for the Stadium Authority Board to have sufficient financial information to make decisions in the best interests of the organization as fiscal steward, and for Stadium Authority staff and the public to ensure that financial activity is adhering to the Stadium Lease and other agreements.

Capital Expenditures

As specified in the Stadium Lease, the Stadium Authority transfers funds to the Capital Expenditure Reserve (sometimes referred to as the Capital Improvement Budget in the financial reports and budgets) in two installments. First, the annual deposit, as defined in Exhibit A (Definitions) to the Stadium Lease, is $2 million, increasing each year by 3 percent. Second, as specified in section 14.3 of the Stadium Lease, for any lease year in which the Stadium Authority has excess Stadium Authority revenues, the Stadium Authority shall deposit an additional $1 million, also to increase each year by 3 percent, into the Capital Expenditure Reserve.

[2] The annual shared Stadium expense budget is defined in the Stadium Lease as expenses shared between the Stadium Authority and ManCo for costs that are not attributable to either NFL or non-NFL events. They are described in the Stadium Lease subsection of Section 1 of this report.

[3] The capital expenditure budget is defined in the Stadium Lease between the Stadium Authority and ManCo and described in the Stadium Lease subsection of Section 1 of this report.

Budgetary documents show that $3 million was transferred into the Capital Expenditure Reserve in both FY 2014-15 and FY 2015-16. No funds were expended in either year, so the funds carried over through FY 2016-17. However, as discussed in Section 1 of this report, five-year capital plans were not prepared by ManCo and delivered to the Stadium Authority for the two years under review as required by the Stadium Lease. The absence of a capital plan left the Stadium Authority Board and staff without information about the adequacy of the amount of funds available compared to future capital needs. Further, it was not clear in the budgetary documents how much was available in Operating Fund reserves or the Discretionary Fund, both of which could potentially be used for capital repairs and projects if the Capital Expenditure Reserve proved insufficient.

As far as the audit team is aware, the first record of both a one- and five-year Capital Expenditure Plan is from March 2016 and was included in the materials for the March 22, 2016 Stadium Authority Board meeting, when the FY 2016-17 Stadium Authority budget was introduced for approval.

Debt Service Fund

The Deposit and Disbursement Agreement details how funds flow to, from, and between the various accounts related to the Stadium (e.g., the Stadium Authority Construction Account, the StadCo O&M Account, the Trust Debt Service Account, etc.; for a full list see Section 2.3 of the Deposit and Disbursement Agreement). The Agreement governs the other element of the Net Transfers line item in the budget: transfers out of the Operating Fund into the Debt Service Fund.

In both FYs 2014-15 and 2015-16, significant amounts were transferred out of the Operating Fund to the Debt Service Fund to cover current debt service obligations and to prepay longer term debt obligations. The budgetary documents did not consistently present information about the amounts and sources of transfers into the Debt Service Fund and the amounts that were paid to each individual debt service instrument. Beginning and year-end balances were not presented until the final financial status report for FY 2015-16 (released June 28, 2016). Budget to actual Debt Service Fund revenues and expenditure comparisons, which would allow the Board and public to track progress in meeting debt service obligations and changes made during the year, were also not presented.

A key factor in changes in Debt Service Fund expenditures during the audit review period was the use of excess Construction Fund monies to prepay debt service. In FY 2014-15, approximately $100.7 million was transferred from the Construction Fund to the Debt Service Fund, but this transfer amount was not explicitly disclosed in the budgetary documents. Total

transfers into the Debt Service Fund from the Operating Fund and the Construction Fund were presented as a single net amount in the year-end financial status report. Total debt service payments were shown but the sources of the amounts transferred in, such as the Construction Fund, or the specific debt instruments paid off were not shown.

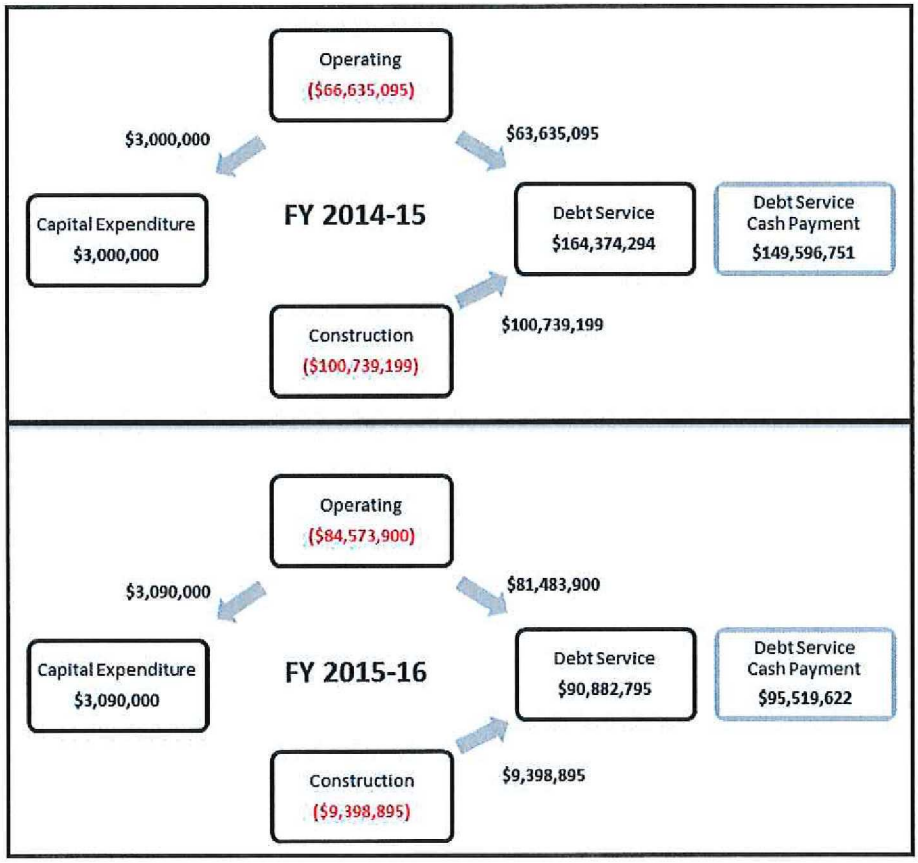
Planned payments by specific instrument were shown in the FY 2014-15 budget approved by the Board, but actual payments could not be compared to the budgeted amounts in the year-end financial status report. No beginning or year-end balances were shown for the Debt Service Fund in any of the budgetary documents for FY 2014-15. The text descriptions in the documents filled in some but not all of the gaps in information presented in table form. However, the Stadium Authority's audited financial statements do present debt payment amounts for each year and outstanding amounts owed, by debt instrument.

Debt Service Fund presentations in budgetary documents improved in FY 2015-16, although Construction Fund transfers to the Debt Service Fund, which amounted to approximately $9 million that year, were again not included in the budget presented to the Board for approval. The quarterly financial status reports for FY 2015-16 did present total transfers to the Debt Service Fund (though without individually identifying the source funds) and the amounts to be paid by individual debt instrument. Beginning and year-end balances were not presented for the Debt Service Fund until the FY 2015-16 year-end financial status report. The year-end document also presented total transfers in to the Debt Service Fund (though, again, without individually identifying the contributions from the Construction Fund and the Operating Fund), the payment amounts by individual debt instrument, and the originally budgeted amounts for comparison to the actual amounts. Overall, this FY 2015-16 year-end report represented an improvement upon the information in previous financial status reports and budget documents.

Debt Service Fund budget amendments were submitted to the Board either late or retroactively in the two fiscal years reviewed. For FY 2014-15, an $80 million retroactive budget amendment was submitted to the Board on March 20, 2015, or just before the March 31 fiscal year-end, to authorize transfers of excess Construction Fund monies to the Debt Service Fund and increased debt service payments. A similar amendment for $32 million in FY 2015-16 was submitted to the Board on May 24, 2016 retroactively, as FY 2015-16 had already ended. The staff report accompanying the submission to the Board explained the transfer was due to Stadium Builders License revenue being higher than expected for FY 2015-16. Overall, more comprehensive tracking of Debt Service Fund revenues and expenses during the year would have provided the Board with information needed to possibly avoid the late or retroactive budget amendments and allowed them to be better prepared, having seen the trends in Debt Service Fund revenue collection and expenses.

Exhibit 2.21 presents a graphic depiction of the breakout of Operating and Construction funds that were transferred to the Debt Service Fund and the Capital Expenditure Fund in FYs 2014-15 and 2015-16. As can be seen, the Construction Fund contributed $100,739,199 and $9,398,895 to the Debt Service Fund in FY 2014-15 and FY 2015-16, respectively. Combined with Operating Fund contributions of $63,635,095 and $81,483,900, total transfers to the Debt Service Fund were $164,374,294 in FY 2014-15 and $90,882,795 in FY 2015-16. Budgetary documents report $149,596,751 in actual debt service payments in FY 2014-15 and $95,519,622 in FY 2015-16, reported on a cash basis.

Exhibit 2.21: Breakout of Transfers to the Debt Service Fund, FY 2014-15 and 2015-16



FINDING 2.E: Starting and year-end balances, budget-to-actual comparisons, and transfers in and out of the Debt Service Fund were not clearly and consistently presented in Stadium Authority budgetary documents during FYs 2014-15 and 2015-16. The transfer and use of $100.7 million from the Construction Fund to the Debt Service Fund in FY 2014-15 for early debt service payments was not clearly presented or described in the budget or year-end financial status report, though the Board was informed about the transfer when they were asked to amend the budget just before the fiscal year ended. Debt Service Fund reporting improved in the FY 2015-16 financial status report presented at the end of the fiscal year.

RECOMMENDATION 2.E: The Stadium Authority Board should require that a comprehensive accounting of Debt Service Fund transactions, including beginning and year-end balances, budget vs. actual revenues and expenditures by specific line item, and details on all transfers in and out of the fund, be presented in Stadium Authority budgets and financial status reports.

Excess Stadium Authority Revenues

The Stadium Authority budgets for FYs 2014-15 and 2015-16 did not present an excess Stadium Authority revenue amount or its allocation among funds as specified in the Stadium Lease. Excess Stadium Authority Revenue is defined in the Stadium Lease as Stadium Authority revenue less Stadium Authority expenses, which differ from operating revenues and expenses.

Stadium Authority Revenue includes the revenue line items detailed in Section 1 of this report. Stadium Authority Expenses are defined as including all rent paid under the Ground Lease, operating and maintenance costs, capital reserve contributions, Stadium Manager costs (shared expenses), Stadium Authority overhead, non-NFL event costs, required debt service payments, and required payments of the ManCo revolving loan. Discretionary expenses and any civic event stadium costs are excluded.

As discussed in Section 1, the difference between Stadium Authority Revenue and Stadium Authority Expenses, or Excess Stadium Authority Revenue, is to be allocated as follows, according to the Stadium Lease. All dollar amounts set forth below, other than the Renovation/Demolition Reserve, shall increase at a rate of 3 percent per year. Budgetary documents and financial statements do not make clear if funds were allocated in accordance with these requirements. However, as discussed in more detail below, a review of bank statements from FY 2014-15 and 2015-16 confirms that these allocations did occur in accordance with the Stadium Lease.

1. **Management Company Revolving Loan:** First, as provided in the Revolving Credit Agreement, any excess Stadium Authority revenues shall be used to pay off the then outstanding balance, if any, of the Management Company revolving loan.

2. **Funding of Future Stadium Authority Expenses:** Second, if, as of the end of the particular lease year, the balance of the Operating Expense Reserve[4] is less than $2 million, then the Stadium Authority shall transfer such excess revenues to the operating expense reserve in an amount equal to the lesser of:

    a. The amount necessary to increase the amount of the operating expense reserve to $2 million; or

    b. $1 million.

3. **Stadium Capital Expenditure Reserve:** Third, the next $1 million of excess Stadium Authority revenues in any such lease year shall be transferred to the Stadium Capital Expenditure Reserve.

4. **Operating Expense Reserve:** Fourth, if as of the end of the particular lease year, the balance of the Operating Expense Reserve is less than $10 million, then the Stadium Authority shall transfer such excess Stadium Authority revenues to the Operating Expense Reserve in order to increase the balance to $10 million.

5. **Prepayment of Subordinated Loan:** Fifth, the Stadium Authority shall use any additional excess revenues to prepay any outstanding principal balance on the subordinated loan in accordance with the StadCo Obligations Agreement.

6. **Additional Operating Expense Reserve Amounts:** Sixth, if, as of the end of the particular lease year, the balance of the Operating Expense Reserve is less than $20 million, then the Stadium Authority shall transfer the additional excess Stadium Authority revenues to the Operating Expense Reserve in the amount necessary to increase the balance of the Operating Expense Reserve to $20 million.

7. **Renovation/Demolition Reserve:** Seventh, if, as of the end of the particular lease year, the balance of the Renovation/Demolition Reserve is less than $70 million, then the Stadium Authority shall transfer the additional excess Stadium Authority revenues to the Renovation/Demolition Reserve in order to increase the balance to $70 million.

[4] The "operating expense reserve" is a reserve retained by the Stadium Authority to fund Stadium Authority expenses, excluding debt service on the permitted landlord financing.

8. **Additional Disbursements:** After distribution to the first seven priorities listed above, the Stadium Authority has the right to use the remaining excess revenues in such lease year, if any, to pay Stadium Authority discretionary expenses or for any other purposes, including distribution to the City's General Fund.

Actual contributions to the Operating Expense Reserve as required in the Stadium Lease were unclear in budgetary documents for FYs 2014-15 and 2015-16. However, a review of bank statements from FYs 2014-15 and 2015-16 confirms that in both years, the allocations to the Operating Expense Reserve and the Capital Expenditure Reserve occurred in accordance with the Stadium Lease up through the fourth allocation of $10,000,000 to the Operating Expense Reserve, the maximum amount required before prepayment of the subordinated loan.

In FY 2014-15, a total of $10,000,000 was transferred to the Operating Reserve and $3,000,000 was transferred to the Capital Expenditure Reserve, in accordance with the Stadium Lease. Of this $3,000,000 allocated to the Capital Expenditure Reserve, $2,000,000 was allocated as a baseline contribution in accordance with Exhibit A (Definitions) to the Stadium Lease and $1,000,000 was allocated in accordance with the required uses of excess Stadium Authority revenues outlined above. In FY 2015-16, $300,000 was transferred to the Operating Reserve to maintain the reserve at $10,000,000 plus a 3 percent annual increase, and $3,090,000 was transferred to the Capital Expenditure Reserve, in accordance with the Stadium Lease. Of this $3,090,000 allocated to the Capital Expenditure Reserve, $2,060,000 was allocated as a baseline contribution in accordance with Exhibit A (Definitions) to the Stadium Lease ($2,000,000 plus a 3 percent annual increase) and $1,030,000 was allocated in accordance with the required uses of excess Stadium Authority revenues.

At the close of FY 2015-16, the ending balance in the Capital Expenditure Reserve was thus $6,090,000 and the ending balance in the Operating Reserve was $10,300,000. The remainder of the excess Stadium Authority revenue, approximately $17.1 and $24.1 million in FYs 2014-15 and 2015-16, respectively, was used to prepay the subordinated loan as required by the Stadium Lease.

The allocations and uses of excess Stadium Authority revenue for 2014-15 and 2015-16 and the balances of the Operating and Capital Expense Reserves at the close of the 2015-16 fiscal year are presented in Exhibit 2.22 below.

Exhibit 2.22: Allocation of Excess Stadium Authority Revenue, FYs 2014-15 and 2015-16, and Reserve Balances

	Excess Revenue Allocations		Baseline Contributions		Balance
	FY 2014-15	FY 2015-16	FY 2014-15	FY 2015-16	*3/31/2016*
Capital Reserve	$1,000,000	$1,030,000	$2,000,000	$2,060,000	**$6,090,000**
Operating Reserve	10,000,000	300,000			**$10,300,000**
Subordinated loan prepayment	17,117,450	24,061,459			

Source: City Finance Department

The Stadium Authority Board should receive this information in its budgetary documents along with details on fulfilling all the required allocations of excess Stadium Authority revenue so that Board members know the total resources available for current and future Stadium needs and so they can ensure that the Stadium Authority is operating in compliance with the Stadium Lease.

Recommendation 1.K in Section 1 of this report recommends that information on the beginning and year-end balances in all required reserves be presented to the Board in the budget and financial status reports to demonstrate compliance with excess Stadium Authority revenue requirements in the Stadium Lease.

Discretionary Fund

As discussed above and in Section 1 of this report, the Stadium Authority's Discretionary Fund can be used for discretionary expenses to pay costs incurred by the Stadium Authority not approved by StadCo as part of the shared Stadium Expense budget or ManCo in the line of credit agreement. The source of the Discretionary Fund is one-half of the revenue from the $4 per ticket non-NFL event ticket surcharge.

Discretionary Fund expenses were presented as operating expenses in the budgetary documents for the two years reviewed. However, the amounts deposited into the separate Discretionary Fund bank account and the account's beginning and year-end balances were not presented, leaving the Stadium Authority Board without information on resources available for discretionary expenses or the amount left after covering NFL public safety cost overages. Furthermore, there is no evidence in the budgetary documents or other Stadium Authority documents of compliance with the following Stadium Lease requirement: when the Discretionary Fund exceeds $1 million the Stadium Authority and ManCo must determine and make provisions for use of any funds in excess of $1 million for public safety capital improvements. If a determination is made that no public safety capital improvements are needed, the Stadium Lease allows the Stadium Authority to transfer half of the amount in excess of $1 million in the Discretionary Fund to the City's General Fund. Such transfers were

not made in either FY 2014-15 or 2015-16 and there is no documentation that such consideration took place.

FINDING 2.F: Stadium Authority budgetary documents during the audit review period do not clearly present whether one half of the revenue from the non-NFL event ticket surcharge was deposited into the Discretionary Fund, as required by the Stadium Lease, or how much of that fund was spent. Variances between budgeted and actual amounts and current and year-end balances were also omitted.

RECOMMENDATION 2.F: The Stadium Authority Board should require that Discretionary Fund revenues, expenses, budget-to-actual comparisons, and account balances be reported in Stadium Authority budgetary documents separately from the Operating Fund.

C. Stadium Authority Expenditure Detail

13. Expenditure: Stadium Manager Operating Expenses (Shared Stadium Expenses)

Exhibit 2.23: Stadium Manager Operating Expenses (Shared Stadium Expenses), FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$4,336,295	$5,806,843	$6,446,000*	$7,560,537

*An amendment to the FY 2015-16 budget increased this amount to $7,561,000. The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

Authority: Article 8 of the Stadium Lease defines "Shared Stadium Expenses" as costs paid by the Stadium Authority for the operation, management, and maintenance of the Stadium premises and improvements, including day-to-day expenses (cleaning, repairs, landscaping, security, and salaries of ManCo employees), insurance expenses, capital repairs and expenditures, stadium management fees paid to ManCo, groundskeeping, and others. Section 8.3.1 of the Stadium Lease states that, except for insurance and groundskeeping expenses, these shared expenses are divided equally (50 percent and 50 percent) between the Stadium Authority and StadCo, the tenant. Exceptions to the equal split of expenses are: 1) the Stadium Authority's share of insurance expenses is defined in Section 1 of the Stadium Lease as a flat dollar amount, discussed above in Section 1 and below; and 2) StadCo's share of groundskeeping expenses is 70 percent and the Stadium Authority's is 30 percent.

According to the Management Agreement, these shared Stadium expenses are to be detailed in a Shared Expense Budget prepared by ManCo and reviewed and approved by the Stadium Authority as follows:

> *Prior to each Fiscal Year, the Stadium Manager shall deliver to the Stadium Authority and StadCo, for review and comment, a detailed draft budget of Shared Stadium Expenses for such Fiscal Year ("Draft Shared Stadium Expense Budget"), together with a good faith and reasonable projection of Shared Stadium Expenses over the succeeding five (5) year period. (Management Agreement, Section 4.7)*

Shared Stadium expenses, also referred to as Stadium Manager expenses, are a variable operating expense. During the fiscal year, the Stadium Authority pays ManCo based on the budgeted amount for these operating expenditures. After the conclusion of the fiscal year, ManCo sends the Stadium Authority an expenses summary document and adjustments are

made as necessary. Like the financial details behind non-NFL event revenues and expenses, Stadium Authority staff is permitted to audit the backup financial information and see a breakdown of the costs on-site at ManCo's offices, but are not allowed by ManCo to keep records for these expenses.

In FY 2014-15 the Stadium Manager expenses line item was over-spent by $1.47 million, or 34 percent. In FY 2015-16 the Stadium Manager Expenses line item was over-spent by approximately $1.1 million, or 17 percent, before a budget adjustment.[5]

FY 2014-15 Shared Expenses

The adopted budget for FY 2014-15 was $4,336,295 for shared Stadium expenses (budgeted as "Operating Expenses – Stadium Manager"). No breakdown of cost categories or detail on how these costs were budgeted was included in the FY 2014-15 budget document, provided to the Stadium Authority Board for approval in March 2014, or in the quarterly financial reports presenting actual expenditures for the year. A breakdown of budgeted shared expenses that was provided to the City Finance Department for FY 2014-15, separate from information in the budgetary documents, is shown below, with a comparison to actual total expenditures for FY 2014-15 as reported in the quarterly reports. As can be seen, actual expenditures exceeded the budgeted amount by $1.47 million, or 34 percent. Because ManCo did not provide actual expenditure records for shared expenses during the audit review period, the Stadium Authority Board and the public do not receive information showing which categories were over-spent.

Exhibit 2.24: FY 2014-15 Budgeted and Actual Operating Expenses – Stadium Manager (Shared Stadium Expenses)

	Budgeted	Actual
General Operations	$913,203	*Not provided*
Maintenance Staff	966,436	
Groundskeepers	83,070	
Grounds Supplies	109,560	
Guest Services	209,950	
Janitorial Staff	96,525	
General Building Operations and Maintenance	922,400	
Security - Non-Event Related	1,035,149	
Total	**$4,336,293***	**$5,806,843**
Amount over-spent		*$1,470,550*

Source: City Finance Department

*Note: the amount shown in the budget is $4,336,295. The $2 difference is likely due to a rounding error.

[5] The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

FY 2015-16 Shared Expenses

As in FY 2014-15, a breakdown of budgeted categories for the FY 2015-16 shared expenses budgeted and actual expenditures was not included in the budget document provided to the Stadium Authority Board for approval in March 2015. Actual expenditures exceeded the budget by $1.11 million, or 17 percent. Because ManCo did not provide actual expenditure records, areas of overspending were not recorded and presented to the Board.

For FY 2015-16, City staff did not receive a breakdown of budgeted shared expenses as they did in FY 2014-15 (presented above in Exhibit 2.24). Therefore, only the aggregate adopted shared expenses budget and actual expenditures are shown for FY 2015-16 in Exhibit 2.25. As in FY 2014-15, the categories of shared expenses overspent were not reported.

Exhibit 2.25: FY 2015-16 Budgeted and Actual Operating Expenses – Stadium Manager (Shared Stadium Expenses)

Initial Budget	Final Budget	Actual (cash)	Actual vs. Initial
$6,446,000	$7,561,000	$7,560,537	$1,114,537

Source: Financial status report, quarter and fiscal year ending March 31, 2016

* Over/under calculated using the initial budgeted amount rather than the final budgeted amount. The FY 2015-16 budget was amended on March 22, 2016, ten days before the close of the fiscal year.

The increase in the budget for Operating Expenses-Stadium Manager (Shared Stadium Expenses) was considered and approved retroactively by the Stadium Authority Board on March 22, 2016, ten days before the conclusion of FY 2015-16 and the same day the FY 2016-17 budget was presented for approval. The report to the Board states that "overages in security, guest services, Stadium Manager operations, and maintenance budgets were partially offset by savings in groundskeeping expenses" but no detail by category is provided to show where the overages occurred. However, a "Forecast" for FY 2015-16 Stadium Manager Operating Expenses was provided in the March 22, 2016 report. Because the line item detail in the forecast is inconsistent with the line item detail in the FY 2014-15 breakout shown above, not all categories can be compared across years. For example, the forecast showed $3.5 million in expenses for the Stadium Manager, but there was no amount designated for Stadium Manager in the FY 2014-15 detail shown in Exhibit 2.24 above.

Exhibit 2.26: FY 2015-16 Stadium Manager Operating Expenses (Shared Stadium Expenses) as Forecast at Year-End

	Adopted Budget	Detailed Forecast Provided at Year-End								
		Total	Compensation	Travels, meals, entertainment	Outside services	General supplies	Telephone	Equipment	Uniforms	Other
Stadium Manager		**$3,502,486**	$1,872,274	$210,338	$959,724	$57,700	$202,500	$159,917	-	$40,033
Main-tenance		**1,479,458**	1,151,778	2,250	216,300	102,130	-	-	-	7,000
Guest Services		**869,000**	531,709	31,733	19,975	114,843	4,740	41,270	$50,000	74,731
Grounds-keeping		**150,183**	76,437	1,626	2,250	52,080	360	1,290	-	16,140
Security		**1,500,000**	517,021	4,000	867,591	40,375	21,300	44,013	-	5,700
Fees [a]		**119,336**	-	-	-	-	-	-	-	119,336
Total	**$6,446,000**	**$7,620,463**	$4,149,219	$249,947	$2,065,840	$367,128	$228,900	$246,490	$50,000	$262,940

Source: City Finance Department

[a]: Lender fees, financing/ratings agencies and related fees

Sufficient details on budgeted and actual categories of the Stadium Manager operating expenses (shared expenses) were not provided in the budgetary documents for either fiscal year reviewed during this audit. ManCo did not deliver to the Stadium Authority a detailed Shared Stadium Expense Budget and five-year projections for FY 2015-16 as required by the Management Agreement. The records for shared Stadium expenses are maintained by ManCo and only available to the Stadium Authority through on-site reviews at ManCo's facility. No Stadium Manager expense documentation is allowed to be taken to Stadium Authority or City offices.

FINDING 2.G: Details on the Stadium Manager Operating Expenses, or Shared Stadium Expenses, were inadequate for oversight and transparency in the Stadium Authority operating budget during the audit review period. A single rolled-up line item was presented in budgetary documents, making it impossible for the Board to determine the magnitude of each cost covered in this expenditure category and to assess the causes of actual cost overages of $1.5 million in FY 2014-15 and $1.1 million in FY 2015-16.

RECOMMENDATION 2.G: The Stadium Authority Board should require that ManCo prepare the five year Shared Expense Budget, per the requirements in the Stadium Management Agreement, and the Board should direct the Executive Director to document receipt of the Shared Expense Budget, and provide written comments to ManCo in response to the proposed expenses.

FINDING 2.H: The $1.1 million in cost overruns in Stadium Manager Operating Expenses in FY 2015-16 were incurred before the Stadium Authority Board was asked to retroactively approve a budget enhancement to cover the additional costs on March 22, 2016, ten days before the end of the fiscal year.

RECOMMENDATION 2.H: The Stadium Authority Board, StadCo, and ManCo should amend the Management Agreement or separately establish binding policies that do not allow retroactive increases in authorized expenditures such as Stadium Manager expenses, and should require that detailed explanations be provided to the Board when additional funding is requested midyear in advance of such expenses being incurred.

14. Expenditure: SBL Sales and Services Expenses

Exhibit 2.27: SBL Sales and Services Expenses, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$0	$0	$1,574,000	$1,573,765

Authority: The Stadium Authority and Legends Premium Sales, LLC entered into the Agreement for Stadium Builders License Sales in July 2011, which authorized Legends to provide marketing and sales of SBLs for the Stadium. Upon expiration of the agreement with Legends, the Fourth Amendment to the Stadium Management Agreement expanded the scope of ManCo's duties to include the handling of SBL transfers and the administration and enforcement of the terms of the SBL License Agreement, including maintaining SBL records and invoicing SBL holders for

payments due on SBLs. The Fourth Amendment included all of ManCo's operating expenses allocable to SBL management services in the annual Stadium Authority budget.

SBL sales and service expenditures are a variable operating expense. During the fiscal year, the Stadium Authority pays ManCo based on the budgeted amount for SBL sales and service expenditures. After the conclusion of the fiscal year, the Stadium Manager and the Stadium Authority conduct an expenses true-up, and adjustments are made as necessary. Much like the financial details behind non-NFL event revenues and expenses, Stadium Authority staff are permitted to review the backup financial information and see a breakdown of the costs related to SBL sales and service on-site at the Stadium, but are not allowed by ManCo to keep records for these expenses.

15. Expenditure: Insurance Expenses

Exhibit 2.28: Insurance Expenses, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$2,550,000	$2,550,022	$2,626,996	$2,626,500

Authority: Section 12 of the Stadium Operations Agreement states that it is ManCo's responsibility to procure insurance for the Stadium pursuant to the Ground Lease, Stadium Lease, and other related agreements. The Stadium Lease includes insurance as one of the shared Stadium expenses, and in section 8.3.1 states that the Stadium Authority's insurance share shall be $2.55 million in the first lease year, increasing annually by 3 percent. This arrangement, with a fixed amount of the total cost specified in the Agreement for the Stadium Authority only (no amount is specified in the Operations Agreement for StadCo), is unlike the other shared expenses provisions for which the proportion of the total cost charged to each party is specifically stated (e.g., day-to-day maintenance expenses are split equally between the Stadium Authority and StadCo).

Insurance is a fixed operating expense. ManCo invoices the Stadium Authority for the $2.55 million, the amount stated in the Stadium Lease. However, ManCo does not send the Stadium Authority an invoice or bill from the insurance provider to document the total insurance cost; therefore, the Stadium Authority cannot see its share of the total cost. The total insurance bill is paid by ManCo, and the percentage of the bill that the Stadium Authority pays for insurance is unknown. Regardless of the total cost, there is no apparent reason for the Stadium Authority to be paying a fixed amount of this shared expense without knowing the total cost or how much of this amount StadCo is covering.

Section 1 of this report contains a recommendation to address the issue of the Stadium Authority's required payment of a fixed amount for Stadium insurance in the Operations Agreement with StadCo paying an unknown amount.

16. Expenditure: Senior and Youth Program Fee

Exhibit 2.29: Senior and Youth Program Fee Payment to City, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$230,000	$238,733	$239,000	$234,439

Authority: Section 12.2 of the Stadium Lease states that StadCo shall collect a fee of $0.35 per NFL ticket sold on behalf of the Stadium Authority. These fees are payable from the Stadium Authority to the City of Santa Clara as the Senior and Youth Program fees.

Totals for the Senior and Youth fees collected in FY 2014-15 FY and 2015-16 are shown below:

Exhibit 2.30: Senior and Youth Fees Collected in 2014-15 and 2015-16

	FY 2014-15	FY 2015-16
No. of tickets sold	682,095	669,826
Program fees: $0.35/ticket	$238,733	$234,439

Source: City Finance Department

The Senior and Youth Program fee is a variable operating expense because it depends on the number of NFL tickets sold, as reported by ManCo. However, because the fees effectively pass through to the City of Santa Clara, they do not have a net effect on the Stadium Authority budget but, rather, affect the City's budget as a General Fund revenue.

The Stadium Authority receives only summary NFL ticket data from ManCo. City Finance Department staff is permitted to review individual event ticket receipts on-site at the Stadium, but are not allowed to take the records with them.

FINDING 2.I: The Stadium Authority does not have records that independently verify NFL ticket receipts and therefore cannot confirm the amount owed for the NFL ticket surcharge on behalf of the City of Santa Clara without making an on-site visit.

RECOMMENDATION 2.I: The Stadium Authority should require that ManCo provide independently prepared reports and documentation to back up the number of NFL tickets sold for each fiscal year in order to verify that the senior/youth fee calculated by ManCo is accurate and to have a set of permanent records documenting the validity of this revenue.

17. Expenditure: Other Expenditures

Exhibit 2.31: Other Expenditures, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$1,224,067	$1,230,652	$3,020,089*	$2,747,776

*An amendment to the FY 2015-16 budget decreased this amount to $2,861,089. The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

Authority: The "Other Expenditures" line item presented in the Stadium Authority budget and financial status reports is presented as a single rolled-up amount. According to the Finance Department, the number includes the following categories that are budgeted and tracked annually by staff, though not reported in the budgetary documents presented to the Board.

- **Stadium Manager Fee**: Section 7.2 of the Stadium Management Agreement states that the Stadium Authority and StadCo jointly pay ManCo a fixed base management fee of $400,000 annually, with each party paying $200,000. The base management fee increases by 3 percent each year.
- **Use of the StadCo Tenant Improvement fee**: Section 4.7.5 of the Stadium Lease states that the Stadium Authority has the right to use tenant improvements at the Stadium for a fee paid to the tenant (StadCo). (Tenant improvements are improvements within tenant facilities and improvements that are owned by and constructed at the cost of the tenant.) Exhibit R to the Stadium Lease details the schedule of charges for the Stadium's use of StadCo's improvements and personal property. In the first lease year, these charges were $19,500 for a major event (concert, festival, sports events) and $275 for smaller events (weddings, corporate meetings), and increase at a rate of 3 percent per year. The main tenant improvement available for Stadium Authority rent at the Stadium

is the scoreboard, but the charges also include fees for use of television and audiovisual equipment and ticket office equipment, among others.

- **Utilities subtotal:** Section 7.7.2 of the Stadium Lease states that StadCo pays for utilities during its season (August-January) and the Stadium Authority pay for utilities during the rest of the year. Utilities costs are variable because they depend on the actual usage of utilities during the Stadium Authority's months. ManCo pays utilities for the whole year and invoices the Stadium Authority for the months for which it is responsible. Event-day utilities are charged to the events themselves, and the amounts charged to the events are deducted from the overall utility bill. Like other records maintained by ManCo, City Finance Department staff do not receive copies of the original invoices, but are permitted to view the utilities invoices on-site at ManCo offices during their annual year-end review.
- **SCSA administrative expenses:** This category includes Stadium Authority (City) internal administrative and accounting staff time and materials, services, and supplies used by City staff for Stadium-related purposes. Section 8.2.5 of the Stadium Lease specifically precludes the Stadium Authority from charging overhead costs, including administration and other related costs associated with operating the business of the Stadium Authority (accounting and legal matters are part of the shared Stadium expenses). Administrative expenses are variable because they depend on Stadium Authority internal administrative and accounting staff time and the use of materials, services, and supplies. When City staff members spend time working on a Stadium-related task, order Stadium-related supplies, or contract for Stadium-related services, they charge their time or the expense to the Stadium. These expenses are signed off at the Department level.

Finance Department records showing the budget vs. actual breakout of Other Expenditures for FYs 2014-15 and 2015-16 are presented in Exhibit 2.32. This information was not presented in the budgetary documents for FYs 2014-2015 and 2015-2016.

Exhibit 2.32: Breakdown of Other Expenditures by Fiscal Year

	2014-15		2015-16		2016-17
	Budgeted	Actual	Budgeted	Actual	Budgeted
Stadium Manager Fee subtotal	$200,000	$200,000	$206,000	$206,000	$212,000
Use of StadCo TI fee subtotal	-	197,525	303,593	313,218	250,000
Utilities subtotal	224,100	497,720	1,527,492	1,409,466	1,473,000
SCSA administrative expenses	800,000	335,406	824,004	819,092	849,000
Total	**$1,224,100**	**$1,230,651**	**$2,861,089**	**$2,747,776**	**$2,784,000**

Source: City Finance Department

Review of Stadium Authority Purchasing Transactions

The audit team reviewed a sample of 35 Stadium Authority charges for materials, supplies, and services to determine whether: (1) the expenses adhered to all applicable Stadium Authority, City, or other pertinent procurement ordinances and policies and procedures, (2) the supporting documentation adequately explained and justified how the expense was Stadium-related, and (3) vendor payments were consistent with the terms and conditions of their contracts or purchase orders. A portion of these charges constitute the "SCSA administrative expenses" discussed above as part of the other expenditures line item.

There are three sets of rules governing purchases of materials, supplies, equipment, and services for the Stadium Authority:

1) the City of Santa Clara Purchasing Authority (Santa Clara Municipal Code Chapter 2.105.070 *et seq.*),
2) the Stadium Authority Procurement Policy (Santa Clara Municipal Code Chapter 17.30), and
3) the Construction Agency Agreement by and between the Santa Clara Stadium Authority and StadCo (for Stadium development expenses).

Depending on how the procurement is executed, one of these three sets of regulations should govern the transaction. Exhibit 2.33 presents the requirements and thresholds for the three possible types of procurements at the Stadium: City procurement, Stadium procurement, and Stadium development project procurement. City procurement rules are more restrictive than Stadium Authority procurement rules and both of these are much more restrictive than the Stadium development project rules under the Construction Agreement; under the latter, StadCo as the construction agent is not required to follow the process requirements for the other two procurement classifications. The significant differences between the three sets of rules are clear, but the process for determining which is in effect for each transaction is less clear.

Exhibit 2.33: Three Sets of Procurement Rules Governing Stadium Purchases

	City Purchasing Authority Thresholds (if procurement is part of a City department purchase)	Stadium Authority Procurement Policy Thresholds (if procurement is a Stadium Authority purchase)	Stadium Construction Agreement Thresholds (if procurement is for Stadium construction or development)
Professional services	Competitive bidding if over $50,000 ($150,000 for Utility), licensed professional services excluded. Contracts required for all.	Competitive bidding not required; Executive Director can approve contracts.	*No threshold requirements*
Purchase order required	All material, supplies & eqpt. over $10,000	All material, supplies & eqpt. up to $250,000	*No threshold requirements*
Informal bidding (3 quotes or bids) required	Greater than $15,000 up to and including $100,000	$250,000 - $1 million	*No threshold requirements*
Formal bidding required	Greater than $100,000	Greater than $1 million	*No threshold requirements*

Some of the transactions charged to the Stadium Authority by City staff were procured as part of regular City department purchases, with a portion of the goods or services in the purchase used for Stadium-related purposes and the rest for general City or department use. In these instances, City procurement rules and ordinances applied. However, the Stadium Authority Procurement Policy states that it governs purchases of goods, materials, and services acquired on behalf of the Stadium Authority, so a department could reasonably apply the less restrictive provisions of that policy to such procurements, or at least the portion of a purchase attributed to the Stadium (such a process might be administratively difficult if a City department is making a routine purchase that is partially allocated to the Stadium, such as supplies for the Fire Department used both for regular duty and for Stadium duty). City Finance Department staff

state that the more restrictive City process has been used when staff purchase items that are for both the City and the Stadium Authority.

A number of purchases reviewed in the sample were for services, supplies, materials and equipment that were classified as part of the Stadium development project, not part of the SCSA administrative expenses included in the Other Expenditures line item. None of the procurement requirements in the Santa Clara Municipal Code applied to these purchases because they instead fall under the Construction Agency Agreement, under which StadCo was not required to follow the City's or Stadium Authority's procurement process. Some purchases under the Stadium development project (identifiable because they were coded to the Capital Improvement Project Fund and a specific project number) covered items such as IT equipment purchases or GIS services that without the availability of Construction Fund monies might otherwise be considered a routine purchase as part of ongoing Stadium operations. The Stadium Authority Board approved the Capital Improvement Project that allowed for expenditure of Construction Fund monies, but expenses such as the procurements reviewed were not detailed in the Capital Improvement Project documents or the annual operating budgets reviewed and approved by the Board.

For our review we applied the set of regulations that appeared to be most appropriate given the details of the individual purchases, given that there are no specific Stadium Authority guidelines detailing when to use which regulations.

The audit team selected a sample of 35 charges for materials, supplies, and services taken from the Stadium Authority consolidated financial records to review across the scope of the audit period. Of these 35 transactions, 12 transactions were drawn from the Operating Fund and 23 were drawn from the Stadium development budget, which, as stated above, is part of the City's Capital Improvement Project budget. Altogether, these represented $2.5 million in expenditures over the two year audit review period.

The audit team reviewed the invoices associated with the transactions and any underlying vendor contracts, agreements, or purchase orders and verified that the invoiced amounts matched the Stadium's financial records and contract or purchase order terms and conditions. The expenses reviewed came primarily from the Police, Information Technology, and Finance Departments, although other departments in the sample included the City Attorney's Office and the Fire Department. The expenses included Stadium public safety equipment (e.g., binoculars and flex cuffs), computer hardware sold to the Stadium, fees for professional legal services, and reimbursements to the City of Santa Clara related to public safety.

Six of the 35 transactions selected by the audit team were related to construction draws, which are managed by StadCo as the construction agent. The audit team did not review the underlying documentation for these transactions because they were outside the scope of this audit as Stadium construction expenses. The remaining 29 transactions were found to be in compliance with the City Code sections or the Construction Agency Agreement threshold requirements summarized above. However, in some cases an invoice did not contain enough detail to allow the audit team to match it with the underlying contract, or the underlying contract did not contain enough detail to allow the audit team to verify the invoice charges, as detailed below.

Of the 29 transactions the audit team was able to review, 13 had underlying contracts, three had purchase orders and/or quotes, as required by the City procurement code, and 13 had no underlying contract or purchase order. The transactions without underlying contracts or purchase orders were either under the threshold that would require a purchase order ($10,000 under the City purchasing authority) or were reimbursements to the City of Santa Clara.

The three transactions with purchase orders and/or quotes, the thirteen purchases without an underlying contractor or purchase order, and three of the thirteen procurements with an underlying contact (a total of 19 out of 29 transactions reviewed) were determined to be compliant with the relevant requirements and had invoices that matched the terms and conditions of their contract or purchase order.

The audit team was unable to fully verify the remaining 10 procurements with the documentation available, although none of these procurements appeared to be outside the scope of the associated contract and no invoice was for an amount in excess of the contract total or not-to-exceed amount. Of these 10 procurements in question:

- four were made under competitive multiple agency procurement agreements for computer equipment, which specify percentage discounts but do not include the base line price lists for specific items to be able to verify the discounts obtained; and
- six had invoices with billing rates, units of service, and/or progress billing that could not be verified because the underlying contract contained no such details to check against or because the contract contained hourly rates and units of service to be charged but the invoices did not contain this information.

For the latter six sample procurements, the lack of matching information in contracts and invoices limits the City's and Stadium Authority's ability to verify that charges for services and supplies are in keeping with agreed-upon contracts and that contracts contain sufficient specifics to monitor vendor performance.

As a separate note, of the total 29 transactions the audit team reviewed, 10 did not have Accounts Payable Payment Request Forms attached as cover sheets, and therefore the audit team was unable to verify required payment approvals by appropriate staff in the procuring departments. According to City staff, some departments use an approval stamp instead of the AP request form, and the three purchase card transactions in the sample were approved at the purchase-card statement level, in accordance with City policy.

The Stadium Authority Procurement Policy requires that the Executive Director verify that the goods or services purchased for the Stadium Authority have been provided according to the terms and conditions set forth in the contract. Documentation of such verification was not included in the sample procurement files reviewed, although this provision may be overlooked because many Stadium Authority purchases are made under the authority of City procurement ordinances or the Construction Agreement.

FINDING 2.J: The City and Stadium Authority have different sets of procurement regulations with different requirements and thresholds related to competitive bidding. The "Other Expenditures" category in the Stadium Authority budgets includes purchases for materials, supplies, equipment, and services made by City departments, a portion or all of which is used for the Stadium, and purchases made by the Stadium Authority exclusively for Stadium use. The City does not have guidelines for staff to follow regarding which procurement regulations should be applied when making Stadium Authority purchases, although City Finance Department staff state that the more restrictive City process has been used when staff purchase items that are for both the City and the Stadium Authority.

RECOMMENDATION 2.J: The Stadium Authority Board and the City of Santa Clara should clarify when the City Purchasing Authority procurement thresholds (Santa Clara Municipal Code Chapter 2.105.070 *et seq.*) apply and when the Stadium Authority Procurement Policy thresholds (Santa Clara Municipal Code Chapter 17.30) apply.

FINDING 2.K: A review of a sample of 29 purchases for materials, supplies, equipment and services found that the purchases complied with the City's and Stadium Authority's procurement regulations and did not exceed their contract maximums. However, for 10 of 29 transactions reviewed, the vendor contracts did not sufficiently spell out the basis for billing (such as the work to be performed or unit costs) or, in transactions with contracts in place with such detail, the invoices submitted did not match the hourly rates or other cost details specified in the contracts.

RECOMMENDATION 2.K: The Stadium Authority Board should direct staff to prepare policies and procedures pertaining to all purchases made on behalf of the Stadium Authority to require a level of specificity in costs and services in all vendor contracts, that all invoices bill using the rates or unit costs specified in their contracts, and that the invoices and contracts be periodically reviewed by Stadium Authority staff.

FINDING 2.L: Some of the sampled purchases of Stadium materials, supplies, equipment, and services reviewed by the audit team were drawn from the Stadium Development budget, which was not subject to City or Stadium Authority procurement regulations. Further, although the Stadium Authority Board approved the appropriation, these operating expenses were not detailed in the documents reviewed by the Board.

RECOMMENDATION 2.L: The Stadium Authority Board should require that budgets and actual expenditures for the Stadium construction budget be presented alongside the Stadium Authority Operating Budget to provide an accurate overall picture of purchases for all materials, services, and supplies for the Stadium.

18. Expenditure: Ground Rent

Exhibit 2.34: Ground Rent, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual	Budgeted	Actual
$180,000	$180,000	$215,000	$215,000

Authority: Section 4.3 of the Ground Lease states the Stadium Authority will pay the City a fixed ground rent of $180,000 for the first year of Stadium operations, and the amount will increase annually as specified in Section 4.3.1 of the Ground Lease.

Ground Rent is a fixed operating expense. The Stadium Authority has made annual payments of the amounts due to the City of Santa Clara.

19. Expenditure: Performance Rent

Exhibit 2.35: Performance Rent, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual (accrual)	Budgeted	Actual (accrual)
$2,410,000	$2,513,777*	$2,410,000**	$2,932,008

*As discussed below, the performance rent for FY 2014-15 as reported in the March 31, 2016 quarterly financial status report ($5,508,588) is incorrect. The actual amount paid was $2,513,777, as calculated by the City Finance Department and the audit team.

**An amendment to the FY 2015-16 budget increased this amount to $2,509,000. The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

Note: The table above reports the performance rent on an accrual rather than a cash basis because the performance rents for FY 2014-15 and FY 2015-16 were not paid until after the close of those fiscal years.

Authority: The performance rent calculation is based on net revenue from non-NFL events. Section 1.93 of the Ground Lease states that the performance rent payable to the City will equal 50 percent of the net revenue from non-NFL events for the lease year, less the sum of performance-based rent credits, as specified in Section 1.94 of the Ground Lease, and includes:

(a) 50 percent of the fixed ground rent;

(b) the amount by which the public safety costs exceeded the public safety cost threshold ($170,000 per game in the first year, increasing annually) and that was paid by StadCo to the City, and

(c) various tax and credit provisions.

As explained in the net revenue from non-NFL events section above, ManCo remits the net revenue from non-NFL events (less a marketing and booking fee) to the Stadium Authority yearly after the conclusion of each fiscal year. Because the Stadium Authority budget and quarterly reports are on a cash basis, the Stadium Authority's performance rent payment for FY 2014-15 is reported in quarterly reports as an expenditure for FY 2015-16, and the actual performance rent expense for FY 2014-15 is shown as $0 in the quarterly financial reports. The net revenue from non-NFL events and the associated performance rent expense for FY 2015-16 will be recorded in the actual revenues and expenses of FY 2016-17.

Performance rent is a variable operating expense because it depends on the net revenue from non-NFL events. Through FY 2015-16, the only performance-based rent credit has been 50 percent of the fixed ground rent. Thus far, the use of the Discretionary Fund to pay for public safety cost overages (discussed below) has meant that there have been no performance-based rent credits for StadCo's payment of public safety overages to the City.

Exhibit 2.36: Performance Rent Calculations for 2014-15 and 2015-16

	FY 2014-15	FY 2015-16
Non-NFL Event Revenue	$50,980,519	$89,754,081
Non-NFL Event Expense	$45,772,966	$83,675,065
Net Non-NFL Event Revenue	**$5,207,553**	**$6,079,016**
50% of Net Revenue from non-NFL events	$2,603,777	$3,039,508
50% of ground rent	($90,000)	($107,500)
Performance Rent due to the City	**$2,513,777**	**$2,932,008**

Source: City Finance Department and HMR calculations.

The performance rent for FY 2014-15 as reported in the March 31, 2016 quarterly financial status report ($2,508,588) is incorrect. The actual amount paid was $2,513,777, as calculated by the City Finance Department and the audit team.

The Stadium Authority's performance rent expense, which is paid to the City and becomes a City General Fund revenue, is based on net revenue from non-NFL events, as shown in Exhibit 2.36 above. The higher the net non-NFL event revenue for the Stadium Authority, the higher the contribution to City revenue. However, as discussed earlier, the Stadium Authority does not receive information on the details of the revenues and expenses that comprise net non-NFL event revenue, so it has little basis to assess the adequacy of the performance rent amount paid.

If the Stadium Authority had access to and was able to analyze the details of non-NFL event revenues and costs, it could be more proactive in identifying areas of potential revenue enhancement and cost reduction to generate greater net non-NFL event revenue and greater General Fund revenue for the City.

ManCo only provides aggregated net non-NFL event revenue figures to the Stadium Authority. There is no additional detail provided in budget documents and financial status reports on the specific revenues and expenses associated with non-NFL events. Non-NFL event revenue and expense records and details are not maintained by the Stadium Authority but, instead, are kept by ManCo at their facility. Stadium Authority staff are permitted to review those records at the ManCo office but do not report their contents to the Board or in any Stadium Authority documents.

As recommended in Recommendation 2.B, ManCo and the Stadium Authority should negotiate and agree to a level of detail regarding non-NFL event revenue and expenses that can be provided in City reports and public documents without compromising ManCo's ability to book and negotiate deals with non-NFL event acts and promoters. Both the annual proposed budget and the quarterly financial status reports should include this level of detail—budgeted and actual—for revenues and expenses to allow for the clear calculation of performance rent and to provide assurance to the Board that performance-based rent payments to the City are being maximized.

20. Expenditure: Discretionary Fund Expenses

Exhibit 2.37: Discretionary Fund Expenses, FYs 2014-15 and 2015-16

FY 2014-15		FY 2015-16	
Budgeted	Actual (accrual)	Budgeted	Actual (accrual)
$385,500	$743,255	$670,000*	$669,902

*An amendment to the FY 2015-16 budget increased this amount to $715,000. The budget was amended on March 22, 2016, ten days before the close of the fiscal year.

Note: The table above reports the Discretionary Fund expense on an accrual rather than a cash basis because portions of the Discretionary Fund expenses for FY 2014-15 and FY 2015-16 were not paid until after the close of those fiscal years.

Authority: Section 12.1 of the Stadium Lease states that one half of the proceeds from the $4 surcharge per ticket for non-NFL events will be included as Stadium Authority revenue, with the other half deposited in the Stadium Authority Discretionary Fund.

Section 12.1 of the Stadium Lease specifies allowable uses of the Discretionary Fund by defining how its "unallocated amount" may be used. The unallocated amount is defined as "the portion of the Stadium Authority Discretionary Fund, if any, that is not then allocated to pay the costs of a Scheduled Civic Event or other Stadium Authority Discretionary Expenses included in the then-approved Annual Stadium Authority Budget or for Emergency expenses."

If the unallocated amount exceeds $1 million, then the Stadium Authority is required to determine whether adequate provisions for public safety capital improvements and replacements to public safety capital improvements have been made, and if not, is to reserve funds in the Discretionary Fund for this purpose. If adequate provision has been made and the remaining balance still exceeds $1 million, then up to one half of the excess may be transferred to the City's General Fund at the discretion of the Stadium Authority. At that time, an equal amount will be transferred from the Discretionary Fund to the Stadium Authority's Operating Fund and will be included in Stadium Authority revenue, used to pay Stadium Authority expenses.

The Stadium Lease identifies Stadium Authority Discretionary Capital Expenses (section 10.5) and public safety costs above the public safety cost threshold (section 7.5.3) as potential uses of the Discretionary Fund. The quarterly financial status reports show that through the second quarter of FY 2016-17, the Discretionary Fund has been used only to cover the amount of NFL public safety costs that exceeded the threshold. A summary of the non-NFL ticket surcharge, the Discretionary Fund allocation, and the uses of the Discretionary Fund for FY 2014-15 and FY 2015-16 is presented in Exhibit 2.38 below. The table displays the expenses for the year they were incurred, rather than the year the payments were made (for example, payments from the Discretionary Fund to cover public safety cost overages for FY 2014-15 that were made after the close of the fiscal year are still recorded as costs for FY 2014-15). Because public safety cost overage payments were not always made during the same fiscal year in which the costs were incurred, the balance presented below does not represent the actual cash balance of the fund.

Exhibit 2.38: Discretionary Fund Activity, FY 2014-15 and FY 2015-16

	FY 2014-15	FY 2015-16	Combined
Non-NFL ticket surcharge	$1,431,540	$2,477,084	$3,908,624
Discretionary Fund allocation (½ of surcharge)	$715,770	$1,238,542	$1,954,312
Discretionary Fund expense (payments for public safety cost overages)	$743,255	$669,902	$1,413,157
Ending balance	$(27,485)	$568,640	$541,155

Source: City Finance Department.

Note: As stated above, this table presents Discretionary Fund expenses for the fiscal year in which they were incurred, not the fiscal year in which payments were made. The balances presented above do not represent the actual cash balance of the fund.

As shown above, the amount allocated to the Discretionary Fund in FY 2014-15 was insufficient to cover the public safety cost overages incurred that year. Because payments were made after the close of FY 2014-15, some of the allocation from the FY 2015-16 non-NFL ticket surcharge was used to cover the overages for FY 2014-15.

Discretionary Fund expenses for NFL public safety costs are recorded as Stadium operating expenses. Similarly, the total non-NFL ticket surcharge is recorded in the operating budget as Stadium Authority revenue, even though one half of the surcharge is deposited into a separate Discretionary Fund account and should be recorded in the Discretionary Fund instead. The Discretionary Fund balance and activity was not reported on separately in budgeting materials until the quarterly financial status reports for the 2016-17 fiscal year.

> *Recommendation 2.F in this section of the report recommends that the Stadium Authority Finance Department staff report revenues, expenses, budget-to-actual comparisons, and fund balances for the Discretionary Fund in Stadium Authority budgetary documents, separately from the Operating Fund.*

FINDING 2.M: Discrepancies between what is reported on a cash basis for actual revenues and expenditures and an accrual basis can be significant, as demonstrated by Discretionary Fund expenses. These were reported as $0 for FY 2014-15 in budgetary documents when actual expenses for the year were $743,255 but incurred after the close of the fiscal year. Similar discrepancies in reporting occurred for net revenue from non-NFL events, performance rent, and other line items.

RECOMMENDATION 2.M: The Stadium Authority Board should direct staff to report actual revenues and expenditures on an accrual basis in budgetary documents so that all amounts presented reflect actual results for the year, regardless of the timing of revenue receipt or expenses incurred.

Conclusions and Findings

FINDING 2.A: The Stadium Authority does not receive a set of records to independently verify and permanently document the accuracy of NFL ticket receipts and, by extension, the amount owed for the NFL ticket surcharge. Visual reviews of such records at the ManCo offices are conducted but rely on staff's assessment of the documents. City staff report that the Stadium Authority's independent auditing firm also samples NFL ticket receipts during the Stadium's annual financial audit. However, neither of these reviews provides the Stadium Authority with permanent records to document the revenue due for the NFL ticket surcharge.

FINDING 2.B: Important non-NFL event financial information is not presented in the current and past Stadium Authority operating budgets. This omission leaves the Stadium Authority Board, staff, and the public without the data needed to assess and monitor the financial performance of these events. Providing only a single net non-NFL event revenue line item (approximately $5 million in FY 2014-15 and $6 million in FY 2015-16) obscures the tens of millions of dollars in revenues and expenses from non-NFL events including ticket sales, parking and concession revenues, event promotion costs, and the City's non-NFL event public safety costs.

FINDING 2.C: Because net revenue from non-NFL events is the basis for the performance rent that is due to the City of Santa Clara, the financial performance of non-NFL events directly impacts the City of Santa Clara's finances. Omitting critical information related to net non-NFL revenue also obscures the basis of and opportunities for improvement of the performance rent due to the City of Santa Clara, which was approximately $2.5 million in FY 2015-16.

FINDING 2.D: Stadium Authority staff can review non-NFL event ticket documentation at ManCo offices and the Stadium Authority's independent auditor samples non-NFL ticket receipts during the Stadium's annual financial audit. However, ManCo does not allow Stadium Authority staff to copy or keep any permanent records verifying non-NFL event ticket receipts and, by extension, the amounts received for the non-NFL event ticket surcharge.

FINDING 2.E: Starting and year-end balances, budget-to-actual comparisons, and transfers in and out of the Debt Service Fund were not clearly and consistently presented in Stadium Authority budgetary documents during FYs 2014-15 and 2015-16. The transfer and use of $100.7 million from the Construction Fund to the Debt Service Fund in FY 2014-15 for early debt service payments was not clearly presented or described in the budget or year-end financial status report, though the Board was informed about the transfer when they were

asked to amend the budget just before the fiscal year ended. Debt Service Fund reporting improved in the FY 2015-16 financial status report presented at the end of the fiscal year.

FINDING 2.F: Stadium Authority budgetary documents during the audit review period do not clearly present whether one half of the revenue from the non-NFL event ticket surcharge was deposited into the Discretionary Fund, as required by the Stadium Lease, or how much of that fund was spent. Variances between budgeted and actual amounts and current and year-end balances were also omitted.

FINDING 2.G: Details on the Stadium Manager Operating Expenses, or Shared Stadium Expenses, were inadequate for oversight and transparency in the Stadium Authority operating budget during the audit review period. A single rolled-up line item was presented in budgetary documents, making it impossible for the Board to determine the magnitude of each cost covered in this expenditure category and to assess the causes of actual cost overages of $1.5 million in FY 2014-15 and $1.1 million in FY 2015-16.

FINDING 2.H: The $1.1 million in cost overruns in Stadium Manager Operating Expenses in FY 2015-16 were incurred before the Stadium Authority Board was asked to retroactively approve a budget enhancement to cover the additional costs on March 22, 2016, ten days before the end of the fiscal year.

FINDING 2.I: The Stadium Authority does not have records that independently verify NFL ticket receipts and therefore cannot confirm the amount owed for the NFL ticket surcharge on behalf of the City of Santa Clara without making an on-site visit.

FINDING 2.J: The City and Stadium Authority have different sets of procurement regulations with different requirements and thresholds related to competitive bidding. The "Other Expenditures" category in the Stadium Authority budgets includes purchases for materials, supplies, equipment, and services made by City departments, a portion or all of which is used for the Stadium, and purchases made by the Stadium Authority exclusively for Stadium use. The City does not have guidelines for staff to follow regarding which procurement regulations should be applied when making Stadium Authority purchases, although City Finance Department staff state that the more restrictive City process has been used when staff purchase items that are for both the City and the Stadium Authority.

FINDING 2.K: A review of a sample of 29 purchases for materials, supplies, equipment and services found that the purchases complied with the City's and Stadium Authority's procurement regulations and did not exceed their contract maximums. However, for 10 of 29

transactions reviewed, the vendor contracts did not sufficiently spell out the basis for billing (such as the work to be performed or unit costs) or, in transactions with contracts in place with such detail, the invoices submitted did not match the hourly rates or other cost details specified in the contracts.

FINDING 2.L: Some of the sampled purchases of Stadium materials, supplies, equipment, and services reviewed by the audit team were drawn from the Stadium Development budget, which was not subject to City or Stadium Authority procurement regulations. Further, although the Stadium Authority Board approved the appropriation, these operating expenses were not detailed in the documents reviewed by the Board.

FINDING 2.M: Discrepancies between what is reported on a cash basis for actual revenues and expenditures and an accrual basis can be significant, as demonstrated by Discretionary Fund expenses. These were reported as $0 for FY 2014-15 in budgetary documents when actual expenses for the year were $743,255 but incurred after the close of the fiscal year. Similar discrepancies in reporting occurred for net revenue from non-NFL events, performance rent, and other line items.

Recommendations

RECOMMENDATION 2.A: The Stadium Authority Board should request that ManCo provide the relevant reports and documentation that back up the NFL ticket surcharge summary report in order to retain permanent verification of the accuracy of the surcharge calculated by ManCo.

RECOMMENDATION 2.B: The Stadium Authority Board should negotiate with ManCo to establish a level of detail regarding non-NFL event revenue and expenses that can be provided in City reports, public documents, and permanent records to be kept by the Stadium Authority without compromising ManCo's ability to book and negotiate deals with non-NFL event acts and performances. The Board should direct staff to include this level of detail for both budgeted and actual revenues and expenses in the annual proposed budget and the quarterly financial status reports to allow the Board and public to monitor the performance of non-NFL events and ManCo's performance in managing and executing the events.

RECOMMENDATION 2.C: The Stadium Authority Board should require that a detailed breakdown of performance rent calculations and payments to the City of Santa Clara be included in the budget and quarterly financial status reports using additional information provided by ManCo.

RECOMMENDATION 2.D: The Stadium Authority Board should require that ManCo provide reports and documentation that can be kept in Stadium Authority records, consistent with confidentiality provisions in the agreements, that back up the non-NFL ticket surcharge summary report in order to verify that the surcharge calculated by ManCo is accurate.

RECOMMENDATION 2.E: The Stadium Authority Board should require that a comprehensive accounting of Debt Service Fund transactions, including beginning and year-end balances, budget vs. actual revenues and expenditures by specific line item, and details on all transfers in and out of the fund, be presented in Stadium Authority budgets and financial status reports.

RECOMMENDATION 2.F: The Stadium Authority Board should require that Discretionary Fund revenues, expenses, budget-to-actual comparisons, and account balances be reported in Stadium Authority budgetary documents separately from the Operating Fund.

RECOMMENDATION 2.G: The Stadium Authority Board should require that ManCo prepare the five year Shared Expense Budget, per the requirements in the Stadium Management Agreement, and the Board should direct the Executive Director to document receipt of the

Shared Expense Budget, and provide written comments to ManCo in response to the proposed expenses.

RECOMMENDATION 2.H: The Stadium Authority Board, StadCo, and ManCo should amend the Management Agreement or separately establish binding policies that do not allow retroactive increases in authorized expenditures such as Stadium Manager expenses, and should require that detailed explanations be provided to the Board when additional funding is requested midyear in advance of such expenses being incurred.

RECOMMENDATION 2.I: The Stadium Authority should require that ManCo provide independently prepared reports and documentation to back up the number of NFL tickets sold for each fiscal year in order to verify that the senior/youth fee calculated by ManCo is accurate and to have a set of permanent records documenting the validity of this revenue.

RECOMMENDATION 2.J: The Stadium Authority Board and the City of Santa Clara should clarify when the City Purchasing Authority procurement thresholds (Santa Clara Municipal Code Chapter 2.105.070 *et seq.*) apply and when the Stadium Authority Procurement Policy thresholds (Santa Clara Municipal Code Chapter 17.30) apply.

RECOMMENDATION 2.K: The Stadium Authority Board should direct staff to prepare policies and procedures pertaining to all purchases made on behalf of the Stadium Authority to require a level of specificity in costs and services in all vendor contracts, that all invoices bill using the rates or unit costs specified in their contracts, and that the invoices and contracts be periodically reviewed by Stadium Authority staff.

RECOMMENDATION 2.L: The Stadium Authority Board should require that budgets and actual expenditures for the Stadium construction budget be presented alongside the Stadium Authority Operating Budget to provide an accurate overall picture of purchases for all materials, services, and supplies for the Stadium.

RECOMMENDATION 2.M: The Stadium Authority Board should direct staff to report actual revenues and expenditures on an accrual basis in budgetary documents so that all amounts presented reflect actual results for the year, regardless of the timing of revenue receipt or expenses incurred.

3. Unclaimed, Unreimbursed City Staff Costs

Section 3 Summary:

- **In the first two years after Levi's Stadium opened, City staff did not charge all of their time spent on Stadium-related activities to Stadium funding sources. This resulted in General Fund support for some Stadium activities, in violation of Measure J.**

- **Although payroll time codes were established for City employees to record their time spent on Stadium activities, not all employees were sure how or when to use these codes. No Citywide written policies were produced or provided to employees to ensure that their time spent on Stadium activities was not charged to the General Fund until August 2016. At that time, City Manager Directive 136 was issued to all City employees, providing guidance to staff on charging their time for Stadium-related work.**

- **Through a comparison of City payroll records with department activity records and input from staff about time allocated to various Stadium activities, we estimate that the costs of staff time for unreimbursed recurring activities amounted to $44,608 for a sample of six NFL and five non-NFL events between October 2014 and June 2016. Extrapolating this figure to all major events during that time period results in $202,587.**

- **In addition to the $202,587 in unreimbursed costs for recurring activities, an additional $26,652 was incurred for unusually time-consuming Stadium-related police investigations during the audit review period and for certain unbilled administrative activities. Combining the $26,652 with the extrapolated costs of $202,587 results in total unreimbursed costs of $229,239.**

- **Staff reported other Stadium-related activities for which they were uncertain if their time had been billed but City records were not sufficient for the audit team to quantify any related costs.**

- **Of these estimated unreimbursed costs, in June 2016 the General Fund was reimbursed by the Stadium Authority and the 49ers entities for $92,932.73 based on an analysis of unreimbursed staff time conducted by the Santa Clara Fire Department prior to commencement of this audit. In addition, the General Fund was retroactively reimbursed $21,525.62 for Fire Department management time spent on Stadium work based on their Memorandum of Understanding for 2015-2017. Since the costs covered through these reimbursements were indepeendently identified in the audit analysis,**

they can be subtracted from our estimated unreimbursed costs of $229,239, leaving net unreimbursed costs of $114,781.

- **In addition to the Stadium Authority and 49errs entities covering City staff costs for Stadium work, Construction Fund monies were used to cover $894,228 in public safety costs during FYs 2014-15 and 2015-16. This funding source and the costs it covered were not explicitly reported to the Stadium Authority Board in budgetary documents for those years.**

- **The absence of information in the Stadium Authority operating budget about the use of the $894,228 in Construction Fund monies to cover public safety costs in FYs 2014-15 and 2015-16 speaks to a larger issue of poor controls and lack of transparency over Stadium public safety costs. A comprehensive public safety budget for NFL and non-NFL events detailing funding sources and expenses and regularly reported actual funding and expenditure information needs to be provided to the Board so they can assess the public safety agencies' performance and management of their Stadium work and to ensure management accountability for public safety operations.**

- **A 10 percent overhead charge is added to all staff time costs direct-billed for Stadium-related work. The City does not have a clear guide regarding what is covered by the charge, resulting in inconsistent charging practices by some City staff who may believe their work is covered by the overhead charge while others do not for the same work.**

The City of Santa Clara Municipal Code Chapter 17.20(b) states that "The City shall not use or pledge any money from the City's General Fund or enterprise funds for the development of the stadium." Furthermore, Santa Clara Municipal Code Chapter 17.20(j) states that "neither the City nor its Redevelopment Agency shall be liable for the obligations of the Stadium Authority, including operating and maintenance expenses of the stadium."

Section 3.10 of the Joint Exercise of Powers Agreement establishing the Santa Clara Stadium Authority, dated February 22, 2011, by and between the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara ("Joint Powers Agreement") designated the City Manager of Santa Clara as "the chief executive officer of the Stadium Authority [who] shall be responsible to the Board for the proper and efficient administration of all of the affairs of the Stadium Authority."

The Municipal Code and Joint Powers Agreement clearly delineate authority and basic parameters for reimbursement for Stadium activities, but due to a lack of clarity by City and public safety department managers, the City did not charge all of its costs for Stadium-related

activities to the appropriate events to be reimbursed by the Stadium Authority or 49ers entities between April 2014 and June 2016.

In November 2013, the Finance Department provided two codes for the Fire Department's use for time charges: one for Stadium public safety planning efforts and one for Stadium public safety planning efforts specific to Super Bowl 50. After the Stadium opened, the City's Finance Department created additional time codes and worked with individual departments and City employees when they inquired about tracking and recording their time spent on Stadium-related tasks. Managers and timekeepers in City departments attempted to help staff resolve questions about what activities to charge and what time codes to use. The assistance provided to staff by department timekeepers and the Finance Department was often in response to questions from individual staff members and reflected the absence of central Citywide and departmental management direction and written policies and procedures on this topic for all staff.

A City memo titled "City of Santa Clara Business Processes - Analyze Labor Costs Associated with Levi's Stadium", dated around July 24, 2014, stated that event-specific costs should be invoiced to the Stadium Authority. However, this memo does not appear to have been widely disseminated based on emails provided to the audit team nor was it directed to all staff. Besides the memo, there were no Citywide written policies and procedures for City departments to follow outlining what activities were chargeable to the Stadium until a City Manager's Directive was issued in August 2016 (City Manager's Directive 136) that provided clarification on the topic and gave more direction to employees than they previously had received. However, the Directive still left some issues unresolved, such as specific definitions of what Stadium-related activities included.

As a result of the absence of clear direction from management, some City staff time spent on Stadium activities was not billed or reimbursed during the audit review period. In some cases, employees reported to the audit team they were directed not to bill their time for certain activities. However, after the issuance of City Manager's Directive 136, employees reported that the amount of uncharged time for Stadium related work decreased.

Department activities performed because of and on behalf of the Stadium were identified through an audit survey of all department heads, interviews with staff of selected departments, and review of written documents such as the Stadium Public Safety Plan and department documents outlining their Stadium-related functions. A comparison of payroll records with Stadium and department records for such activities, to the extent they were documented, and staff estimates of when certain activities were performed showed that some City public safety staff time during the audit review period was regularly spent on Stadium-related work, but not

reimbursed by the Stadium Authority for non-NFL related events or by ManCo on behalf of StadCo or the Stadium Authority for NFL-related events. This was particularly true for the City's departments most involved in Stadium-related activities: the public safety departments.

After identifying Stadium-related tasks performed by City staff for a sample of eleven Stadium events (six NFL events and five non-NFL events), including Stadium event day activities and tasks and tasks regularly performed in advance of and after Stadium event days, we requested records and time estimates from the Police, Fire, and Public Works Departments to identify the amount of time spent and the specific employees performing Stadium-related activities. This documentation included records of staff assigned to the Stadium on event days to perform their core public safety services and records of Stadium-related activities performed before and after Stadium event days. Records documenting staff assigned to Stadium-related duties on Stadium event days were generally more available, and records documenting Stadium-related activities performed before and after the Stadium event days were generally less available. When records were not available, we relied on estimates from staff about the frequency of the tasks performed, the amount of staff time spent on them, and the particular employees engaged in these activities. To be conservative, we used the lower range estimates of time required for the specific tasks analyzed.

The scope of our review was April 1, 2014, through July 31, 2016, and the following six NFL and five non-NFL Stadium events were randomly selected as sample events for analysis for this audit. The additional four months beyond the audit scope period were included to allow for a more recent non-NFL event. The review period was extended for four additional months to capture more recent non-NFL events and the possible impact of a reduction in costs for recurring Stadium activities performed by City staff.

Date of Event: NFL	*Event*
10/5/14	vs. Chiefs
11/2/14	vs. Rams
11/27/14	vs. Seahawks
9/14/15	vs. Vikings
10/22/15	vs. Seahawks
1/3/16	vs. Rams
Date of Event: Non-NFL	
10/24/14	California/Oregon
3/29/15	WrestleMania
6/28/15	Grateful Dead
7/11/15	One Direction
5/16/16	Beyoncé

We analyzed City payroll records to determine whether total staff time charged covered all known Stadium-related staff tasks performed. We found that most of the staff time spent on Stadium-related activities was captured and properly recorded in the City payroll system as time charged to the Stadium and reimbursed from the Stadium Authority or ManCo. Most of this staff time was for the core services provided at the Stadium on event days, such as law enforcement, emergency medical, and traffic control services. The time that was not always charged included staff activities performed before and after the event days by Police and Fire Department staff in particular. These activities included:

- Fire Department participation in Stadium event planning meetings
- Fire Department pre- and post-event preparation, movement, and maintenance of equipment and supplies
- Police Department participation in Stadium event planning meetings
- Public Works Department participation in Stadium event planning meetings
- Police Department arrest follow up activities such as report-writing, investigations, and court time

In addition, some event day staff time was found to be not charged and reimbursed when staff rosters for event days were compared to City payroll records. Because many of the staff activities listed above were performed for all Stadium events and follow consistent patterns in terms of staff time required, we were able to estimate unreimbursed time per activity and extrapolate our findings and estimates. Staff estimates of some unreimbursed, undocumented activities varied and, to be conservative, we relied on the lower range of time estimates. Exhibit 3.1 presents a summary of the $44,608 in costs not appropriately reimbursed for recurring staff activities for the eleven sample Stadium events reviewed for this audit.

Exhibit 3.1: City Costs for Recurring Activities: Eleven Sample Stadium Events

Fire Department planning meetings	$	915
Fire Department pre- and post-event day activities	$	30,031
Police Department planning meetings	$	1,227
Police Department personnel	$	7,164
Police Department arrest activities	$	4,804
Public Works planning meetings	$	467
Total	$	44,608

Fire Department

During the audit review period, the Fire Department personnel did not bill for costs before and after events, including preparing and reviewing Incident Action Plans, preparing, checking, and moving equipment and supplies to and from the Stadium before and after events, and attending event planning meetings. The estimated cost for the audit review period for these activities is $30,031 for labor and $915 for planning meetings, for a total of $30,946.

Police Department

Labor pertaining to repeat Police Department event planning, arrest-related activity, and event day activity for our 11 sampled events was often not reimbursed during the audit review period. This labor includes time Department staff spent at event planning meetings, estimated at $1,227 for the eleven sample events; the time officers spent preparing arrest reports after event days; the time Santa Clara Police Department Records Management Unit staff took to

process reports after event day;, and the time investigators spent on these cases. The estimated cost for these Stadium-related arrest activities for the sample events is $4,804.[1] The estimate of unreimbursed police personnel costs is $7,164 for labor on event days. Though uncommon, unreimbursed time on event days was identified by comparing event day staffing rosters to payroll records for the day. Total Police Department costs for the sample events were $13,195.

The Santa Clara Police Department estimates 100 hours each were spent on two additional arrest cases, resulting in approximately $12,631 of investigator time costs. This amount is not shown in Exhibit 3.1 as it was not considered a recurring activity that could be included in the base amount for extrapolation to all events.

Public Works Department

The estimate of Department of Public Works staff time for attendance at planning meetings is $467 for the eleven sample events.

City staff costs not appropriately reimbursed from our 11 samples can be extrapolated for the audit review period to $69,443 for NFL events and $133,152 for non-NFL events, for a total of $202,587.

To extrapolate our sample results to the period between April 1, 2014 through June 30, 2016, we applied the total sample costs of $44,608 ($23,777 for non-NFL events and $20,830 for NFL events) for recurring activities that were not charged for Stadium events. The average costs for non-NFL and NFL events were calculated separately because of differences in the nature of the events. Exhibits 3.2 and 3.3 present the averages for each event type, which were used for extrapolation. Minimum and maximum amounts calculated for events are also presented to show the range of City staff costs identified for the sample events. As can be seen, the range of costs was narrower for NFL events than for non-NFL events, reflecting a greater consistency in staff activities for NFL events compared to non-NFL events. Non-NFL events vary more in nature and require a wider variety of City resources than NFL events.

Exhibit 3.2 presents the summary statistics for the five non-NFL sample events.

[1] This amount excludes two major investigation cases that consumed approximately 100 Police Department investigator staff hours each.

Exhibit 3.2: City Staff Costs Not Reimbursed for Sample Non-NFL Events

	Non-NFL Total	Non-NFL Average	Non-NFL Min	Non-NFL Max
Fire pre- and post-event day	$16,622	$3,324	$1,836	$7,078
Police arrests	$1,330	$266	$10	$623
Police personnel	$4,292	$858	$0	$4,292
Planning meetings: Fire	$675	$135	$0	$240
Planning meetings: Police	$859	$172	$0	$859
Planning meetings: Public Works	$0	$0	$0	$0
	$23,777	$4,755.46	$2,695	$7,478

Source: Santa Clara Fire Department incident action plans and logbooks; Santa Clara Police Department event action plans, sign-in sheets, police reports; production meeting sign-in sheets.

The average of the non-NFL costs that have not been reimbursed for our event samples is $4,755.46. If we extrapolate this average to all 28 events for the scope period of April 1, 2014, through June 30, 2016, the estimated unreimbursed amount is $133,153.

Exhibit 3.3 presents the summary statistics for the six NFL sample events.

Exhibit 3.3: City Staff Costs Not Reimbursed for Sample NFL Events

	NFL Total	NFL Average	NFL Min	NFL Max
Fire pre- and post-event day	$13,409	$2,235	$1,332	$3,813
Police arrests	$3,474	$579	$200	$1,351
Police personnel	$2,872	$479	$0	$1,554
Planning meetings: Fire	$240	$40	$0	$240
Planning meetings: Police	$369	$61	$0	$369
Planning meetings: Public Works	$467	$78	$0	$317
	$20,830	$3,471.72	$2,095	$4,503

Source: Santa Clara Fire Department incident action plans and logbooks; Santa Clara Police Department event action plans, sign-in sheets, police reports; production meeting sign-in sheets.

The average NFL costs that have not been reimbursed for our six NFL sample events is $3,471.72. If we extrapolate this average to all 20 NFL events for the first two seasons, the estimated unreimbursed amount is $69,434.

Altogether, the extrapolated costs of $69,434 for NFL events and $133,152 for non-NFL events total $202,587 in total estimated unreimbursed costs.

Other Administrative City Staff Costs were Inconsistently Charged during the Audit Review Period

The lack of clarity regarding what constitutes overhead costs for the Stadium Authority resulted in inconsistent staff billing practices during the audit review period. Exhibit 3.4 presents estimated costs for a limited number of one-time administrative or support activities that were identified and quantified during the audit. These activities were identified by the auditors based on interviews with staff about activities performed related to the Stadium and based on our understanding of various activities that took place as the Stadium began operations in 2014. There are likely other activities that may not have been reimbursed, but there is no systematic way of identifying all of them.

Exhibit 3.4: Unreimbursed Stadium-related Administrative Activities Performed by City Staff

Activity	Cost
Hiring Per Diem Officers	$4,209
Establishing Bicycle Unit, Police Department	$8,055
CAD training: Records Management Unit, PD	$730
New Hire Orientations: Police Department	$1,026
Total	**$14,021**

Source: Time estimates from staff; costs quantified by auditors using salary and benefit information corresponding to classifications performing identified tasks.

The largest administrative staff time cost identified and quantified was for the hiring of per diem officers for Stadium activities. The specific activities include testing, oral board examination, compilation of information packets, creation of job offers, and preparation of correspondence. Within our scope period, 72 per diem officers were hired, at an estimate of 10 hours worked per officer hired. For the given positions and corresponding salaries and benefits, this figure translates in to $48,884 in costs, of which $44,608 was captured in the Fire Department analysis reimbursement. The outstanding balance is $4,209.

The Police Department created a Bicycle Unit during the audit review period and City payroll records show that staff costs for this activity were not reimbursed. Based on staff's estimated time spent on this activity and their corresponding salaries and benefits at the time, the total cost for this activity is $8,055.

Santa Clara Police Records Management staff and timekeepers were trained to use the CAD system at the Stadium for several weeks leading up to the opening of the Stadium. The

unreimbursed cost for their estimated time spent on this Stadium-related activity is $6,571, of which $730 was not reimbursed from the Fire Department analysis reimbursement.

City staff reported that seven Police Department new hire orientations took place between April 1, 2014, and June 30, 2016. City payroll records show that Human Resources Department staff charged time for two of the orientations, but not for the five other orientation events. The estimated cost for this unreimbursed time is $1,026.

Altogether, these administrative activities amounted to estimated costs of $14,021. Combined with the Police Department's $12,631 uncharged, unreimbursed Stadium-related investigation costs described above, one-time costs during the audit review period that were not extrapolated for estimating purposes were $26,652. Combined with the estimated costs of $202,587 for recurring activity results in total unreimbursed costs of $229,239.

Of total unreimbursed costs of $229,239, $92,932.73 was reimbursed in June 2016 after an internal analysis of unreimbursed Fire Department staff costs conducted by the Santa Clara Fire Department. Another $21,525.62 was reimbursed by the Stadium Authority retroactively for Fire Department management time spent on Stadium-related duties, pursuant to the Memorandum of Understanding covering Department management for 2015-2017. Because these same costs were identified in the audit analysis of unreimbursed staff time, subtracting them from total estimated costs of $229,239 results in net unreimbursed costs of $114,781.

The Costs of a Number of Other Stadium-related Activities Identified by City Staff Cannot be Estimated

When queried by the audit team, the Police Department Records Management Unit estimated time spent on Stadium-related public records requests during the audit review period was 15.5 hours, but staff were uncertain of the exact dates when the work was conducted and whether the time had been charged. Because timekeeping records do not have details on specific tasks, the audit team was unable to determine whether this time had been charged and reimbursed. This time is an estimated $844 in labor costs that may or may not have been charged.

There are other activities for which staff were uncertain whether time had been charged. For example, Santa Clara Police Department staff is uncertain whether work related to physical assets and on-going maintenance for computer systems has all been charged. Staff time spent on research, data analysis, vendor management, equipment installation, meeting preparation, and training for new machinery do not have supporting documentation to determine whether that time has been captured and reimbursed.

Time charges for labor on the agreements between the Santa Clara Police Department and other agencies for event day support also cannot be clearly identified. The City Attorney, the City Manager, and City Clerk regularly execute the agreements, but time charges for all City staff could not be located or confirmed in payroll record time charges and billing documentation.[2]

FINDING 3.A: City public safety staff costs not reimbursed for recurring Stadium-related work during the audit review period based on our sample of 11 NFL and non-NFL events can be extrapolated for the entire audit review period to $202,587. In addition, the estimated costs for unreimbursed one-time activities such as hiring per diem officers and certain Stadium-related investigations amounted to $26,652, resulting in total estimated unreimbursed costs of $229,239. Deducting General Fund reimbursements of $92,932.72 of the same costs identified by an internal Fire Department analysis in 2016 and $21,252.62 retroactively reimbursed for Fire Department management staff's time based on their Memorandum of Understanding leaves net unreimbursed costs of $114,781.

RECOMMENDATION 3.A: The Stadium Authority Board should request that staff prepare plans for reimbursement to the City's General Fund for unreimbursed staff costs from the appropriate source: Discretionary Fund, ManCo, or, to the extent funds are available and appropriate, the Construction Fund.

Public Safety Funding and Cost Reporting to the Board needs Improvement

There are two arrangements under which the City gets reimbursed for public safety costs incurred for the Stadium. For NFL events, StadCo is required to pay the City directly up to $1.7 million a year starting in the first year of Stadium operations, adjusted each year by 4 percent, pursuant to the Stadium Lease Agreement. To the extent actual costs exceed the threshold amount (which occurred both fiscal years reviewed for this audit), the City is reimbursed by the Stadium Authority from its Discretionary Fund so that General Fund monies are not used to fund Stadium-related services. For FY 2015-16, the Stadium Authority's year-end financial status report disclosed that $2.43 million in NFL public safety costs had been incurred, or approximately $660,000 over StadCo's capped amount for that year of $1.77 million. The

[2] The Stadium Authority provided payroll information by pay period, and names listed as executors on the agreements were searched in payroll data. Payroll information provides no details on specific activities associated with the time charges; thus, if time charges within a two week period before the execution date were found, the audit team assumed some of this time reflected labor for the contract.

amount owed over the capped amount was paid for from the Stadium Authority Discretionary Fund.

For non-NFL events, there is no capped reimbursement amount; instead, the City invoices ManCo for total costs incurred and ManCo pays on behalf of the Stadium Authority. The Stadium Authority's FY 2015-16 year-end financial status report states that $3.2 million in non-NFL public safety costs were incurred. After deducting credits for offsite parking fees of $278,703, the remaining $2.9 million in City public safety costs were billed and paid for by ManCo.

Use of $894,228 in Construction Fund Monies for Public Safety not Included in Budgets

In addition to reimbursements to the City from ManCo and the Stadium Authority, public safety and possibly some other costs were covered during FYs 2014-15 and 2015-16 by Construction Fund monies. City payroll records show that $894,228 of Construction Fund monies were used between April 2014 and October 2015 to cover City Police, Fire, and possibly other Department staff time spent on Stadium-related activities. It cannot be determined from City payroll records what specific staff activities these funds paid for as staff time records are not coded by activity.

The $894,228 in Construction Fund expenditures covering City staff time was not presented in the Stadium Authority budget for approval by the Board or reported with actual expenditures in the quarterly financial status reports for Board monitoring. These expenditures were also not presented in the City's Capital Improvement Project budget document for approval by the City Council.

City staff reports that Construction Fund monies were available in FYs 2014-15 and 2015-16 stemming from a $7 million appropriation for Stadium Authority and City costs authorized through the Disposition and Development Agreement, when it was approved in 2011. While that document did allow for a total of $7 million for Stadium Authority and City costs, appropriation in the Stadium Authority operating budget should have taken place in subsequent years. The $894,228 in Construction Fund monies expended in FYs 2014-15 and 2015-16 was not disclosed as an appropriation in the budgetary documents for those years.

The absence of review and approval of a budget for a portion of the costs of Stadium operations by its governing body reflects a lack of internal controls and transparency over Stadium costs. While some of the staff activities funded may have been related to Stadium construction and opening, all Stadium Authority and City costs covered by the Construction Fund should have been estimated and identified in advance for authorization by the governing body as part of the

Stadium Authority operating budget. The Construction Fund beginning and year-end balances should also be reported.

In the absence of Construction Fund monies, public safety staff costs attributable to NFL events would have otherwise been covered by the Stadium Authority's Discretionary Fund because the maximum annual amount required to be paid by StadCo ($1.7 million per year for the first year of operations, adjusted by 4 percent per year for subsequent years) was exceeded in both of the first two years of Stadium operations. Discretionary Funds were used to cover the excess NFL event public safety costs in the first two years of operations, but the use of one-time Construction Fund monies limited the extent to which the Stadium Authority Discretionary Fund needed to be used to cover those costs.

In the absence of Construction Fund monies, public safety costs attributable to non-NFL events would have otherwise been charged to and reimbursed to the City by ManCo on behalf of the Stadium Authority. These public safety costs would then have decreased the net revenue from non-NFL events and ultimately resulted in a lower performance rent paid to the City. To the extent the Construction Fund monies were used to cover City administrative costs, they would have otherwise been reimbursed by the Stadium Authority.

The absence of information on Construction Fund expenditures for public safety activities in the Stadium Authority's budgetary documents is part of a larger issue surrounding the lack of a comprehensive public safety budget for all Stadium activities that should be produced annually, pursuant to Stadium Lease requirements. A budget corresponding to the reported total actual expenditures of $5.7 million in the FY 2015-16 year-end financial status report for Stadium public safety costs should have been included in the Stadium Authority's annual operating budget for review and approval by the Board before those expenses were incurred. As reported in Section 1 of this report, the Public Safety budget required by the Stadium Lease was not produced and delivered to the Stadium Authority in FYs 2014-15 or 2015-16.

The current structure of presenting and reporting Stadium-related public safety and other City costs is patchworked and not transparent. Annual public safety budgeted expenditures for NFL events are not presented as a line item in the Stadium Authority's annual operating budget because the reimbursement arrangements bypass the Stadium Authority and are between StadCo, ManCo, and the City for up to $1.7 million in costs (adjusted annually by 4 percent). Only NFL event public safety costs in excess of the capped amount are included in the Stadium Authority budgetary documents as an element of Discretionary Fund expenditures. With this presentation, the Board and public are not provided with complete NFL public safety cost information.

Annual public safety costs for non-NFL events are even less transparent. The costs are incorporated in the Stadium Authority's operating budget as an element of net revenue from non-NFL events, but are not explicitly presented for Board approval because, as discussed in Section 2, this line item is presented as a single net line item without any line item detail and records are maintained by ManCo.

Non-NFL event public safety costs are only presented at year-end when total reimbursements to the General Fund are reported in the year-end Stadium Authority financial status report. It is not possible for the Board to compare these reimbursement amounts to an original budget.

As an example of the fragmented structure of the public safety budget for Stadium related activities, $408,150 had to be transferred from the Fire Department budget to the Police Department budget in September 2015 to cover a deficit in the Police Department's Contractual Services budget, which was due to higher than anticipated costs for outside law enforcement services at the Stadium. Without an original complete public safety budget in the Stadium Authority operating budget and regular budget-to-actual reports for public safety costs, the Stadium Authority Board was not made aware of this cost overrun or any others in its budgetary documents.

FINDING 3.B: Construction Fund monies totaling $894,228 were used in FYs 2014-15 and 2015-16 to cover public safety costs that were not part of a budget approved by the Stadium Authority and were not reported as actual expenditures in Stadium Authority financial status reports. The absence of such information in Stadium Authority budgetary documents reflects a broader lack of control, accountability, and transparency surrounding public safety costs allocated to the Stadium. A complete budget for all public safety costs is not presented in the operating budget for comparison to actual expenditures reported during the year.

RECOMMENDATION 3.B: The Stadium Authority Board should request that staff have ManCo prepare an annual comprehensive Public Safety budget, as required by the Stadium Lease, to include all components of Stadium public safety costs and reimbursement, including NFL public safety costs paid for directly by ManCo on behalf of StadCo, by the Stadium Authority from the Discretionary Fund, and any costs paid using other funds such as the Construction Fund.

Overhead costs not clearly defined

City staff costs charged to the Stadium are billed at an hourly rate to cover employees' salaries and benefits plus a 10 percent overhead rate. While charging an overhead rate in these circumstances is reasonable, the basis of the 10 percent rate has not been calculated by the City, nor have clear definitions been established and communicated to staff about what City functions are captured in the overhead rate and which should be billed directly. As a result, some staff report charging for their time for certain activities, while others do not charge for the same activities. Some department heads charge for their time and some materials and supplies are charged directly, while some are not.

According to the City's most recent cost allocation plan, which establishes overhead rates for each City department, the Police Department's overhead rate for Citywide costs such as information technology and human resources support was approximately 33 percent. However, for the Stadium, some of those costs are now billed directly and others are not, possibly because employees believe their costs are being recovered through the 10 percent overhead rate.

As an example of inconsistent staff billing practices, two of the seven new hire Police Department orientations between April 1, 2014, and June 30, 2016 held by the Human Resources Department were direct billed, but no time charges for the five other orientation events could be identified in City payroll records.

City management should define overhead costs and activities and provide a directive to staff on what constitutes overhead activities and what should be direct billed to the Stadium. This recommendation could mean increasing the rate charged on top of direct staff costs, but reducing the total amount of time direct billed to the Stadium. Such an adjustment would ease the burden for many employees when tracking their time when they only sporadically spent time on Stadium-related activities or when their time is a blend of tasks performed for both the Stadium and the City without distinct demarcations between the two. Such an overhead rate could also cover the time of management positions that allocate a portion of their time to Stadium activities along with performing their regular duties.

FINDING 3.C: The City currently charges a 10 percent overhead rate on the salary and benefits costs for staff time charged for Stadium-related activities. While an overhead charge is appropriate for City services and costs supporting the staff providing direct service, the current rate has not been clearly defined so that all City staff know whether or not they should charge their time directly. Inconsistencies were found in staff approaches to charging their time. The City's existing citywide indirect cost allocation plan can serve as a template for determining City costs to be charged to as Stadium overhead.

RECOMMENDATION 3.C: The Stadium Authority Board should direct staff to develop specific definitions of which costs should be charged as overhead and which should be direct billed. Alternatively, staff should adjust the rate applied to direct billed staff costs from the current 10 percent to a more appropriate rate, and communicate to all staff which positions or activities will be charged as overhead.

Conclusions and Findings

FINDING 3.A: City public safety staff costs not reimbursed for recurring Stadium-related work during the audit review period based on our sample of 11 NFL and non-NFL events can be extrapolated for the entire audit review period to $202,587. In addition, the estimated costs for unreimbursed one-time activities such as hiring per diem officers and certain Stadium-related investigations amounted to $26,652, resulting in total estimated unreimbursed costs of $229,239. Deducting General Fund reimbursements of $92,932.72 of the same costs identified by an internal Fire Department analysis in 2016 and $21,252.62 retroactively reimbursed for Fire Department management staff's time based on their Memorandum of Understanding leaves net unreimbursed costs of $114,781.

FINDING 3.B: Construction Fund monies totaling $894,228 were used in FYs 2014-15 and 2015-16 to cover public safety costs that were not part of a budget approved by the Stadium Authority and were not reported as actual expenditures in Stadium Authority financial status reports. The absence of such information in Stadium Authority budgetary documents reflects a broader lack of control, accountability, and transparency surrounding public safety costs allocated to the Stadium. A complete budget for all public safety costs is not presented in the operating budget for comparison to actual expenditures reported during the year.

FINDING 3.C: The City currently charges a 10 percent overhead rate on the salary and benefits costs for staff time charged for Stadium-related activities. While an overhead charge is appropriate for City services and costs supporting the staff providing direct service, the current rate has not been clearly defined so that all City staff know whether or not they should charge their time directly. Inconsistencies were found in staff approaches to charging their time. The City's existing citywide indirect cost allocation plan can serve as a template for determining City costs to be charged to as Stadium overhead.

Recommendations

RECOMMENDATION 3.A: The Stadium Authority Board should request that staff prepare plans for reimbursement to the City's General Fund for unreimbursed staff costs from the appropriate source: Discretionary Fund, ManCo, or, to the extent funds are available and appropriate, the Construction Fund.

RECOMMENDATION 3.B: The Stadium Authority Board should request that staff have ManCo prepare an annual comprehensive Public Safety budget, as required by the Stadium Lease, to include all components of Stadium public safety costs and reimbursement, including NFL public safety costs paid for directly by ManCo on behalf of StadCo, by the Stadium Authority from the Discretionary Fund, and any costs paid using other funds such as the Construction Fund.

RECOMMENDATION 3.C: The Stadium Authority Board should direct staff to develop specific definitions of which costs should be charged as overhead and which should be direct billed. Alternatively, staff should adjust the rate applied to direct billed staff costs from the current 10 percent to a more appropriate rate, and communicate to all staff which positions or activities will be charged as overhead.

4. Stadium Parking Revenue Controls

Section 4 Summary:

- **The Stadium Authority lacks controls and procedures to verify the accuracy of parking fees remitted for public and private parking lots, and the net parking revenues from privately owned parking lots. 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. This would help verify the trends City records from the audit review period show of a decline in vehicles parked and City parking fee revenue for NFL events but a less consistent trend for non-NFL events.**

- **The Santa Clara Golf and Tennis Club, located on City property, was used for parking for Stadium events through July 2016, during which time StadCo paid fees to the City for using the property. City records show that for the last five months that the property was used, StadCo did not pay its fees, resulting in an outstanding balance as of the writing of this report of $718,803.37. Resolution of payment of this amount is still pending as of the writing of this report.**

- **There is no documentation to indicate that ManCo is reporting on matters related to the off-site parking locations for Stadium Authority events at the quarterly meetings with the Stadium Authority Executive Director, as required by the first amendment to the Stadium Management Agreement.**

- **During the audit review period, the Stadium Authority lacked controls to verify that the private off-site parking fees remitted to the City during NFL and non-NFL events and any net revenue from parking lot operators ABM, PCA, and Marvell for non-NFL events were accurate, due to the absence of agreements and established Stadium Authority audit rights over their parking lot operations.**

Overview of Parking Program

Section 7.4 of the Stadium Lease states that the Stadium Authority is responsible for managing and operating parking for Stadium Authority events (non-NFL events) and StadCo is responsible for managing and operating parking for NFL events. The Stadium Lease calls for parking to be provided on the Main Lot, on public parking parcels, and on private lots that contract with the Stadium Authority, StadCo, or ManCo.

Section 7.4 allows for the Stadium Authority and StadCo to employ a single third-party operator to manage and operate Stadium parking and the individual agreements with private parking lot owners to provide parking for both NFL and non-NFL Stadium events. In this instance, StadCo has the right and responsibility to solicit and select a single Stadium parking operator and negotiate a Stadium parking management agreement, both of which are subject to the Stadium Authority's approval. Responsibility for administering the Stadium parking management agreement with a single operator can be delegated to the Stadium manager, ManCo.

Since the Stadium opened, parking management was delegated to ManCo by the Stadium Authority and StadCo, and ManCo entered in to a Stadium parking management agreement with Citypark to serve as the Stadium parking operator. Citypark in turn maintains individual agreements with private parking lot owners who make their lots available for Stadium events.

Section 4 of the first amendment to the Stadium Management Agreement provides ManCo with full authority and discretion to select the off-site private parking locations for Stadium events and to negotiate and enter into contracts with private parking lot owners for use of their spaces. Section 4 also gives ManCo the primary right to select a Stadium parking operator.

In the Stadium Lease, revenue from parking operations is divided into Stadium Authority Parking Revenue and Tenant Parking Revenue. Stadium Authority Parking Revenue is defined in the Stadium Lease as all net revenue from the public parking lots and any revenue sharing arrangements from private lots generated from non-NFL events. Tenant Parking Revenue has the same definition but for NFL events only. Tenant Parking Revenue also includes Main Lot parking revenue.

In addition to the agreement between Citypark and ManCo, three other parking operators, ABM, Marvell, and PA, provided parking for Stadium events at private lots during the audit review period. Revenue from these three operators' lots is not shared with ManCo, StadCo, or the Stadium Authority, although all three operators are subject to the City's off-site parking permit fee.

The Stadium Lease also requires that StadCo deliver a draft NFL parking plan to the Stadium Authority each year, which must be compliant with the Traffic Management and Operation Plan (TMOP) and the mitigation measures and conditions of approval and is subject to the approval of the City Director of Community Development.

Public Parking Facilities

The City-owned lots currently in use for NFL and non-NFL events are the Tasman Garage, or Yellow Lot #1; a dirt lot on the southeast corner of Centennial and Stars and Stripes, or Yellow

Lot #2; a dirt lot on the southwest corner of Centennial and Stars and Stripes, or Yellow Lot #3; the Convention Center Garage; and the Great American Theme Park Main Lot. Per the Stadium Lease Section 7.4, ManCo is responsible for management of these public lots during NFL and non-NFL events, and ManCo contracted with Citypark to manage the operations. Two of the public lots are subject to the City's $5 fee per space used during NFL and non-NFL events.[1]

Besides the public lots identified above, parking was also provided for Stadium events during the audit review period at the Santa Clara Golf and Tennis Club, which is located on City-owned property, pursuant to the Additional Parking Rights Agreement between the City and StadCo. The agreement required that StadCo pay $5 per space, with a minimum parking fee payment to the City of $250,000 per year for the first two years, through February 2016. Payment for use after that period was to be month-to-month and based on offsetting the golf course's lost income.

StadCo discontinued using the golf course for Stadium event parking in July 2016, but City records show that there is still $718,803.37 in fees outstanding from StadCo for use of this facility from the period after the first two years. This unpaid amount is based on nonpayment for each of the five months between March and July 2016, at which time StadCo discontinued using the golf course for Stadium event parking, and a $134,164 balance due for payments due for use of the golf course from prior to March 2016. The basis for the amount still owed in shown in Exhibit 4.1. As of the writing of this report, this outstanding balance was not resolved between the City and StadCo.

[1] Email with SCSA staff on December 8, 2016.

Exhibit 4.1: Basis of Golf Course Lost Net Income and Amount Due

Actual Net Income based on 26 months (through Feb 2016)	$ 488,454.41
Base Net Income based on 26 months (through Feb 2016)	(2,276,019.20)
Subtotal lost net income through February 2016	**(1,787,564.79)**
Year 1 golf course parking fees collected	211,327.00
Year 1 golf course minimum use fee true-up ($250k)	38,675.00
Year 2 golf course parking fees collected	168,980.00
Credit for Super Bowl 50 Closure (Feb 1-10)	74,571.80
Total credits applied to GC lost net income	**493,553.80**
Year 1 true-up payment made by 49ers	56,981.00
Golf course lost net income payment made by 49ers	1,102,865.99
Total payments made by 49ers	**1,159,846.99**
Total amount owed (through Feb 2016)	**(134,164.00)**
March 2016 GC Lost Net Income	(137,588.01)
April 2016 GC Lost Net Income	(36,730.39)
May 2016 GC Lost Net Income	(109,027.53)
June 2016 GC Lost Net Income	(224,619.09)
July 2016 GC Lost Net Income (through July 20th)	(76,674.35)
Total lost net income (March 1, 2016 - July 20, 2016)	**(584,639.37)**
Total remaining amount owed	**(718,803.37)**
Invoice 80924 - Year 2 golf course minimum use fee true-up	81,020.00
Invoice 81194 - Balance owed on lost golf course NI through Feb 2016	53,144.00
Invoice 80324 - March 2016 lost golf course net income	137,588.01
Invoice 80325-2 - April 2016 lost golf course net income	36,730.39
Invoice 80326-2 - May 2016 lost golf course net income	109,027.53
Invoice 80666 - June 2016 lost golf course net income	224,619.09
Invoice 81195 - July 2016 lost golf course net income (through July 20th)	76,674.35
Total amount invoiced	**$ 718,803.37**

Source: SCSA staff

Private Parking Facilities

Pursuant to Santa Clara Municipal Code Chapter 18.86, the City receives an off-site parking fee for every space that is used at private parking lots, including those operating for Stadium events. According to City staff, this fee was developed to recover costs associated with managing the traffic and safety of those lots.

The City's off-site parking fee was $4.92 per space in FY 2014-15 and $5.08 in FY 2015-16. ManCo contracted with Citypark to operate private lots for both NFL and non-NFL events. For NFL events, Citypark only remits off-site parking fees collected to the City. For non-NFL events, Citypark remits the offsite parking fees and any net revenue consistent with the terms of each lot's agreement with Citypark.[2] These amounts are embedded in the net revenue from non-NFL events in the Stadium Authority's budget and quarterly financial status reports.

Citypark maintains contracts with the private lot owners to which ManCo and the Stadium Authority are not parties, but both entities have audit rights to Citypark's information under the agreement. During the audit review period, the City or ManCo did not have formal arrangements with three other parking operators, ABM, PCA, and Marvell, that provided private parking for Stadium events. The City only collected the parking fee for both NFL and non-NFL events.[3] According to City staff, neither the City nor the Stadium Authority had entered into any parking agreements with the operators or owners of these privately owned parking lots for Stadium events during the audit review period. Exhibit 4.2 below shows the remittance arrangements for the different types of parking lot operators.

[2] Stadium Lease Section 12.6, Article 12, states that Stadium Authority Parking Revenue includes (a) all Net Revenues from the operation of the Public Parking Facilities for Stadium Authority [Non-NFL] Events, and (b) all revenue sharing or parking surcharge revenues received by the Stadium Authority for Stadium Authority Events from contracts with private parking lot owners in the vicinity of the Stadium.

[3] According to the Finance Director, any private parking lot owner in the vicinity of the Stadium can get approved to run a fee-based parking lot operation for Stadium events by applying through the Community Development Department. If their parking plan is approved, the operator pays the City a deposit and only remits the parking fee to the City.

Exhibit 4.2: Stadium Parking Remittances to City and Revenue to Stadium Authority

Type of Lot	Public	Private			
Owner	City	Private owners	Private owners	Private owners	Private owners
Manager	Manco/Citypark	Manco/Citypark	ABM	PCA	Marvell
NFL collection	public parking fee	off-site private parking fee	off-site private parking fee	off-site private parking fee	off-site private parking fee
Non-NFL collection	public parking fee, net revenues	off-site privateparking fee, net revenues	off-site private parking fee	off-site private parking fee	off-site private parking fee

Source: Stadium Lease, Finance Department, Community Development Department Parking permits

Revenue from NFL Events

Only the public parking fee and private off-site parking fee are remitted to the City for NFL events. The public parking fee is $5, and the private off-site parking fee was $4.92 in FY 2014-15 and $5.08 in FY 15-16.

Revenue from Non-NFL Events

As the Stadium Manager, ManCo manages and operates the parking operations at public parking facilities on behalf of the Stadium Authority during non-NFL events. ManCo remits the public parking fees to the City. Customer revenue from these lots is collected by ManCo and transmitted as part of the net revenue from non-NFL events at year-end. The Stadium Authority/City staff reviews the parking revenues and expenses as part of a more general review of documentation kept at ManCo for all net non-NFL event revenues.

For non-NFL events, ManCo remits the private off-site parking fee and net revenues from private off-site lots. Supporting documentation for these private off-site parking fee collections is also kept at ManCo and reviewed by Stadium Authority staff as part of the review of net non-NFL event revenues.

NFL Parking Counts and Fees Collected

Exhibit 4.3 below shows the number of tickets sold and the number of cars parked for each of the six sample NFL events reviewed from the audit review period.

Exhibit 4.3: Sampled NFL Event Tickets and Parking

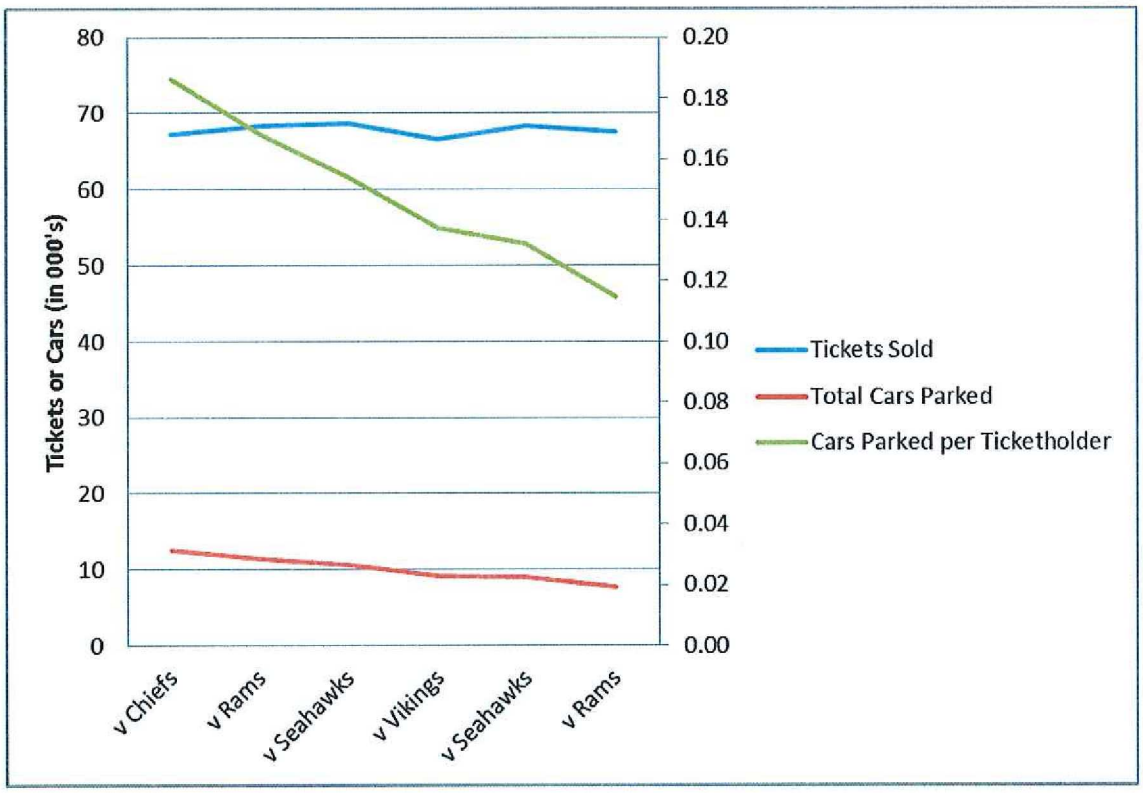
Date Type Event	10/5/2014 NFL v Chiefs	11/2/2014 NFL v Rams	11/27/2014 NFL v Seahawks	9/14/2015 NFL v Vikings	10/22/2015 NFL v Seahawks	1/3/2016 NFL v Rams	Total
Tickets Sold	67,300	68,331	68,758	66,563	68,361	67,558	406,871
Total Cars Parked	12,548	11,483	10,582	9,139	9,037	7,750	60,539

Source: Stadium Authority records

As shown in absolute terms in Exhibit 4.3 above and as a ratio of cars per ticket sold in Exhibit 4.4 below, there has been a decline in the number of cars parked for each NFL game over time. Some possible explanations for these trends have been that traffic has deterred attendees from driving and attendees are instead selecting to use Valley Transit Authority (VTA) or ride-sharing services to reach the Stadium. The audit team attempted to review VTA ridership data to confirm this but found VTA data to be unreliable.

Exhibit 4.4 below charts the number of tickets sold, number of cars parked, and the ratio of cars per ticket sold to illustrate the decline in parking use over time.

Exhibit 4.4: Sampled NFL Event Ticket and Parking Trends



Source: Stadium Authority records

Our review of the City's reported off-site parking fee collection shown in Exhibit 4.5 below and public parking fee collections shown in Exhibit 4.6 below are consistent with the counts of the number of cars parked for NFL events.

Exhibit 4.5: Off-site Parking Fees Collected by City for Sampled NFL Events

Date Type Event	10/5/2014 NFL v Chiefs	11/2/2014 NFL v Rams	11/27/2014 NFL v Seahawks	9/14/2015 NFL v Vikings	10/22/2015 NFL v Seahawks	1/3/2016 NFL v Rams	Total
Cars Parked Off-site	9526	8452	7968	5198	5127	5791	42,062
Off-site Parking Fee	$4.92	$4.92	$4.92	$5.08	$5.08	$5.08	
Off-site Parking Fee Collected	$ 46,868.00	$41,584.00	$ 39,203.00	$ 26,406.00	$ 26,045.00	$ 29,418.00	$ 209,524.00

Source: Stadium Authority records

Exhibit 4.6: Fees collected by City from Public Parking Lots for Sampled NFL Events

Date Type Event	10/5/2014 NFL v Chiefs	11/2/2014 NFL v Rams	11/27/2014 NFL v Seahawks	9/14/2015 NFL v Vikings	10/22/2015 NFL v Seahawks	1/3/2016 NFL v Rams	Total
Cars Parked on Golf Course	2526	2533	2063	3247	3127	1267	14,763
Cars Parked on Tasman Lot	496	498	551	694	783	692	3,714
Public Parking Fee	$5.00	$5.00	$5.00	$5.00	$5.00	$5.00	
City Golf Course & Tasman Lot Parking Fee Collected	$ 15,110.00	$15,155.00	$ 13,070.00	$ 19,705.00	$ 19,950.00	$ 9,795.00	$ 92,785.00

Source: Stadium Authority records

Non-NFL Parking Counts and Fees Collected

Exhibit 4.7 below shows the number of tickets sold and the number of cars parked at each of the five sample non-NFL events reviewed from the audit review period.

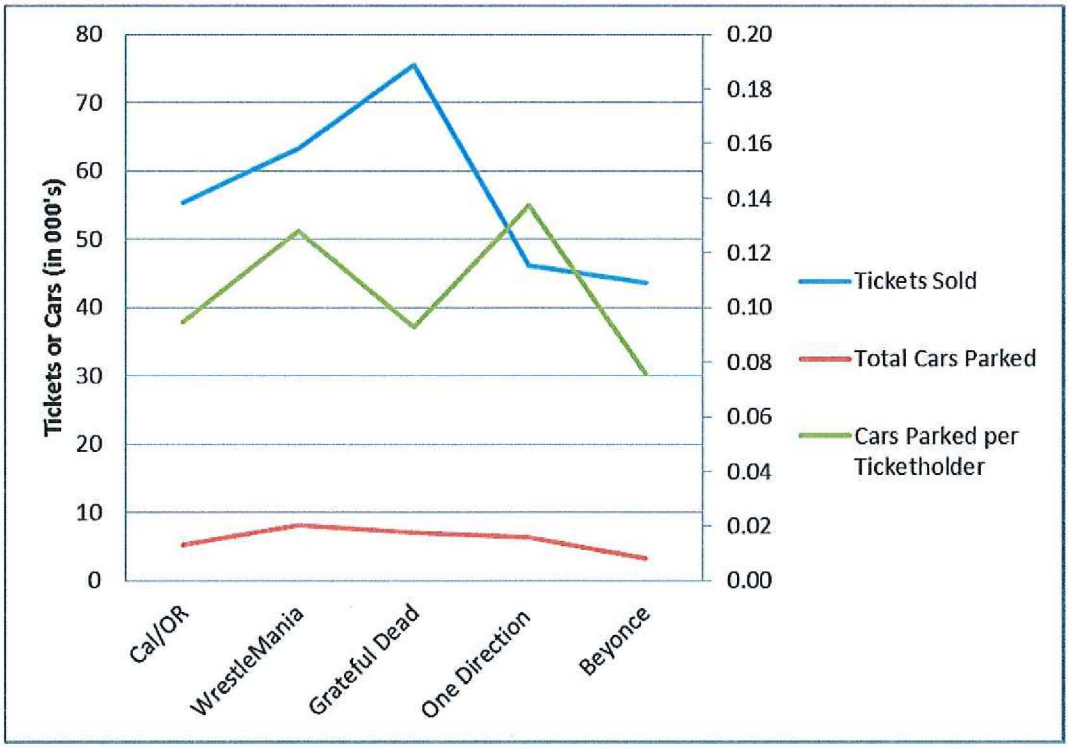
Exhibit 4.7: Sampled Non-NFL Event Tickets and Parking

Date Type Event	10/24/2014 Non-NFL Cal/OR	3/29/2015 Non-NFL WrestleMania	6/28/2015 Non-NFL Grateful Dead	7/11/2015 Non-NFL One Direction	5/16/2016 Non-NFL Beyonce	Total
Tickets Sold	55,343	63,207	75,452	46,228	43,722	283,952
Total Cars Parked	5,241	8,098	7,021	6,360	3,321	30,041

Source: Stadium Authority records

Unlike our data on NFL events, non-NFL parking has not shown a definitive decline in parked cars. This trend is in part due to the different sizes in the events and varied nature of crowds these events attract.

Exhibit 4.8: Sampled Non-NFL Event Ticket and Parking Trends



Source: Stadium Authority records

Our review of the Stadium Authority's reported off-site parking fee collection and public parking fee collections shown in Exhibit 4.9 below is consistent with the counts of the number of cars parked for non-NFL events.

Exhibit 4.9: Public Parking Fees Collected by City for Sampled Non-NFL Events

Date Type Event	10/24/2014 Non-NFL Cal/OR	3/29/2015 Non-NFL WrestleMania	6/28/2015 Non-NFL Grateful Dead	7/11/2015 Non-NFL One Direction	5/16/2016 Non-NFL Beyonce	Total
Cars Parked on Golf Course	2735	2,299	1321	3467	888	10,710
Cars Parked on Tasman Lot	0	0	0	0	0	-
Public Parking Fee	$5.00	$5.00	$5.00	$5.00	$5.00	
City Golf Course & Tasman Lot Parking Fee Collected	$ 13,675.00	$ 11,495.00	$ 6,605.00	$ 17,335.00	$ 4,440.00	$53,550.00

Source: Stadium Authority records

Exhibit 4.10: Off-site Parking Fees Collected by City for Sampled Non-NFL Events

Date Type Event	10/24/2014 Non-NFL Cal/OR	3/29/2015 Non-NFL WrestleMania	6/28/2015 Non-NFL Grateful Dead	7/11/2015 Non-NFL One Direction	5/16/2016 Non-NFL Beyonce	Total
Cars Parked Off-site	2506	5,799	5700	2893	2433	19,331
Off-site Parking Fee	$4.92	$4.92	$4.92	$5.08	$5.08	
Off-site Parking Fee Collected	$ 12,330.00	$ 28,531.00	$ 28,044.00	$ 14,696.00	$ 12,360.00	$95,961.00

Source: Stadium Authority records

The Stadium Authority receives parking fee totals and parking counts but no supporting data for parking lots operating for Stadium events under agreements with Citypark. The agreement between ManCo and Citypark grants the City and the Stadium Authority audit authority of Citypark records. The Stadium Authority should audit the parking fees and net revenues for public and off-site parking managed by Citypark.

The Stadium Authority lacks controls to verify that the public parking fee remitted during NFL events and the private off-site parking fee and any net non-NFL event parking revenues from Citypark are accurate. The Stadium Authority should audit the parking net revenues for public and off-site parking managed by Citypark for non-NFL events.

Supporting data on parking operation net revenues, such as event-specific receipts for individual lots, is reportedly kept at ManCo, but the Stadium Authority does not audit this information specifically and does not plan to do so. The Stadium Authority only reviews high-level summary net parking revenue information as part of its more general review of all non-NFL net revenues. However, per ManCo's agreement with Citypark in Exhibit F Section 1.3, the Stadium Authority has the right to conduct a detailed audit of parking records and should exercise this right to ensure the accuracy of the City's off-site parking fee and public parking lot fee revenues, as well as the parking component of the Stadium Authority's net non-NFL event revenue.

The structure of their agreement with Citypark provides individual parking lot owners and operators an incentive to underreport the number of cars parked in order to underreport revenues and reduce their payments. For example, if an agreement is based on a remittance of a percentage of net revenues from the operator to the owner, the operator is incentivized to underreport the number of cars parked and revenues, so that payment to the owner is lower.

This underreporting would also reduce the parking fee paid to the City and the revenues due to the Stadium Authority.

The Stadium Authority receives net parking revenues as part of the net revenue from non-NFL events, but was unable to provide individual net revenues for the sample events reviewed. These numbers are maintained at ManCo, but the audit team was not allowed to review and report on ManCo records in this public audit report.

FINDING 4.A: The Stadium Authority has not established adequate internal controls to ensure that (a) it is receiving the correct revenue amount from parking lot owners who operate their lots for non-NFL events and (b) the City is receiving the correct amount of off-site parking fee revenue from private lot operators and public parking fee revenue from the public lots. The agreement between the master parking lot operator and ManCo allows the Stadium Authority to audit individual parking lot operator records but the Stadium Authority has not conducted such audits to date.

RECOMMENDATION 4.A: The Stadium Authority should exercise its right stipulated in the agreement between master parking lot operator Citypark and ManCo to periodically audit the detailed records of individual parking lots for NFL and non-NFL events.

The City receives only parking fee totals and parking counts from ABM, PCA, and Marvel for both NFL and non-NFL events. City staff check that the fees matches the vehicle counts, but have no other means to verify that the counts provided are accurate.[4]

Furthermore, no contracts were in place between the Stadium Authority and ABM, PCA, or Marvell during the audit review period, thus limiting any authority for Stadium Authority oversight. The Stadium Authority had no information on the terms and provisions of the contracts between ABM, PCA, and Marvell and the lot owners. These operators obtain permits

[4] City staff described the process for the collection of parking fees as such:

a. The parking vendors email counts to the City as events occur
b. Those counts are logged in a parking count worksheet
c. When the payment is received by the City's cashiering department, a miscellaneous deposit form is completed noting the account string where the parking fee should be deposited
d. The check is entered in the cashiering system and deposited in the City's bank account
e. Once it hits the City's general ledger, a reconciliation is completed to assure the payment matches the parking counts that were previously collected.

from the City, but the permits are not the same as agreements that could provide audit rights. The City should determine if audit rights could be established as a condition of being granted a permit.

FINDING 4.B: The Stadium Authority lacks sufficient controls to verify that the private off-site parking fee remitted during NFL and non-NFL events from ABM, PCA, and Marvell are accurate, due to its inability to verify parking car counts.

RECOMMENDATION 4.B: The Stadium Authority Board should direct staff to report back on the advantages and disadvantages of adding City audit rights as a condition of granting parking permits.

Section 4 of the first amendment to the Stadium Management Agreement requires that ManCo report on the status of: private parking agreements, any ongoing negotiations with private parking lot owners, and the financial performance and other matters relating to the off-site private parking locations for Stadium Authority events at the quarterly meetings with the Stadium Authority Executive Director. The Stadium Authority has reported that this reporting is not occurring.

FINDING 4.C: ManCo is not formally reporting on matters related to the off-site parking locations for Stadium Authority events at the quarterly meetings with the Stadium Authority Executive Director as required in the first amendment to the Management Agreement.

RECOMMENDATION 4.C: The Stadium Authority Board should direct staff to require that ManCo provide a written report on matters related to off-site parking operations at their quarterly meetings, requiring that baseline information be provided in a specific format.

Conclusions and Findings

FINDING 4.A: The Stadium Authority has not established adequate internal controls to ensure that (a) it is receiving the correct revenue amount from parking lot owners who operate their lots for non-NFL events and (b) the City is receiving the correct amount of off-site parking fee revenue from private lot operators and public parking fee revenue from the public lots. The agreement between the master parking lot operator and ManCo allows the Stadium Authority to audit individual parking lot operator records but the Stadium Authority has not conducted such audits to date.

FINDING 4.B: The Stadium Authority lacks sufficient controls to verify that the private off-site parking fee remitted during NFL and non-NFL events from ABM, PCA, and Marvell are accurate, due to its inability to verify parking car counts.

FINDING 4.C: ManCo is not formally reporting on matters related to the off-site parking locations for Stadium Authority events at the quarterly meetings with the Stadium Authority Executive Director as required in the first amendment to the Management Agreement.

Recommendations

RECOMMENDATION 4.A: The Stadium Authority should exercise its right stipulated in the agreement between master parking lot operator Citypark and ManCo to periodically audit the detailed records of individual parking lots for NFL and non-NFL events.

RECOMMENDATION 4.B: The Stadium Authority Board should direct staff to report back on the advantages and disadvantages of adding City audit rights as a condition of granting parking permits.

RECOMMENDATION 4.C: The Stadium Authority Board should direct staff to require that ManCo provide a written report on matters related to off-site parking operations at their quarterly meetings, requiring that baseline information be provided in a specific format.