

Santa Clara Stadium Authority

Introduction of an Ordinance to Amend
Sections 17.30.080, 17.30.090 and
17.30.120 modifying the Stadium
Authority Executive Director's Authority
to Execute Contracts



September 17, 2019

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Santa Clara Stadium Authority (SCSA)

- Executive Director is the Chief Executive Officer of the Stadium Authority and is responsible to the Board for the proper and efficient administration of all affairs.
- Santa Clara Municipal Code Chapter 17.30, Stadium Authority Procurement Policy, outlines the procurement policies and procedures for the Stadium Authority.
- Code authorizes the Executive Director, or designee, to purchase professional, nonprofessional and personal services required by the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000) per contract, subject to budgetary approval. **Contracts with an amount above this dollar limit must be approved by the Board.**



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Santa Clara Stadium Authority

- The Executive Director, or designee, is authorized to purchase professional, nonprofessional and personal services required by the Stadium Authority and to execute contracts for such services on behalf of the Stadium Authority in contract amounts up to and including two hundred fifty thousand dollars (\$250,000.00) per contract, subject to approved budgetary amount, **so long as such persons are specially trained and experienced and competent to perform the special services required.** Contracts with a contract amount above this dollar limit shall be referred to the Stadium Authority Board for approval; (SCCC 17.30.120 (a))



Santa Clara Stadium Authority

Per the Code, ***“Any of the Executive Director’s authority may be delegated to contractors with the Stadium Authority; provided, that the contract delegating such authority is approved by the Stadium Authority Board and the procurement performed by the contractor is within the limits of a budget approved by the Stadium Authority Board for the year in which the contract is awarded.”***



Stadium Manager Procurement Authority

- Forty Niners Stadium Management Company, LLC (Stadium Manager) provides management services, including overseeing the day-to-day operations and maintenance, as well as the marketing and booking of Non-NFL Events.
- First Amendment to the Management Agreement, Section 2. Delegation of Contracting Authority, ***Board delegated the Executive Director's procurement authority to the Stadium Manager.***
- Delegated procurement authority accepted and Stadium Manager attested to being **"an organization whose principals have substantial experience and expertise in the management and operation of public assembly facilities"**.



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STADIUM MANAGER PROCUREMENT RESPONSIBILITIES



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Stadium Manager Procurement Responsibilities

AUTHORIZED TO CONTRACT FOR UP TO \$250,000—FOR MORE REQUIRES BOARD APPROVAL

- All contracts or agreements to acquire supplies, materials, and equipment in the contract amount of two hundred fifty thousand dollars (\$250,000.00) or more shall require the approval of the Stadium Authority Board. The Executive Director may enter into a contract or agreement with a contract amount of two hundred fifty thousand dollars (\$250,000.00) or more, but less than one million dollars (\$1,000,000.00) pursuant to this section; provided, that the contract or agreement notes that Stadium Authority Board ratification must be later secured. (SCCC 17.30.080(f))



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Stadium Manager Procurement Responsibilities

- For all other expenditures required for a public project, but which are not associated with the Stadium Project, the Stadium Authority shall comply with the requirements of Public Contract Code Section 20162 and all applicable City Charter provisions. (SCCC 17.30.130 (b))
- The Executive Director shall prepare, and submit to the Stadium Authority Board, a report at the end of the Stadium Authority's fiscal year summarizing the total number of contracts let by the Stadium Authority, the number of contracts approved under an exception, the number of contracts approved under best value procedures and the number of contracts approved under formal bidding procedures, and to the extent possible listing information related to application and outreach efforts conducted to implement the DBE program. (SCCC 17.30.160(b))



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Stadium Manager Procurement Responsibilities

- Pre-Opening Obligations (Management Agreement 2.4):
 - 2.4.7 **Establish charts of accounts and accounting policies,** procedures and systems, including polices, procedures and systems for payroll processing, accounts payable, accounts receivable, depository accounts, box office and reporting functions;
 - 2.4.8 Design, establish and **maintain effective internal accounting controls with respect to compliance with Applicable Laws,** this Agreement and contracts pertaining to the Stadium, in such a manner as to **minimize the risk of noncompliance and to provide for the detection of any noncompliance within a timely period** by the Stadium Manager's employees in the normal course of performing their assigned functions;



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Stadium Manager Procurement Responsibilities

- **Stadium Manager shall provide** the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement **Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract.** (First Amendment to Management Agreement 2.1)



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Stadium Manager Procurement Responsibilities

- The Stadium Manager shall 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, consistently applied. **The Stadium Manager shall maintain complete and accurate books and records relating to the operations of the Stadium and its services provided hereunder**, including 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 and Stadium Capital Expenditure Reserve, any additional information required to prepare the Annual Statement of Stadium Operations and, to the extent so directed by either StadCo or the Stadium Authority, StadCo Operating Expenses and Stadium Authority Operating Expenses, respectively (collectively, "Stadium Records"). (Mgmt Agreement 4.1)



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Stadium Manager Procurement Responsibilities

- The Stadium Manager shall **use reasonable efforts to maintain separate records for the Tenant Season and the Stadium Authority Season** and for NFL Events and Non-NFL Events, in order to effectively protect the confidentiality of records relating solely StadCo. (First Amendment to Management Agreement 7.)



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STADIUM MANAGER'S PERFORMANCE



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**Despite Stadium Manager's Claim To Have
"Substantial Experience And Expertise"**



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Stadium Manager's Performance

1. The Stadium Manager has never provided a report at the end of the Stadium Authority's fiscal year summarizing the total number of contracts issued on behalf of the Stadium Authority.
2. The Stadium Manager has already admitted to issuing at least one contract for over \$250,000 without Board approval, where work was completed and invoices paid in violation of State laws.
3. Stadium Manager has not maintained complete and accurate books and records relating to the operations of the Stadium and its services provided and it now proposes to charge the Stadium Authority to assemble compliant records



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Stadium Manager's Performance

4. Stadium Manager has not complied with State Prevailing Wage laws, Public Contract Code Section 20162 and procurement requirements
5. Stadium Manager has not maintained internal controls and contracts pertaining to the Stadium in a manner that minimizes the risk of noncompliance and provides timely detection of noncompliance, as the normal course of performing their assigned functions
6. It is unknown whether the Stadium Manager has fully complied with the disclosure requirement to the Stadium Authority for operations relative to contracts greater than \$100,000 within 30 days of entering into any such contract.



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Stadium Manager's Performance

7. All documentation has not provided to the Stadium Authority when requested or via public records requests. Stadium Authority is unable to assess extent of procurement violations based on Stadium Manager's admission of non-compliance with State Prevailing Wage and Public Procurement laws because of lack of documentation.
8. Stadium Manager has not provided, nor does it appear it has maintained, separate records for the Stadium Authority season.
9. Stadium Manager has received a number of Notices of Breaches and Notices of Default that it has not cured.



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PRELIMINARY FINDINGS PROCUREMENT REVIEW



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Preliminary Findings Procurement Review

- ManCo provided documentation for **67 Capital Projects**, titled **“2019 04 12 SCSA Production File CLEAN and WIPED”**
- Stadium Authority retained a forensic auditor to review the documentation (HSNO, now JS|Held)
- ManCo provided Project Order Forms, which are not legally sufficient documentation to contract for work.
- A Project Order Form is an internal tracking document of work used by ManCo



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Preliminary Findings Procurement Review

Of the documents provided, here is what was found:

- 19 projects where no invoices were provided
- 46 projects where no agreements were provided
- 24 projects where no bid, quote or estimate was provided
- On some Project Order Forms, signature and dates missing from contracts, vendor signatures also not obtained, documents signed after invoicing, etc.
- Projects potentially greater than \$250,000. Four vendors that performed work that, when the cost is combined, exceeds \$250,000 threshold and should have triggered a bidding process and Board approval.
- Several instances of agreements between ManCo and vendors being signed after work had begun or even after the work had ended
- Creating contracts after the fact

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DocuSign Envelope ID: 307B8332-004F-430D-ASFI-D8F4E20078E

RMI
mechanical contractors

HEATING - VENTILATION - AIR CONDITIONING - SHEET METAL
1345 Lowrie Avenue, South San Francisco, CA 94080 Tel.
(650) 583-0200 - Fax (650) 583-0111 - License # 831400

To: Levi Stadium
4900 Marie P DeBartolo Way
Santa Clara, CA. 95054

Attn: Pat Rogan

RE: 700 Concessions

QUOTATION

Job # _____

Date: 12/13/2018

Terms: _____

Prices quoted are
F.O.B. _____

Delivery: _____

Description	Amount
We are pleased to quote you the following price for the above project:	
Scope of work:	
Fabricate & install new toe kick flashing at concession stand front bottom areas Throughout the 700 level that are damaged.	\$3,187.00 per
Price includes removal of front fascia panel and existing damaged flashing, installation of new flashing, caulking/water proofing top, bottom & sides of new flashing & re-installation of fascia panel	

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RMI Mechanical Contractor, Inc.
1385 LOWRIE AVE
SO SAN FRANCISCO, CA 94080
(650) 583-6200 Fax (650) 583-0111

CUSTOMER #: 064
INVOICE #: 11114
INVOICE DATE: 12/19/18

DUE DATE: 12/29/18

BILL TO:
FORTY NINERS STADIUM MGMT CO.
PAT ROGAN
4900 MARIE P. DeBARTOLO WAY
SANTA CLARA, CA 95054

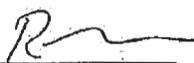
JOB: 8999
LEVI'S STADIUM PROJECT 205.3
CONCESSIONS FLASHING LEVEL 700

DESCRIPTION	QUANTITY	PRICE	AMOUNT
LEVEL 700 - CONCESSION FLASHING PER PROJECT 205.3			47,805.00
NET DUE:			47,805.00

Thank you for your business!

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IN WITNESS WHEREOF, the Parties have caused this agreement for the performance of services to be executed by their duly appointed representatives as of the Effective Date.

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC	RMI MECHANICAL CONTRACTOR, INC.
By: _____	By: 
Name: _____	Name: <u>Ronnie Mafici</u>
Title: _____	Title: <u>V.P.</u>
Date: _____	Date: <u>1/4/19</u> 

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Preliminary Findings Procurement Review

For example, Project No. 196.1

- DLI Mechanical Piping Contractors – Quote dated 5/30/2018.
“We have based our proposal on the verbal instructions of Mr. Damon Andrews and the site visit.”
- Project Order Form, dated 10/1/2018 is not signed by Stadium Manager Jim Mercurio.
- Invoice Date is 10/17/2018, Payment Due Date 11/16/2018
- Service Agreement dated 2/21/2019.
- **Stadium Manager advised to stop creating documents to create the illusion of compliance on May 22, 2019.**



Daniel Larratt Plumbing Inc. DBA DLI Mechanical 777 Mariposa Street, Suite A San Francisco, CA 94107 (415) 553-6011 Fax (650) 551-1206		CUSTOMER #: 952 INVOICE #: 6242 INVOICE DATE: 10/17/18 DUE DATE: 11/16/18				
BILL TO: Levi Stadium 4900 Marie DeBartolo Way Santa Clara, CA		JOB: 18-065 Levi Stadium CO 2 lines 4900 Marie P. DeBartolo Way Santa Clara, CA				
CODE	DESCRIPTION	CURRENT CONTRACT	PREVIOUS BILLED	PREV %	% COMPL	CURRENT BILLING
00	Project #196.1 Contract	15,839.00			100.0	15,839.00
	TOTALS:	15,839.00			100.0	15,839.00
NET DUE:						15,839.00
<p>Thank you for your business! We are now LBE Certified with the city of San Francisco!</p>						

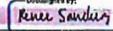
DocuSign Envelope ID: A41174C0-F01D-456D-80CA-5C11226E02AE

IN WITNESS WHEREOF, the Parties have caused this agreement for the performance of services to be executed by their duly appointed representatives as of the Effective Date.

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC

By: 
 Name: John Mercurio
 Title: Owner
 Date: 2/21/2019

DANIEL LARRATT PLUMBING, INC.

By: 
 Name: Renee Sanders
 Title: Estimator
 Date: 2/21/2019



Preliminary Findings Procurement Review

Documentation Not Provided:

- Projects and contracts that exceeded \$250,000
- Projects and contracts not related to the Capital Expenditure Fund
- Purchase Orders for Any Projects
- Bids/Estimates/Quotes for Many of the Projects
- Agreements for Many of the Projects
- Invoices for Many of the Projects

The Stadium Authority has asked for all of the documentation that support operations, shared expenses. Stadium Manager has not produced that documentation.



STADIUM AUTHORITY'S ACTIONS



Stadium Authority's Actions

Despite Stadium Manager's claim to have "substantial experience and expertise"

State Prevailing Wage Law Violations--

- Stadium Manager has violated the state prevailing wage law since it began managing the Stadium, for both capital and operational work
- Stadium Manager has made no effort to disclose corrective action plan, or detail of extent of violations, for day-to-day operations.
- After six months, only one contract proposed for corrective action
- Stadium Authority was issued a Notice of Breach and Notice of Default issued in March and April, 2019, respectively



October 30, 2018

FORTY NINERS STADIUM MANAGEMENT COMPANY

Deanna Santana
City Manager
Santa Clara City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: SCSA Project Notification

Dear Deanna,

We are writing to inform you of the Premium Areas/Special Event Assets project that we have initiated in accordance to the SCSA Capital Expenditures approval on March 27, 2018.

We are seeking your approval and of our intent to execute a contract with the vendor listed in the detail.

	APPROVED	CONTRACT AMOUNT
<ul style="list-style-type: none"> • Premium Areas/Special Event Assets Lympital coating throughout the concourse, Floor restoration/terrazzo, Hardwood floor restoration in clubs, <u>Case service contract with epoxy coating and fill any cracks to protect against chips, trips and falls. Hex Systems will provide coating and labor on a large part of this project and the contract amount is \$495,000.</u> 	\$1,454,250	\$495,000



Should you have any questions, I am available to discuss at your convenience

Approved: _____
Deanna Santana
Executive Director

Date: _____

Sincerely,
Jim Mercurio
JIM MERCURIO
Vice President, Stadium Operations & General Manager




FORTY NINERS STADIUM MANAGEMENT COMPANY

TO: Santa Clara Stadium Authority Board
 FROM: Forty Niners Stadium Management Company LLC
 DATE: December 3, 2018
 SUBJECT: Levi's® Stadium Service Contract Approval Request (NEX Systems)

Pursuant to Section 17.30.120 of the Stadium Authority Procurement Policy, please find the attached agreement for services being performed at Levi's® Stadium by Designers Surfaces LLC d/b/a NEX Systems for your approval.

NEX Systems has been engaged to polish terrazzo flooring and ~~coat the concrete~~ flooring in certain service areas within Levi's® Stadium, with a total ~~cost~~ of \$643,567.50. This amount is below the budgeted line item for this project, approved as part of the 2018 Authority Cap Ex: "Coat service tunnel with epoxy coatings and fill any cracks to protect against slips, trips and falls" - \$1,385,000. ←

NEX Systems was selected using a variety of criteria, including their stellar reputation in the industry, quality of service, and their competitive bid pricing.

As a result of the ~~Levi's® Stadium schedule of events~~ and the urgency of certain elements of the project, NEX Systems began work at the Stadium on August 6, 2018, with an expected completion date of January 31, 2019. No further services are being performed at Levi's® Stadium, pending approval of the ~~final terms of the attached agreement~~. ←

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Date: August 24, 2016

Schedule 3



Date: August 24, 2016

Schedule 2



Date: August 15, 2018

Schedule 1

DESIGNERS SURFACES LLC
 135 FRANK WEST CIRCLE
 STOCKTON, CA 95204
 CONTRACTOR'S LIC# 9990179

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NEX SYSTEMS SURFACES
DESIGNERS SURFACES LLC

DESIGNERS SURFACES LLC
235 FRANK WEST CIRCLE
STOCKTON, CA 95206
CONTRACTOR'S LIC# 958678

Date: September 6, 2018

INVOICE TO: Levi's Stadium
4900 Marie P. DeBartolo Way
Santa Clara, California 95054

PROJECT LOCATION: Levi's Stadium
4900 Marie P. DeBartolo Way, Level 100
Santa Clara, California 95054

SCOPE OF WORK: Initial Proposal for Installation of Semi-Rigid Joint Filler in 6,000 LF of Existing Concrete Joints in Level 100 Epoxy Installation areas as follows:

Base Scope: (Est. 6,000 Ln.Ft.)	
1. Clean and rout all existing joints	
2. Fill all joints with NEX Flex Semi-Rigid Joint Filler for Epoxy Flooring	
Base Cost:	\$ 40,000.00
Weekday T&M Labor:	\$ 160.00 Per Hr.
Weekend T&M Labor:	\$ 215.00 Per Hr.
This proposal does NOT include power. If GC is to provide power, NEX Systems is to have designated house power. The above price does NOT include mock-up. Job requires a minimum of \$ 5,000.00.	

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From: Mercurio, Jim <jm.mercurio@95ss-smc.com>
Sent: Tuesday, March 12, 2019 5:01 PM
To: Angela Kraetsch
Cc: Compliance Manager; Deana's Santana; Weber Rossmann; Colin Krawtich; Brian Doyle; Rogan, Pat; ralon.ferreira@95ss-smc.com
Subject: Re: NEX Systems

Hi Angie:

The floor coating maintenance work that Designers Surfaces, LLC d/b/a NEX Systems performed was to seal the concrete floor in certain areas of Levi's Stadium and to help prevent the concrete from cracking and spalling. This work, though specialized, is relatively straight forward in terms of identifying the scope and square footage.

The following process was used in the selection of NEX Systems:

Forty Niners Stadium Management Company LLC ("ManCo") contacted two known companies (NEX Systems and Jerry Thompson Painting) both of whom have done a fair amount of work at the stadium in the past. We contacted a third company (RP Coatings) that we understood could perform the services and received three qualifying bids.

Pat Rogan, our Director of Engineering, walked the stadium with each vendor indicating and describing where the work was to take place. He included the amount of square feet and discussed other potential specifications needed to handle this sort of work (including event schedule and potentially doing the job during off-hours) so as to avoid canceling booked events.

ManCo selected NEX Systems given the low bid price, the quality of their work, and their reputation for this sort of specialty maintenance work.

Further, we can confirm that this project was a prevailing wage project.

We appreciate your addressing this issue quickly so that they may be paid for the work they have performed to date and so that they can finalize scheduling the remaining work in a manner that doesn't impact the upcoming events scheduled at Levi's Stadium at the end of March and in mid-April.

Please advise if there is anything else we can do to help expedite approval and payment for NEX Systems.

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Stadium Authority's Actions

Despite Stadium Manager's claim to have "substantial experience and expertise"

Public Procurement Law Violations–

- Stadium Manager has violated the public procurement law since it began managing the Stadium, for both capital and operational work
- Stadium Manager has made no effort to disclose corrective action plan, or detail of extent of violations, for day-to-day operations
- Stadium Manager has admitted its failure to comply with contract procurement obligations, placing the Stadium Authority in several potential violations of California State Law.
- Stadium Authority was issued a Notice of Breach and Notice of Default in June and August



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Stadium Authority's Actions

Despite Stadium Manager's claim to have "substantial experience and expertise"

Annual Report of Contracts:

- Stadium Manager was advised in March 2019 to begin preparing its annual contract activity report to the Stadium Authority, which is required per Santa Clara City Code 17.30.160(b).
- Stadium Manager has not produced any reports
- Stadium Authority issued a Notice of Breach of Management Agreement on August 21, 2019.



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Stadium Authority's Actions

Despite Stadium Manager's claim to have "substantial experience and expertise"

Inappropriate Use of the Revolving Loan Fund--

- The Stadium Authority's actions have been about transparency, accountability and compliance.
- Stadium Manager was advised that invoices would be paid with the appropriate supporting documentation to release public funds.
- Stadium Manager has elected to issue itself approximately \$4.4 million in loans made under the Revolving Credit Agreement instead of providing the Stadium Authority's supporting documents.
- Request for supporting documents have gone unanswered.
- Stadium Authority objects and reserves all rights regarding Management Company's use of the Revolving Credit Agreement to trigger a loan to Stadium Authority for its Shared Expenses.



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Stadium Authority's Actions

Despite Stadium Manager's claim to have "substantial experience and expertise"

Stadium Manager --

- Has not produced the Stadium Authority's financial documents
- Has not complied with the Agreement terms
- Records do misrepresent and lack transparency
- Created records, after the fact, to create the illusion of procurement compliance
- Violated multiple State laws, e.g., worker wages
- Has not cured Notices of Breach or Default
- Is taking out loans obo Stadium Authority to avoid producing Stadium Authority records



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Recommendation

- Approve Introduction of Ordinance to Amend Chapter 17.30 to require Board approval before execution by Stadium Manager of any contract for Stadium Authority for Non-NFL events.



9/17/19

#2.B.

POST AGENDA MATERIALS

Santa Clara Stadium Authority

Introduction of an Ordinance to Amend
Sections 17.30.080, 17.30.090 and
17.30.120 modifying the Stadium
Authority Executive Director's Authority
to Execute Contracts



September 17, 2019

POST MEETING MATERIAL



FORTY NINERS STADIUM MANAGEMENT COMPANY

Project Order Form

Project Title: General Building/Miscellaneous - Concession Flashing 700 Level		Project Number: 2053	Date: 12/13/2018
Project Manager: Pat Rogan	Telephone: (408) 562-4946	Email: pat@49ers-smc.com	
Requestor: Stadium Operations	Telephone: (408) 873-2100	Email: projectmanagement@Niners.net	
Levi's® Stadium Specific Location: Levi's Stadium		Subcontract Company: RMI Mechanical Contractors	
Architectural Code (if applicable):		Name: Ronnie Maffei	
Project Start Date: 12/13/18	Project Completion Date: 12/30/18	Telephone: (650) 583-6200	
Party Responsible for Payment:	Authority Capex		

Project Description:

Fabricate & Install new toe kick flashing at concession stand front bottom areas throughout the 700 Level that are damaged (15 x \$3187.00/ea). Price includes removal of front fascia panel and existing damaged flashing installation of new flashing caulking/water proofing top bottom & sides of new flashing & re-installation of fascia panel (See attached for details)	\$47,805.00
NOT TO EXCEED	
Total	\$47,805.00

Please Return this form to the Forty-Niners Stadium Management Company Stadium Operations Department Office
 If you have any questions please contact your respective PM or the Stadium Operations PMO
 Project Order Forms must be reviewed and approved by the listed Forty-Niners Stadium Management Company entities below

Party Responsible for Payment

Authority CAPEX - Approved in 3/2018	ACAPEX	City of Santa Clara	City of Santa Clara	Authority CAPEX
Print Name	Signature Name	Title	Company Name	

This section is for the Forty-Niners Stadium Management Company

Authorized by:
Ronnie Maffei 12/13/2018

1 Vendor/Contractor Date: _____

AND

2 Finance/Accounting Rep Date: _____

3 _____ Date: _____

4 Project Manager Levi's Stadium Date: _____

DocuSigned by:
Pat Rogan 12/13/2018

Change Order Request	Description	Total Cost
Change Order Approval Signature	1	2
	3	4
Change Order Approval Signature	1	2
	3	4

Acknowledgement of this document represents approval to start the requested Project Order for Levi's® Stadium Facility. This document is non-binding until the project's Stadium Operations PM, Finance/Accounting Rep and Jim Mercurio - VP of Stadium Operations General Manager of Levi's Stadium have signed this document. The listed individuals all have signed and dated this specific Project Order document for approval. **NO WORK IS TO BEGIN UNTIL THIS DOCUMENT IS FULLY AND PROPERLY EXECUTED AND SIGNED. A COPY MUST BE RETURNED TO THE INDIVIDUAL WHO IS REQUESTING A CHANGE TO THE LEVI'S® STADIUM AS WELL AS THE STADIUM OPERATIONS OFFICE.**

Leave Behind Asset Return to Original Status Acceptance of Change



QUOTATION

HEATING • VENTILATION • AIR CONDITIONING • SHEET METAL
1385 Lowrie Avenue, South San Francisco, CA 94080 Tel.
(650) 583-6200 - Fax (650) 583-8111 • License # 831408

To: Levi Stadium
4900 Marie P DeBartolo Way
Santa Clara, CA. 95054

Attn: Pat Rogan

RE: 700 Concessions

Job # _____

Date: 12/13/2018

Terms: _____

Prices quoted are
F.O.B. _____

Delivery: _____

Description	Amount
<p>We are pleased to quote you the following price for the above project:</p> <p style="text-align: center;">Scope of work:</p> <p>Fabricate & install new toe kick flashing at concession stand front bottom areas Throughout the 700 level that are damaged.</p> <p>Price includes removal of front fascia panel and existing damaged flashing, installation of new flashing, caulking/water proofing top, bottom & sides of new flashing & re-installation of fascia panel</p> <p>Exclusions: Cutting – Patching – Painting – Ceilings – Plumbing - Controls – Condensate Drains – Electrical – Low Voltage Conduits – Life Safety – Fire Sprinklers – Smoke Fire Dampers – Smoke Detectors – Certified Air and Water Balancing – Comfort Balancing – Roofing – Permits and Fees – Wavier of Subrogation – Title-24/HERS Rating – Overtime – Removal of insurance for Mold, Asbestos or other Hazardous Materials – Saw cutting, chipping or patching of concrete – Wall, Floor or Furniture Protection – Structural Engineering</p>	<p style="text-align: right;">\$3,187.00 per</p>

By: _____

RMI Mechanical Contractor, Inc.
1385 LOWRIE AVE
SO SAN FRANCISCO, CA 94080
(650) 583-6200 Fax (650) 583-8111

CUSTOMER #: 064
INVOICE #: 11114
INVOICE DATE: 12/19/18
DUE DATE: 12/29/18

BILL TO:

FORTY NINERS STADIUM MGMT CO.
PAT ROGAN
4900 MARIE P. DeBARTOLO WAY
SANTA CLARA, CA 95054

JOB: 8999

LEVI'S STADIUM PROJECT 205.3
CONCESSIONS FLASHING LEVEL 700

DESCRIPTION	QUANTITY	PRICE	AMOUNT
LEVEL 700 - CONCESSION FLASHING PER PROJECT 205.3			47,805.00
		NET DUE:	47,805.00

Thank you for your business!

LEVI'S® STADIUM SERVICE AGREEMENT

This Levi's® Stadium Service Agreement ("Agreement") is made and entered into on this December 21, 2018, ("Effective Date") by and between RMI MECHANICAL CONTRACTOR, INC., a California corporation with its principal place of business located at 1385 Lowrie Ave, South San Francisco, CA 94080 ("Contractor"), and the FORTY NINERS STADIUM MANAGEMENT COMPANY LLC, a Delaware limited liability company ("Forty Niners"), with its principal place of business located at 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054. Forty Niners and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

TERMS AND CONDITIONS

1. Services Provided. Forty Niners hereby employs Contractor to fabricate and install fifteen (15) toe kick flashing at the front bottom of certain concessions stands on the 700 level at Levi's® Stadium (the "Services"). Such Services shall include, but are not limited to: (a) the fabrication of the toe kick flashing to the specifications provided by Forty Niners; (b) removal and taking away of the existing damaged flashing; (c) installation of the new flashing; (d) caulking and waterproofing of all sides of the new flashing; and (e) the re-installation of the fascia panel at all fifteen concessions locations specified by Forty Niners. Forty Niners shall pay for all such Services which are consistent with the terms of this Agreement, which shall be completed by Contractor during the Term of the Agreement. Except as and to the extent expressly set forth in this Agreement, Contractor shall furnish all Services necessary to satisfactorily complete the work required by Forty Niners at Contractor's own risk and expense, at a time specified by Forty Niners. Except as expressly provided herein, Contractor shall be responsible for all costs and expenses incurred in performing the Services. Contractor shall perform such Services and duties and obligations in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California and in compliance with all rules, regulations, standards, and other applicable regulation. This Agreement expressly excludes any of Contractor's terms and conditions or any document issued by Contractor.
2. Performance of Services. Contractor shall perform all Services in an efficient and expeditious manner and shall work closely with and be guided by Forty Niners. Contractor shall be as fully responsible to Forty Niners for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor shall be responsible for the professional quality, technical accuracy, and coordination of the Services furnished by it under this Agreement. Neither Forty Niners' review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to Forty Niners in accordance with applicable laws for all damages to Forty Niners caused by Contractor failure to perform any of the Services furnished under this Agreement.
3. Term of the Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date of this Agreement and terminate on December 31, 2018.
4. Warranty. Contractor expressly warrants that all Services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to Forty Niners when defects are due to the negligence, errors, or omissions of Contractor. If Contractor fails to promptly correct or replace Services, Forty Niners may make corrections or replace Services and charge Contractor for the cost incurred by Forty Niners. This section shall survive the termination or expiration of this Agreement.

5. Compensation. In consideration for Contractor's complete performance of the Services, Forty Niners shall pay Contractor a total of \$3,187.00 per installed toe kick flashing (a total of \$47,805.00 upon installation of all fifteen (15) toe kick flashing). Contractor shall not be reimbursed for any expenses, costs, or other fees incurred by Contractor in the performance of the Services. Any mutually agreed upon costs to be reimbursed by Forty Niners shall be approved in writing by Forty Niners prior to being incurred by Contractor.
6. Payment Schedule. Contractor will invoice Forty Niners upon completion of the Services provided by Contractor, subject to verification by Forty Niners. Forty Niners will pay Contractor within thirty (30) days of Forty Niners' receipt of a valid invoice. Forty Niners shall have no obligation to make payments for invoices received more than six (6) months after termination or expiration of the Term.
7. Termination. In addition to any other rights or remedies Forty Niners may have, Forty Niners may terminate this Agreement by written notice to Contractor if Contractor fails to perform any obligation under this Agreement and such failure continues un-remedied for a period of ten (10) days after receipt of written notice from Manager of the particular failure to perform.
8. Assignment and Subcontractors. Forty Niners and Contractor bind themselves and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred by Contractor without the prior written approval of Forty Niners. Contractor shall not hire subcontractors without written permission from Forty Niners.
9. Independent Contractor. Contractor and all persons employed by Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of Forty Niners. Contractor has full rights to manage its employees in their performance of Services under this Agreement. All liabilities that may arise as a result of Contractor's status as an employer shall be borne exclusively by Contractor. Contractor will not be entitled to any of the benefits which the Forty Niners may make available to its employees, such as group insurance, profit-sharing or retirement benefits. Contractor will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to Contractor's performance of Services and receipt of fees under this Agreement. Because Contractor is an independent contractor, Forty Niners will not withhold or make payments for social security; make unemployment insurance or disability insurance contributions; or obtain worker's compensation insurance on Contractor's behalf. Contractor is not authorized to bind Forty Niners to any contracts or other obligations.
10. Confidentiality. All ideas, memoranda, specifications, plans, data, drawings, descriptions, documents, or other information developed or received by Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of Forty Niners, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor shall be deemed confidential.
11. Intellectual Property. Contractor shall have no right to use the trademarks, symbols, trade names or other intellectual property of Forty Niners or its respective affiliates. Contractor represents and warrants that the Services provided hereunder shall not violate or infringe any third party's intellectual property rights.
12. Ownership of Materials. All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, and other material developed, collected, prepared, or caused to be prepared under this Agreement shall be the property of Forty Niners, but Contractor may retain and use copies thereof solely for the performance of the Services. Forty Niners shall not be limited in any way or at any time in its use of said material.
13. Indemnification. Contractor shall indemnify, defend and hold harmless Forty Niners and its affiliates, and their respective officers, directors, managers, members, partners, sponsors, owners, and employees ("Indemnified Parties") from and against all losses, costs, suits, actions, claims, damages,

amounts paid in settlement, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of (i) any breach by Contractor under this Agreement, (ii) any activity, inactivity, work or thing done or permitted by Contractor or its employees, agents or contractors or (iii) any injury or damage to any person or entity or to the property of any person or entity caused by any action or omission of Contractor or its employees, agents or contractors.

14. **Insurance.** During the Term of this Agreement, Contractor shall, at no cost to Forty Niners, maintain (or cause to be maintained) the following insurance coverage with insurers having a "Best's" rating of A-VIII or better: (i) workers compensation insurance in compliance with applicable law and shall include a waiver of subrogation in favor of Forty Niners Stadium Management Company LLC and (ii) commercial general liability insurance, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations and contractual liability with a minimum amount of one million US Dollars (USD \$1,000,000.00) for each occurrence, two million US Dollars (USD \$2,000,000.00) aggregate and shall name Forty Niners Stadium Management Company LLC as additional insured and shall specifically state the coverage thereunder shall be deemed to be primary and non-contributory to any other insurance available. Contractor shall furnish Forty Niners with a certificate of insurance evidencing such insurance coverage upon request.
15. **Notices.** All notices to Forty Niners shall, unless otherwise requested in writing, be sent to Forty Niners addressed as follows: Legal Affairs, 4949 Marie P DeBartolo Way, Santa Clara, CA 95054. If notice is sent via email, a signed, hard copy of the material shall also be mailed. The workday the email was sent shall control the date notice was deemed given.
16. **Miscellaneous.** This Agreement may be amended only with the written consent of both Parties. This Agreement represents the entire agreement between Forty Niners and Contractor. In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect. Contractor agrees that waiver by Forty Niners of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the Parties have caused this agreement for the performance of services to be executed by their duly appointed representatives as of the Effective Date.

FORTY NINERS STADIUM
MANAGEMENT COMPANY LLC

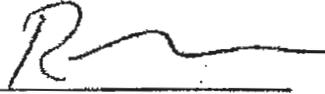
By: _____

Name: _____

Title: _____

Date: _____

RMI MECHANICAL CONTRACTOR, INC.

By:  _____

Name: Ronnie Mafri

Title: V.P. _____

Date: 1/4/19 _____

Daniel Larratt Plumbing Inc.
DBA DLI Mechanical
777 Mariposa Street, Suite A
San Francisco, CA 94107
(415) 553-6011 Fax (650) 551-1206

CUSTOMER #: 952

INVOICE #: 6242

INVOICE DATE: 10/17/18

DUE DATE: 11/16/18

BILL TO:

Levi Stadium
4900 Marie DeBartolo Way
Santa Clara, CA

JOB: 18-065

Levi Stadium
CO. 2 lines
4900 Marie P. DeBartolo Way
Santa Clara, CA

CODE	DESCRIPTION	CURRENT CONTRACT	PREVIOUS BILLED	PREV %	% COMPL	CURRENT BILLING
	Project #196.1					
00	Contract	15,839.00			100.0	15,839.00
	TOTALS:	15,839.00			100.0	15,839.00

NET DUE: 15,839.00

Thank you for your business!

We are now LBE Certified with the city of San Francisco!

LEVI'S® STADIUM SERVICE AGREEMENT

This Levi's Stadium Service Agreement ("Agreement") is made and entered into **on this October 1, 2018**, ("Effective Date") by and between DANIEL LARRATT PLUMBING, INC., a California corporation d/b/a DLI MECHANICAL, with its principal place of business located at 777 Mariposa Street Suite A, San Francisco, CA 94107 ("Contractor"), and the FORTY NINERS STADIUM MANAGEMENT COMPANY LLC ("Stadium Manager"), with its principal place of business located at 4900 Marie P. DeBartolo Way, Santa Clara, CA 95054. Stadium Manager and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

TERMS AND CONDITIONS

- Services Provided. Stadium Manager hereby engages Contractor to relocate carbon dioxide lines at Levi's® Stadium to avoid electrolysis (the "Services"). Contractor hereby agrees to undertake and complete such Services, which shall include, but are not limited to: (a) relocation of two (2) carbon dioxide lines specified by Stadium Manager; (b) installation of one trap primer to the specifications directed by Stadium Manager; and (c) engagement of any subcontractors required for the performance of the Services at Contractor's cost, subject to such parties' compliance with the insurance terms contained herein. Services shall include all labor and travel costs, and setup and takedown of the materials as requested by Stadium Manager. Stadium Manager shall pay for all such Services which are consistent with the terms of this Agreement, which shall be completed by Contractor during the Term of the Agreement. Except as and to the extent expressly set forth in this Agreement, Contractor shall furnish all Services necessary to satisfactorily complete the work required by Stadium Manager at Contractor's own risk and expense, at a time specified by Stadium Manager. Except as expressly provided herein, Contractor shall be responsible for all costs and expenses incurred in performing the Services. Contractor shall perform such Services and duties and obligations in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California and in compliance with all rules, regulations, standards, and other applicable regulation. This Agreement expressly excludes any of Contractor's terms and conditions or any document issued by Contractor.
- Performance of Services. Contractor shall perform all Services in an efficient and expeditious manner and shall work closely with and be guided by Stadium Manager. Contractor shall be as fully responsible to Stadium Manager for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor shall be responsible for the professional quality, technical accuracy, and coordination of the Services furnished by it under this Agreement. Neither Stadium Manager's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to Stadium Manager in accordance with applicable laws for all damages to Stadium Manager caused by Contractor failure to perform any of the Services furnished under this Agreement.
- Term of the Agreement. The term of this Agreement (the "Term") shall begin on the Effective Date of this Agreement and terminate **on March 31, 2019**.
- Warranty. Contractor expressly warrants that all Services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to Stadium Manager when defects are due to the negligence, errors, or omissions of Contractor. If Contractor fails to promptly correct or replace Services, Stadium Manager may make corrections or replace Services and charge Contractor

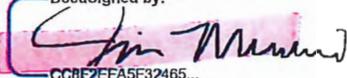
for the cost incurred by Stadium Manager. This section shall survive the termination or expiration of this Agreement.

5. Compensation. In consideration for Contractor's complete performance of the Services, Stadium Manager shall pay Contractor a one-time flat fee of \$15,839.00 (the "Fee"). Contractor shall not be reimbursed for any expenses, costs, or other fees incurred by Contractor in the performance of the Services. Any mutually agreed upon costs to be reimbursed by Stadium Manager shall be approved in writing by Stadium Manager prior to being incurred by Contractor.
6. Payment Schedule. Contractor will invoice Stadium Manager upon completion of the Services provided by Contractor, subject to verification by Stadium Manager. Stadium Manager will pay Contractor within thirty (30) days of Stadium Manager's receipt of a valid invoice. Stadium Manager shall have no obligation to make payments for invoices received more than six (6) months after termination or expiration of the Term.
7. Termination. In addition to any other rights or remedies Stadium Manager may have, Stadium Manager may terminate this Agreement by written notice to Contractor if Contractor fails to perform any obligation under this Agreement and such failure continues un-remedied for a period of ten (10) days after receipt of written notice from Manager of the particular failure to perform.
8. Assignment and Subcontractors. Stadium Manager and Contractor bind themselves and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred by Contractor without the prior written approval of Stadium Manager. Contractor shall not hire subcontractors without written permission from Stadium Manager.
9. Independent Contractor. Contractor and all persons employed by Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of Stadium Manager. Contractor has full rights to manage its employees in their performance of Services under this Agreement. All liabilities that may arise as a result of Contractor's status as an employer shall be borne exclusively by Contractor. Contractor will not be entitled to any of the benefits which the Stadium Manager may make available to its employees, such as group insurance, profit-sharing or retirement benefits. Contractor will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to Contractor's performance of Services and receipt of fees under this Agreement. Because Contractor is an independent contractor, Stadium Manager will not withhold or make payments for social security; make unemployment insurance or disability insurance contributions; or obtain worker's compensation insurance on Contractor's behalf. Contractor is not authorized to bind Stadium Manager to any contracts or other obligations.
10. Confidentiality. All ideas, memoranda, specifications, plans, data, drawings, descriptions, documents, or other information developed or received by Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of Stadium Manager, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor shall be deemed confidential.
11. Intellectual Property. Contractor shall have no right to use the trademarks, symbols, trade names or other intellectual property of Stadium Manager or its respective affiliates. Contractor represents and warrants that the Services provided hereunder shall not violate or infringe any third party's intellectual property rights.
12. Ownership of Materials. All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, and other material developed, collected, prepared, or caused to be prepared under this Agreement shall be the property of Stadium Manager, but Contractor may retain and use copies thereof solely for the performance of the Services. Stadium Manager shall not be limited in any way or at any time in its use of said material.

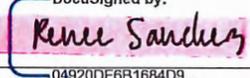
13. Indemnification. Contractor shall indemnify, defend and hold harmless Stadium Manager and its affiliates, and their respective officers, directors, managers, members, partners, sponsors, owners, and employees ("Indemnified Parties") from and against all losses, costs, suits, actions, claims, damages, amounts paid in settlement, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), resulting to, imposed upon, asserted against or incurred by any of them (including in any action between the parties) in connection with or arising out of (i) any breach by Contractor under this Agreement, (ii) any activity, inactivity, work or thing done or permitted by Contractor or its employees, agents or contractors or (iii) any injury or damage to any person or entity or to the property of any person or entity caused by any action or omission of Contractor or its employees, agents or contractors.
14. Insurance. During the Term of this Agreement, Contractor shall, at no cost to Stadium Manager, maintain (or cause to be maintained) the following insurance coverage with insurers having a "Best's" rating of A-VIII or better: (i) workers compensation insurance in compliance with applicable law and shall include a waiver of subrogation in favor of Stadium Manager and (ii) commercial general liability insurance, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations and contractual liability with a minimum amount of one million US Dollars (USD \$1,000,000.00) for each occurrence, two million US Dollars (USD \$2,000,000.00) aggregate and shall name Stadium Manager, Forty Niners Stadium Management Company LLC, Forty Niners SC Stadium Company LLC, the Santa Clara Stadium Authority, and the City of Santa Clara as additional insured and shall specifically state the coverage thereunder shall be deemed to be primary and non-contributory to any other insurance available. Contractor shall furnish Stadium Manager with a certificate of insurance evidencing such insurance coverage. Contractor shall also furnish Stadium Manager with a certificate of insurance evidencing such insurance coverage for all subcontractors engaged by Contractor for the performance of the Services under this Agreement.
15. Notices. All notices to Stadium Manager shall, unless otherwise requested in writing, be sent to Stadium Manager addressed as follows: Legal Affairs, 4949 Marie P DeBartolo Way, Santa Clara, CA 95054. If notice is sent via email, a signed, hard copy of the material shall also be mailed. The workday the email was sent shall control the date notice was deemed given.
16. Miscellaneous. This Agreement may be amended only with the written consent of both Parties. This Agreement represents the entire agreement between Stadium Manager and Contractor. In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect. Contractor agrees that waiver by Stadium Manager of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

IN WITNESS WHEREOF, the Parties have caused this agreement for the performance of services to be executed by their duly appointed representatives as of the Effective Date.

FORTY NINERS STADIUM MANAGEMENT COMPANY LLC

DocuSigned by:

CC8F2EFA5F32465...
By: _____
Name: Jim Mercurio
Title: Owner
Date: 2/21/2019

DANIEL LARRATT PLUMBING, INC.

DocuSigned by:

04920DF6B1684D9...
By: _____
Name: Renee Sanchez
Title: Estimator
Date: 2/21/2019



FORTY NINERS STADIUM MANAGEMENT COMPANY

October 30, 2018

Deanna Santana
City Manager
Santa Clara City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: SCSA Project Notification

Dear Deanna,

We are writing to inform you of the Premium Areas/Special Event Assets project that we have initiated in accordance to the SCSA Capital Expenditures approval on March 27, 2018.

We are seeking your approval and of our intent to execute a contract with the vendor listed in the detail.

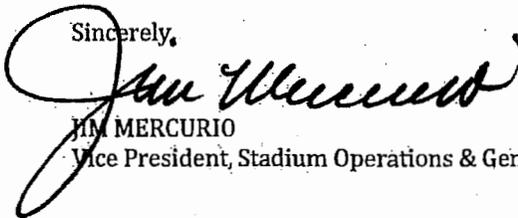
	APPROVED	CONTRACT AMOUNT
<ul style="list-style-type: none"> • Premium Areas/Special Event Assets Lyntal coating throughout the concourse. Floor restoration/terrazzo. Hardwood floor restoration in clubs. Coat service tunnel with epoxy coating and fill any cracks to protect against slips, trips and falls. Nex Systems will provide coating and labor on a large part of this project and the contract amount is \$495,000. 	\$1,454,250	\$495,000

Should you have any questions, I am available to discuss at your convenience

Approved: _____
Deanna Santana
Executive Director

Date: _____

Sincerely,


JM MERCURIO
Vice President, Stadium Operations & General Manager

- cc: Walter Rossmann, City of Santa Clara
 Catlin Ivanetich, City of Santa Clara
 Scott Sabatino, San Francisco 49ers CFO
 Hannah Gordon, San Francisco 49ers General Counsel
 Jihad Beauchman, San Francisco 49ers Deputy General Counsel
 Nelson Ferreira, San Francisco 49ers Director, Technical Operation



FORTY NINERS STADIUM MANAGEMENT COMPANY

TO: Santa Clara Stadium Authority Board
FROM: Forty Niners Stadium Management Company LLC
DATE: December 3, 2018
SUBJECT: Levi's® Stadium Service Contract Approval Request (NEx Systems)

Pursuant to Section 17.30.120 of the Stadium Authority Procurement Policy, please find the attached agreement for services being performed at Levi's® Stadium by Designers Surfaces LLC d/b/a NEx Systems for your approval.

NEx Systems has been engaged to polish terrazzo flooring and coat the concrete flooring in certain service areas within Levi's® Stadium, with a total cost of \$643,567.50. This amount is below the budgeted line item for this project, approved as part of the 2018 Authority Cap Ex: "Coat service tunnel with epoxy coatings and fill any cracks to protect against slips, trips and falls" - \$1,385,000.

NEx Systems was selected using a variety of criteria, including their stellar reputation in the industry, quality of service, and their competitive bid pricing.

As a result of the Levi's® Stadium schedule of events and the urgency of certain elements of the project, NEx Systems began work at the Stadium on August 6, 2018, with an expected completion date of January 31, 2019. No further services are being performed at Levi's® Stadium, pending approval of the final terms of the attached agreement.



Schedule 4

DESIGNERS SURFACES LLC
 235 FRANK WEST CIRCLE
 STOCKTON, CA 95206
 CONTRACTOR'S LIC# 998079

Date: September 6, 2018

INVOICE TO:

Levi's Stadium
 4900 Marie P. DeBartolo Way
 Santa Clara, California 95054

PROJECT LOCATION:

Levi's Stadium
 4900 Marie P. DeBartolo Way, Level 100
 Santa Clara, California 95054

SCOPE OF WORK: Initial Proposal for Installation of Semi-Rigid Joint Filler in 6,000 LF of Existing Concrete Joints in Level 100 Epoxy Installation areas as follows:

Base Scope: (Est. 6,000 Ln.Ft.)	
1. Clean and rout all existing joints	
2. Fill all joints with NEx Flex Semi-Rigid Joint Filler for Epoxy Flooring	
Base Cost:	\$ 40,000.00
Weekday T&M Labor:	\$ 160.00 Per Hr.
Weekend T&M Labor:	\$ 215.00 Per Hr.

This proposal does NOT include power. If GC is to provide power, NEx Systems is to have designated house power. The above price does NOT include mock-up. Job requires a minimum of \$ 5,000.00.

Conditions:

- NEx Systems' Term and Conditions is to be inserted into the Subcontract Agreement as an Exhibit before performing the work.
- NEx Systems is to have priority over all other trades, and no other trades shall interfere with application.
- NEx Systems will require a 10" x 10" staging area near the project area with full access to a nearby janitorial closet.
- General Contractor/Client is responsible for installing 480V three phase pig tail and 240 volt Single phase pigtail. Power source is to be supplies by General Contractor/Owner of the building.
- NEx Systems will require **one parking space** for more accessible access to the building (loading & unloading).
- Price is to inclusive of project being completed prior to walls being built.

Work shall commence on or about TBA and will be completed in approximately three weeks, subject to changes in the plan approved by the owner and events and conditions beyond our control. All material is guaranteed to be as specified above. All work shall be completed in a workmanlike manner, in accordance with standard industry practices and manufacturers' instructions. Any deviation or alteration from the above specifications that involves extra costs will be completed only upon executing a written

change order, and will require extra charges and time to complete, above and beyond this estimate.

Contractor shall carry General Liability Insurance and Workers Compensation Insurance for all employees. All work to be performed Monday through Friday. Weekend work is at overtime rates. Pricing is based on work done before framing begins. Edging after framing may incur additional man-hours. One-Time mobilizations set-up of \$ 2,500.00 per mobilization. Customer to provide water, trash disposal, and enough heat to ensure a floor temp of 65 degrees or higher. Work areas to be free of all debris or other encumbrances.

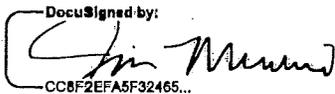
Additional Cost: If fills are required, it will be price after initial grinding. The amount of fills can only be determined after thin layer of glue in ground down. All grinding will be done dry with vacuums. All grinders and vacuums use 250v 50amp three phases power. The use of propone grinding will not be use buildings. For ground level buildings we will need to produce a moisture test before we begin. High moisture level will result in a change in the process and man hours related to the project.

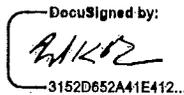
Additional Items:

- 1) Due to no fault of NEx Systems, additional costs will incur when return trips are required to complete our service(s). (Facility lock, denied access, installation delays, construction delays, not all areas are available on scheduled entry date, etc.).
- 2) Payment is Due Net 30 Days from completion.
- 3) All proposal prices are based on Monday through Friday service. Weekend service is an additional 25%.
- 4) Specific scheduling dates for service needed less than 2 weeks from our receipt of written approval of the proposal, an additional 25% will apply to price.

Please Provide and Attach If Required For Billing:

- Purchase Order #: _____
- Service Agreement: _____
- Subcontract Agreement: _____
- Change Order #: _____

DocuSigned by:

CC8F2EFA5F32465...

DocuSigned by:

3152D652A41E412...

Signature of Acceptance and Date

All quotes expire in 30 days

"A minimum cancellation fee of \$250 but not more than \$600 per incident applies if NEx Systems is not given at least a 48-hour notice to cancel or postpone a scheduled service. The cancellation fee also applies when NEX Systems is denied access to a facility more than once a year."

TERMS AND CONDITIONS/ ESTIMATE ASSUMPTIONS

1. **Quotation:** Valid for 30 days after submission date & does not include bonding costs.
2. **Quotation includes:** Standard insurance and/or participation in CCIP/OCIP if disclosed and does not take into account any special insurance requirements.
3. **Bid includes:** All labor, materials, and supervision to provide work according to construction documents available at date of estimate and excludes any construction or installation of cement or concrete products, other than those specifically identified in proposal. Bid reflects estimated material costs at time of submission.
4. **Estimate includes:** Standard labor rates for Cement Masons International Polishing Union.
5. **Estimate does not include:** Overtimes costs associated with performing scope of work.
6. **Timely Release of Payment:** Estimate takes into account timely release of progress payments (any invoice past 60 days will be submitted for full collection activity.)
7. **Retention:** Quotation assumes when NEx Systems work is substantially completed, 50% of retention will be released and the remainder will be retained until notice of completion is filed.
8. **Documents:** In the event of conflicting information between specification and plans, the specification will determine process and plans will determine work space. Any phasing requirements must be clearly identified in bid documents and included in proposal.
9. **Housekeeping:** Proposal is based on the floor being clean of all debris, materials, movable items, and other trade equipment/tools/materials prior to NEx Systems beginning work on floor. Failure to remove these items may result in an hourly standby charge per man hour and equivalent to current time rate plus equipment rental and if it requires NEx Systems to come back on another day will result in additional mobilization charge.
10. **Stationary Objects:** Bid includes Working around stationary objects in place at time of install.
11. **Mobilizations:** Includes 1 mobilization unless specifically listed as different. Each additional mobilization will be \$1,500 per truck with no trailer and \$2,500 per truck with trailer (excluding Bobcat mounted grinder). Actual work time begins when NEx Systems representatives arrive on site.
12. **Mockups:** Are available at an additional cost per mockup install.
13. **FF Testing:** Does not include testing (if required) to verify flatness and/or levelness of the floor, SCOF, or other testing. If Floor does not meet requirements or cannot/has not been verified, NEx Systems cannot guarantee that it has the capability of leveling the floor and the effected results there of.
14. **Concrete Pour:** NEx Systems will not be held responsible for flattening or leveling any concrete floor, low points in floor due to concrete pouring contractor, or any issue clearly not within the control of NEx Systems.
15. **Power:** Estimate assumes 480v, 220v power, and 110v power is on site within 50 feet of work area. The proposal includes standard move in of equipment on a hard surface that allows for standard castor traffic. Estimate does not include any hoisting of equipment.
16. **Parking:** Space must be available within a reasonable distance for parking of trailers, vehicles, and generators. Indoor overnight storage space for equipment should be provided.
17. **Warranty:** Estimate includes a standard 1 year warranty.
18. **Dust:** The concrete grinding process does involve actual grinding via diamond blades and as a result will create some dust. NEx Systems takes every measure possible to keep dust control in check by way of Heavy Duty HEPA Vacuum Systems. However, by the nature of the fine granular dust created, NEx Systems does not take responsibility for final cleaning costs to the space. NEx Systems does take responsibility to bag up and contain the majority of dust that is created and left on the floor.
19. **Subcontracting:** NEx Systems performs work and also on occasion subcontracts. Exclusively NEx Systems always manages any subcontracted work.
20. **Slip Testing:** If slip testing is required. Customer is responsible for all costs associated for such service. NEx Systems does not slip test in house. It is recommended to use 3rd party verification.
21. **Joint Checks:** NEx Systems reserves the right to request joint check agreements with its vendors.
22. **Fringe Benefits:** NEx Systems is signatory to the cement masons through some of our locations. Should a fringe benefit statement be necessary at any time. NEx Systems provides fringe benefit statements in the form of a "Declaration" followed by a copy of cleared checks for the months in question. Our union does not provide monthly statements to NEx Systems or Customers otherwise.
23. **Waiver of Subrogation:** Pricing not included in Bid Quote.
24. **Deposit:** To be negotiated prior to contract execution
25. **Payment to Subcontractors and Suppliers through joint checks:** NEx Systems expects suppliers to be paid in full for the progress payments within the month of billing. Subcontractors will be paid according to the terms of contract retention.
26. **Sloping, Leveling, Grouting, and Patching:** Nex Systems is not responsible for any Sloping, Leveling, Grouting, Patching unless noted in writing.
27. **Moving Joints, Non Moving Joints, Control Joints, Expansion Joints and or any type of joint filling be it on top of Cove base or flooring system:** NEx Systems does not include anything for any type of joint filler and or Caulking whatsoever unless noted and or asked in writing.

28. **Vapor Barrier, Moisture Mitigation, and Waterproofing:** NEx Systems does not assume every project has or needs a Vapor Barrier, Moisture Mitigation or Waterproofing System; therefore, not included in proposal unless noted in writing.
29. **Moisture Testing or any other testing:** (Unless noted)
30. **Protection of any kind:** NEx Systems does not include in proposal; protection of neither Walls, Ceilings, Windows, Equipment, and or Flooring Systems or any other kind of protection, unless asked for and or noted in writing.
31. **Major Cracking or Slab Repairs:** NEx Systems does not assume or includes Patching of Major Cracking and or repair of Concrete Slab/s and or in any other Flooring substrate that NEx Systems is asked for when installation of new flooring system.
32. **Removal and or Demolition:** NEx Systems does not include in proposal price for demolition of any existing flooring system/s and or self-leveling, underlayments, overlayments, glue, tile, vct, micro topping, feathered edge skim coats, coatings. Unless noted and asked in writing.
33. **Equipment Removal:** NEx Systems does not provide pricing for equipment removal and is not responsible for moving any type of equipment whether it be in place or in wheels.
34. **Door Thresholds, Cove Strips:** NEx Systems does not include Door Thresholds, Cove Strips, and or any other kind of strips unless noted
35. **Installation on Metal Surfaces:** Unless noted and asked for in writing
36. **Debris Box:** NEx Systems does include pricing for Debris Box in proposal.
37. **Safety Stripping, Parking Stripping, Line Stripping, Logos, Stenciling:** Unless noted and asked for in writing
38. **Holidays, Weekends:** Unless noted and asked for in writing
39. **Concrete Contour:** Finished Flooring System will be applied and will follow contour of Existing Substrate
40. **Trade Damage:** Once Install NEx Systems is not responsible for any other trade damaging new Flooring System.
41. **Floor Preparation:** NEx Systems will prep floor by means of Bead Blasting and or Diamond Grinding
42. **Metal Flashing or Flashing of any kind:** Unless noted and asked for in writing
43. **Caulking of any kind:** Unless noted and asked for in writing

From: Mercurio, Jim <jim.mercurio@49ers-smc.com>
Sent: Tuesday, March 12, 2019 5:01 PM
To: Angela Kraetsch
Cc: Compliance Manager; Deanna Santana; Walter Rossmann; Catlin Ivanetich; Brian Doyle; Rogan, Pat; nelson.ferreira@49ers-smc.com
Subject: Re: NEX Systems

Hi Angie:

The floor coating maintenance work that Designers Surfaces, LLC d/b/a NEX Systems performed was to seal the concrete floor in certain areas of Levi's® Stadium and to help prevent the concrete from cracking and spawling. This work, though specialized, is relatively straight forward in terms of identifying the scope of square footage.

The following process was used in the selection of NEX Systems:

Forty Niners Stadium Management Company LLC ("ManCo") contacted two known companies (NEX Systems and Jerry Thompson Painting) both of whom have done a fair amount of work at the stadium in the past. We contacted a third company (RP Coatings) that we understood could perform the services and receive three qualifying bids.

Pat Rogan, our Director of Engineering, walked the stadium with each vendor indicating and describing where the work was to take place. He included the amount of square feet and discussed other potential specifications needed to handle this sort of work (including event schedule and potentially doing the job during off hours) so as to avoid canceling booked events.

ManCo selected NEX Systems given the low bid price, the quality of their work, and their reputation for this sort of specialty maintenance work.

Further, we can confirm that this project was a prevailing wage project.

We appreciate your addressing this issue quickly so that they may be paid for the work they have performed to date and so that they can finalize scheduling the remaining work in a manner that doesn't impact the upcoming events scheduled at Levi's® Stadium at the end of March and in mid-April.

Please advise if there is anything else we can do to help expedite approval and payment for NEX Systems.

Thank you,

Jim

Sent from my iPhone

On Mar 11, 2019, at 5:50 PM, Angela Kraetsch <AKraetsch@santacruz.gov> wrote:

Hi Jim,

Could you please provide me with the bid package and explain to me the bid process for this project. We are particularly interested in the scope of the project, job specs presented to the bidders, and compliance with prevailing wage laws. Please provide responding documents no later than 5pm tomorrow, March 12th. This information is critical in order to complete the NEX Systems agenda report.

Thanks,
Angie

Angela Kraetsch | Director of Finance
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2342 | www.santacruz.gov | [image002.png](#) 
<image006.png>

9/17/19

2.B

POST AGENDA MATERIALS

NEX SYSTEMS

FORTY NINERS' STATE PREVAILING WAGE
VIOLATIONS

Santa Clara Stadium Authority

Introduction of an Ordinance to Amend
Sections 17.30.080, 17.30.090 and
17.30.120 modifying the Stadium
Authority Executive Director's Authority
to Execute Contracts



September 17, 2019

September 17, 2019

Item 2B

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VIA E-MAIL AND U.S. MAIL

September 17, 2019

Mayor Lisa Gillmor
Members of Santa Clara City Council
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mayor Gillmor and Members of the Santa Clara City Council:

This firm represents Forty Niners SC Stadium Company, LLC ("StadCo"), the tenant of Santa Clara Stadium Authority ("SCSA") in Levi's Stadium (the "Stadium"), and Forty Niners Stadium Management Company, LLC ("Stadium Manager"), which manages the Stadium pursuant to a contract with both StadCo and the Santa Clara Stadium Authority ("SCSA"). At its September 17, 2019 meeting, the Santa Clara City Council ("City Council") will consider a proposed ordinance that would eliminate the SCSA Executive Director's authority to procure services, materials and equipment for Levi's Stadium, an authority that she currently enjoys pursuant to Sections 17.30.080, 17.30.090 and 17.30.120 of Title 17 of the Santa Clara City Municipal Code.

This remarkable action is not the product of any dissatisfaction with the Executive Director's performance of her duties. To the contrary, the explicit target of the proposed ordinance is Stadium Manager, to which the Executive Director's procurement authority is delegated. The proposed ordinance would require all SCSA-related procurement to be approved by the Board itself – the equivalent of requiring the City Council to approve each and every item or service prior to purchase on behalf of the City of Santa Clara (the "City"). This would be an unmanageable process, and it would undermine the ability of Stadium Manager to perform its essential duties, hindering the proper management and operation of the Stadium, to the detriment of StadCo, SCSA, and the City itself.

We urge you not to adopt this proposed ordinance. It could create immediate dysfunction at the Stadium, and expose SCSA and the City to liability to StadCo and Stadium Manager.

The proposed ordinance is ill-conceived for a variety of reasons, not the least of which is that it will not have the intended legal effect. Stadium Manager's authority to procure goods and services on behalf of SCSA is contractually established by Section 2 of the First Amendment to the as-amended Stadium Management Agreement dated March 28, 2012 (the "Management Agreement"), adopted in 2012, which provides as follows:

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Mayor Lisa Gillmor
Members of Santa Clara City Council
September 17, 2019
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In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts with such providers on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("**Stadium Procurement Contracts**"), as and to the extent the Executive Director has authority to enter into such Stadium Procurement Contracts pursuant to Sections 17.30.010 through 17.30.180 of the Santa Clara City Code ("**SCCC**"), as approved on first reading by the Santa Clara City Council on November 13, 2012. Manager shall provide the Stadium Authority with information, including the contracting party and the contract amount, regarding all Stadium Procurement Contracts entered into with contract amounts greater than \$100,000 within thirty (30) days of entering into any such contract. The foregoing constitutes the Executive Director's delegation to the Stadium Manager, pursuant to Section 17.30.010(c) of the SCCC, of the authority granted to the Executive Director to enter into such Stadium Procurement Contracts. If the ordinance adopting Sections 17.30.010 through 17.30.180 of the SCCC approved on November 13, 2012 does not become effective by January 31, 2013, this Section 2 shall be of no further force or effect.

The Management Agreement may not be unilaterally changed by SCSA, any more than it could be unilaterally changed by StadCo or Stadium Manager. That is the essence of a contract – all of the parties to it are bound by its terms, unless and until they *all* agree to modify them. There is nothing in the Management Agreement that purports to give such unilateral authority to SCSA (much less, to the City).

Section 2 of the Management Agreement confers upon Stadium Manager the authority to procure supplies, materials, equipment and services coextensive with the authority conferred upon the Executive Director of SCSA pursuant to the Stadium Authority Procurement Policy set forth in the existing ordinance. At the time the First Amendment was adopted, that ordinance was pending before the City Council. But the fact that the parties described the scope of Stadium Manager's authority by reference to a particular ordinance in no way suggests that they

Mayor Lisa Gillmor
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intended that authority to be subject to unilateral amendment or revocation by the City, which is not a party to the contract.¹

In 2012, StadCo and SCSA agreed that procurement authority would be delegated to Stadium Manager, in order that the party actually managing and operating the Stadium would have the tools it needs to perform its job. The parties recognized that separating the procurement process from the management of the Stadium made no sense, would impair the ability of Stadium Manager to maintain the Stadium efficiently and consistent with the time constraints that the operation of such a facility imposes, and could lead to a dysfunctional dynamic, driven by political or bureaucratic considerations, to the detriment of the Stadium as a whole.

There are obvious and compelling reasons why the parties wanted to avoid those circumstances. Stadium Manager's function is to manage and operate the Stadium for the benefit of *both* StadCo and SCSA. Many of the goods and services that are essential to Stadium operations are owned by Stadium Manager itself: software licenses, supplies for a wide swath of Stadium services (janitorial, electrical plumbing, painting, refrigeration, and others), linen/laundry service, certain HR functions (like background checks for Stadium Manager employees, and systems used to recruit and train event employees), and internet service. Stadium Manager also procures life/safety services and goods for the Stadium, including certain medical equipment, and on-site medical services for large events.

The SCSA Board meets only twice per month, and has extended periods of unavailability during the Stadium's busiest periods – during the winter holiday period (which is both during the NFL season, and when SCSA hosts many of its catered non-NFL events), and during July and August (which is during the summer concert season). If SCSA Board must approve *all* procurement, then there will be no means by which Stadium Manager can procure goods that are necessary for Stadium operations, but which may not be known about months in advance.

Stadium Manager cannot relinquish its ability to continue to procure Stadium-related goods and services in a timely manner for the Stadium without jeopardizing the successful – and safe – operation of the Stadium for both SCSA and StadCo events. Eliminating Stadium Manger's ability to make procurement decisions will inevitably impair the operation of the Stadium. Just a few examples will illustrate the magnitude of the problem:

¹ Our point is not that SCSA (or the City) lacks the authority to modify the job description of the Executive Director, to assign aspects of her authority to another official, or to restore that authority to the Board itself. But the contractual delegation of procurement authority to Stadium Manager would remain intact.

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- How, for example, should Stadium Manager repair or replace the X-ray machine that it acquired for the Stadium, for use by StadCo and SCSA, without having to wait extended periods of time for SCSA Board to (hopefully) authorize that expense?
- The Stadium's emergency generators are critically important for public safety in the event of a power outage. They belong to SCSA. If Stadium Manager could not timely acquire supplies or services to keep them in working order, how can it ensure the safe operation of the Stadium?
- Broken windows, plumbing leaks, last-minute promoter requests, and other time-sensitive tasks that require the ability to acquire goods and services in real time arise regularly. How can these needs be attended to in a timely fashion? If there is a leak into one of the SCSA-owned clubs in July, will it take two months to authorize a repair?
- Stadium Manager owns (and repairs/replaces) the Teraplast, sweepers, tables, chairs, and garbage cans used for SCSA events. If more garbage cans are required for a large concert, how quickly will SCSA authorize that expense?

The practical and logistical difficulties of terminating Stadium Manager's authority to procure goods and services on behalf of SCSA are frankly endless. The sheer volume of transactions and contracts that the SCSA Board will be required to approve goes far beyond its capacity as a public governing body, and will cause inevitable damage, dysfunction, and liability.

And, of course, to the extent that Stadium Manager staff is required to prepare requests for approval, months in advance, for even the most insignificant purchases on SCSA's behalf, those staff expenses will be charged to SCSA. One could easily imagine that a purchase of \$100 of goods from the local retail outlet could cost hundreds, or thousands, of dollars of staff time seeking the Board's approval for that purchase.

Undermining Stadium Manager's ability to obtain goods and services timely and efficiently would constitute a contractual breach, and would seriously destabilize Stadium operations; it also makes no sense that SCSA would appoint *itself* as the procurement agent. SCSA and City have never managed or operated a 68,000-seat entertainment/sports venue, and they have never confronted the challenges presented by managing such a facility.² Indeed, it appears that the City has not been able to effectively discharge its traditional procurement

² The City does not even manage its own convention center, which is a far less complex operation than the Stadium.

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responsibilities, and there is considerable doubt that, even if it were theoretically possible for SCSA to procure its own goods, it could actually do so.

In July 2019, the City issued an RFQ seeking assistance with the process of reviewing and overhauling the City's procurement practices. That RFQ acknowledges the City's history of non-compliance with its own procurement standards:

Prior to July 2018, the procurement and contracting functions were decentralized with little or no centralized oversight. . . . There was no administrative or operations manual that included standard template documents for solicitations, vendor selection processes, ethics and conflict of interest, etc. Vendor outreach was primarily via e-mail and the City's internet site, resulting in limited exposure to the City's contracting opportunities. . . . With minimal staffing, Purchasing was a PO maintenance organization with the primary responsibility of dispatching purchase orders for goods and services to vendors.

A January 2019 report to the City Council reported that "maverick buying" – procurement without any contract or purchase order – was a widespread problem within City departments. One of Ms. Santana's priorities for 2018, and for this current year, is to overhaul the City's procurement practices, and to bring the City's various departments into compliance with applicable requirements.

The procurement process for the Stadium, by contrast, has been conducted in a manner that is tailored to the unique requirements of such a complex facility, and that has been overseen by SCSA's staff and Board. Each year, Stadium Manager prepares one-year and five-year plans, and presents them for SCSA Board approval. At the end of each year, capital expenditures are reviewed by KPMG, and are reflected in SCSA's audited financial statements. As part of the budgeting process each March, these expenditures are presented to the Board as well. In addition, each quarter, SCSA's Director of Finance makes a presentation to the SCSA Board on revenues and expenditures, including shared Stadium expenses and capital expenditures.

The Staff Report's discussion with respect to the proposed ordinance is both inaccurate and incomplete. It cites a single contract – with a vendor known as NEx Systems – that staff contends did not comply with prevailing wage and procurement requirements. Omitted from the report is the fact that Stadium Manager took active steps to rectify any departure from such requirements. For example, among other things, Stadium Manager tendered additional wages to address any shortfall relative to prevailing wage requirements. Similarly, the report falsely asserts that Stadium Manager has refused to comply with staff's demand for backup documentation for every contract ever entered into on behalf of SCSA during the operation of

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the Stadium (a dramatically broader request than the one described in the report). The truth is that Stadium Manager readily agreed to provide such documentation, provided only that SCSA comply with the Management Agreement's requirement that it bear the cost.

The Staff Report also neglects to mention the Stadium Manager's various proposals regarding transparency and accountability with respect to the procurement process. For example, Stadium Manager suggested enhanced monthly reporting and a reduction in signature authority from \$250,000 to \$100,000, to align with the City's general procurement practices. The proposed monthly reporting would include detail of all payments made on behalf of the SCSA by the Stadium Manager along with procurement documentation and agreements executed on behalf of the SCSA during the preceding month. Stadium Manager believes that such modifications would achieve staff's stated goals, without imposing onerous and unnecessary impediments and red tape for even the smallest purchases made on behalf of StadCo and SCSA. But City/SCSA staff have ignored those proposals, and have refused to meet with Stadium Manager's staff to discuss them.

To the extent that there has been any confusion or misunderstanding with respect to the Stadium Manager's procurement function, it is due in large measure to the fact that every major City and SCSA position involved with Stadium management has turned over at least once in the past four years (and some of them have turned over several times). Stadium Manager has done its best to work with new staff, and with new City Council members, as they have issued new interpretations of existing regulations (some of which conflict with prior interpretations), and adopted new policies (some of which conflict with longstanding practices previously approved or acknowledged by SCSA). At every step, Stadium Manager has fulfilled its contractual obligations, and sought to accommodate SCSA's demands.

For the past several years, SCSA and the City have been casting about for a pretext for terminating the Management Agreement entirely. But the Management Agreement does not provide for such a unilateral termination by reason of any existing or foreseeable future circumstances. And so the decision has apparently now been made to hamstring the Stadium Manager's ability to do its job, even though the impact on Stadium operations will be dire.

Neither SCSA nor the City has the authority to "revoke" the Stadium Manager's delegated procurement authority, nor may the City Council accomplish that goal indirectly, as it is now proposing to do. This strategy is being pursued in obvious bad faith, and in disregard of SCSA's contractual obligations. It will also, in our view, potentially expose the City to liability for Stadium obligations. By inserting itself into the contractual relationship between SCSA, StadCo, and Stadium Manager – with the predictable result that Stadium operations and maintenance will suffer – the City will destabilize the legal structure put in place specifically to shield the City's treasury, and the City's taxpayers, from incurring responsibility for the Stadium's obligations. The City, in short, will be impairing the operations of the Stadium and, at the same time, undermining the wall that has kept the City's finances separate from those of the Stadium.

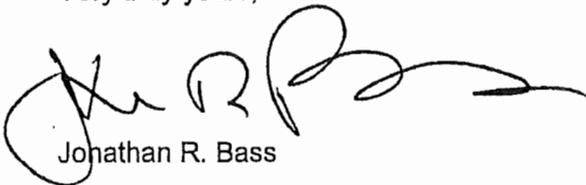
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With all that in mind, the reasonable course would be for the Stadium Manager, SCSA, and the City to continue to work together, in order to ensure that the public procurement function is performed in accordance with applicable laws and policies. There is always room for improvement in any complex system, and we would welcome the good faith contribution of Ms. Santana and Mr. Doyle. The existing system – in which Stadium Manager exercises the Stadium procurement function, with appropriate oversight by the SCSA Board and staff – is the sensible one for the Stadium. Indeed, it is the *only* feasible one. If there are opportunities for enhancing that system, the parties should work together to do so. But they should work together in compliance with the existing contractual structure, and in a manner that does not deprive the City of the financial protection that depends on the City's maintaining a hands-off stance vis-à-vis the management and operation of the Stadium.

It would not be an improvement to sever the link between Stadium operations and maintenance, on the one hand, and procurement, on the other. To the contrary, that would wreck the system. We hope that the City Council (and the SCSA Board) will direct Ms. Santana and Mr. Doyle to work cooperatively with Stadium Manager with respect to its procurement practices.

Very truly yours,



Jonathan R. Bass

JRB:cxh

cc: Deanna Santana
Brian Doyle, Esq.
Hannah Gordon, Esq.
Jihad Beauchman, Esq.