

Sent via Certified Mail, Return Receipt Requested
and Email al.guido@49ers.com



March 21, 2019

Al Guido, President
San Francisco Forty Niners
4949 Marie P. DeBartolo Way
Santa Clara, CA 95054

NOTICE OF BREACH
(MANAGEMENT AGREEMENT)
March 21, 2019

Dear Mr. Guido:

PLEASE TAKE NOTICE that Forty Niners Stadium Management Company LLC (Stadium Manager) is in breach of its obligations under Stadium Management Agreement, by and among Santa Clara Stadium Authority (Stadium Authority), Stadium Manager, and Forty Niners SC Stadium Company LLC, dated March 28, 2012 and subsequently amended (Management Agreement). This letter and notice serves as Stadium Authority's Notice of Breach under Section 11.3 of the Management Agreement.

Under the Section 2.1 of the First Amendment of the Management Agreement, dated November 13, 2012 (First Amendment), Stadium Manager is obligated to comply with contract procurement terms and related laws, as follows:

Stadium Procurement Contracts. 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.

Accordingly, Stadium Manager is obligated to comply with Section 17.30.120 of the Santa Clara City Code (City Code), Service contracts – Signature authority:

The Executive Director shall have the authority to execute contracts with third parties for services provided to the Stadium Authority, which shall be exempt from the competitive process, as follows:

(a) 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;

(b) The Executive Director is authorized to delegate all or a portion of the authority to execute such service contracts to specified Stadium Authority employees at her/his discretion. Such delegation of authority shall be made in writing;

(c) Such service contracts shall be generally consistent with forms of contracts approved by the Stadium Authority Counsel's office or shall be subject to the final review and approval of the Stadium Authority Counsel's office for form and content;

(d) The maximum amount of the value of the service contracts which the Executive Director or designee is authorized to execute shall be adjusted as needed by resolution of the Stadium Authority Board, with amounts rounded to the nearest five thousand dollar (\$5,000.00) increment;

(e) Notwithstanding anything to the contrary, solicitations for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

In exercising its authority under Section 2.1, Stadium Manager is required to comply with all applicable legal requirements, including but not limited to California Prevailing Wage statutes (See California Labor Code Sections 1720 and 1771) and regulations of the California Department of Industrial Relations.

Stadium Authority has previously raised questions and concerns regarding Stadium Manager's compliance with the contract procurement obligations. These concerns have included, but are not limited to, the December 13, 2018 Notice to Provide Management Correction Action that Stadium Authority served on Stadium Manager. Despite these contractual obligations and Stadium Authority's efforts to confirm Stadium Manager's compliance, it appears that Stadium Manager is in breach of its obligations.

Just today, on March 21, 2019, Jim Mercurio of Stadium Manager and Deanna Santana of Stadium Authority, in addition to other Stadium Manager and Stadium Authority staff, participated in a telephone conference regarding the Agreement for the Performance of Services by and between Stadium Manager and Designer Surfaces, LLC dba NEX Systems Surfaces, dated August 1, 2018, (NEX Agreement), that Stadium Manager procured on behalf of the Stadium Authority. It became very apparent on that call that Stadium Manager has substantially failed to comply with the California Prevailing Wage Law with respect to its issuance of the NEX Agreement, and that such contract is subject to being declared void under the provisions of 17.30.150 of the City Code. Specifically, Stadium Manager could not confirm that it complied with the California Prevailing Wage Law, let alone attempted to do so. In addition, Stadium Manager failed to present this NEX Agreement to Stadium Authority for Board approval prior to issuance, as required by City of Santa Clara Code.

Therefore, the Stadium Authority hereby notifies Stadium Manager of Breach of the Management Agreement.

Stadium Manager must cure the foregoing breach, at Stadium Manager's own costs and expense, by providing documentation to Stadium Authority that the NEX Agreement is in compliance with all applicable legal requirements, specifically including but not limited to California Prevailing Wage Law. If Stadium Manager fails to cure this breach within Thirty (30) Days of the date of this Notice, then such breach will be an Event of Default under Article 11 of the Management Agreement. This matter will be before the Stadium Authority Board on April 30, 2019, as stated by the Executive Director.

Al Guido, President, San Francisco Forty Niners

RE: Notice of Breach (Management Agreement)

March 21, 2019

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Stadium Authority reserves all rights, including but not limited to actions to enforce the Management Agreement.

Sincerely,



Brian Doyle

Stadium Authority Counsel

cc: Hannah Gordon, Director of Legal Affairs, San Francisco Forty Niners
Stadium Authority Executive Director
Santa Clara Stadium Authority Board

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