

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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Jonathan R. Bass
D 415.772.5726
jbass@coblentzlaw.com

March 26, 2019

Brian Doyle
Stadium Authority Counsel
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Notice of Breach (Management Agreement)

Dear Brian:

As you know, this firm is counsel to Stadium Management Company LLC ("ManCo"). Its president, Al Guido, has asked us to respond to your letter of March 21, 2019.

First, I want to make clear that ManCo has every intention of continuing to perform its obligations under the Management Agreement. In the event that there was an inadvertent failure to ensure strict compliance with the relevant procurement processes with respect to the NEX Agreement – and we do not believe that there was – ManCo is committed to working closely and collaboratively with the responsible City officials, in order to ensure compliance in the future. In the same spirit, I hope that we can rely on those same City officials to work with us toward that goal. Please be assured that the appropriate ManCo official will shortly be reaching out to an appropriate Stadium Authority official to discuss how best to avoid any misunderstandings in the future, and to make sure that we are privy to the Stadium Authority's understanding of its obligations under all relevant State and local laws and regulations regarding procurement and contracting.

Second, because your March 21 letter does not appear to us to satisfy the notice requirements of Section 11.3 of the Management Agreement, I want to ensure that we are working together productively to identify and solve any problems, rather than expending resources on legal maneuvers.¹ We are committed to working cooperatively to avoid

¹ I am aware that, at the March 19, 2019, meeting of the Stadium Authority Board, in the course of a discussion of the Stadium Authority's legal expenditures, you indicated that the spending had been higher than expected because the Forty Niners were in the habit of suing the Stadium Authority. If that is the Stadium Authority's true perspective, then we should be redoubling our efforts to reestablish the parties' open, cooperative, and mutually satisfactory relationship. It is, of course, not our view that the Forty Niners were responsible for initiating any litigation. The commencement of the Stadium rent arbitration was directed by the Stadium Authority Board.

Brian Doyle
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unnecessary disputes in the future. It has never been the view of ManCo or StadCo that litigation was a good way to address any of the parties' business issues.

Section 11.3 requires that a notice of breach be promptly given, and that it specify in detail the act or omission alleged to constitute a breach. It does not appear to us that your Notice satisfies either requirement. Our aim, however, is not to quibble over technicalities, and we hope that yours isn't either. As noted above, we would like to solve whatever problems the Stadium Authority believes exist. The only means to that end is cooperation, not confrontation.

Toward that end, your Notice states that ManCo must cure the alleged breach "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." But an absence of documentation regarding the provisions of the NEX Agreement is not a breach of the Management Agreement, and so providing such documentation would not be a cure. Rather, you seem to be saying that you do not know whether there has been a breach or not, and that you would like us to provide you with documentation to help you analyze the issue. Let me suggest that we have that discussion, and engage in that analysis, without the counterproductive and inflammatory threats of a declaration of Events of Default. I am confident that our clients will be able to identify actual problems, and real solutions, much more efficiently if they communicate in a non-adversarial spirit.

If, on the other hand, your preference is to address this matter in a legal arena, then I would be happy to discuss with you whether the acts and omissions you have alluded to in your letter could actually constitute a breach of the Management Agreement, and, if so, what sort of "cure" would be acceptable to your client. For example, if NEX – contrary to our understanding – in fact failed to comply with Prevailing Wage requirements, there could be several ways to address it, depending on what the Stadium Authority's real concerns are. We could seek to have NEX compensate its employees for any shortfall, or we could replenish the capital expenditures account, so as to eliminate the use of public funds on that project. Obviously, either solution – or any other approach – would require your confirmation that it would resolve this matter.

With respect to the matter now pending in the Santa Clara County Superior Court, ManCo and Forty Niners Stadium Company LLC ("StadCo") did initiate that matter. They did so because the Stadium Authority had signaled an intention to attempt to terminate the Management Agreement without any lawful cause, and we believed that a judicial declaration was appropriate. When the threat of termination was withdrawn, we dismissed our complaint. The Stadium Authority is proceeding ahead with its cross-complaint.

Coblentz
Patch Duffy
& Bass LLP

Brian Doyle
March 26, 2019
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I look forward to discussing this matter with you.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JRB' with a stylized flourish.

Jonathan R. Bass

JRB

cc: Al Guido

March 28, 2019

Via Email and U.S. Mail
Jbass@coblenzlaw.com



Coblentz Patch Duffy & Bass LLP
Attn: Jonathan R. Bass, Esq.
One Montgomery Street, Suite 3000
San Francisco, CA 94104-5500

Re: March 21, 2019 Notice of Breach (Management Agreement)

Dear Mr. Bass:

I am writing in response to your March 26, 2019 letter regarding Stadium Authority's March 21, 2019 Notice of Breach to the Forty Niners' Stadium Management Company, LLC (ManCo) regarding the NEX Systems Agreement.

Stadium Authority's Notice of Breach properly raises ManCo's breach of its Management Agreement obligations under Section 2.1 of the First Amendment. It is undisputed that ManCo failed to present the NEX Systems Agreement to the Stadium Authority for Board approval prior to its issuance, as required by Section 17.30.120 of the City Code. Your March 26 letter does not reference that omission by ManCo. Compliance with that obligation by ManCo could have mitigated this issue because the Executive Director would have asked to confirm that ManCo was properly procuring contracts as the Stadium Authority's agent. Of course, that first breach is now past. But ManCo's comments during the March 21 conference call made it clear that ManCo could not confirm that its procurement of the NEX Systems Agreement complied with the California Prevailing Wage Law. Stadium Authority immediately served its Notice of Breach of both breaches, thus making it timely.

In your March 26 letter, you do not confirm that ManCo has complied with the California Labor Code and Prevailing Wage Regulations. Rather, you attempt to rationalize ManCo's breach as the result of ManCo's failure to understand Stadium Authority's "real concerns."

Stadium Authority's real concerns are its duty to comply with state labor law. ManCo serves as the manager of a public agency, and in that role, as its purchasing agent. As such, ManCo is obligated to understand and take a professional, proactive role in assuring that all of Stadium Authority's contracts are procured in compliance with the applicable legal requirements. This obligation is stated clearly in the First Amendment, and is vital to protect the Stadium Authority from liability for procurements in violation of the laws applicable to California public agencies. ManCo, its in-house counsel and your office should have done due diligence when ManCo took on the purchasing role. Accordingly, ManCo should already know the laws and regulations applicable to public agency procurements, and be able to demonstrate that knowledge and compliance to the public agency that employs it.

COBLENTZ PATCH DUFFY & BASS LLP

ATTN: JONATHAN R. BASS, ESQ.

RE: March 21, 2019 Notice of Breach (Management Agreement)

March 28, 2019

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Your letter offers two "ways to address" the breach that you refuse to admit has occurred. Each of these "ways" demonstrates a lack of understanding of prevailing wage regulations. One "way," seeking "to have NEX compensate its employees for any shortfall" might be a partial cure (while at the same time admitting that there has been a breach). The other "way," to "replenish the capital expenditure account," appears to be an attempt to have the work deemed not subject to the law rather than a solution for compliance with it. Although we do not see this second option as a viable way to cure the breach, we would consider any proposal you might offer if you provide actual legal authority for it. We would also require that the Department of Industrial Relations concur with your legal conclusion.

In conclusion, the Stadium Authority would prefer that ManCo cure this breach and resolve this issue without litigation. Indeed, ManCo has already caused enormous expenditure in time and money in resisting the Stadium Authority's efforts to obtain its own financial records. If ManCo had actually engaged in a cooperative effort to provide the financial records that it has been withholding from the Stadium Authority, we might not now be in this unenviable position. Nevertheless, in a spirit of cooperation and without waiving any of Stadium Authority's rights to demand a cure of the apparent breach, outside counsel and I are amenable to meeting with you to discuss ManCo's plans to bring its performance into compliance with the Management Agreement.

Stadium Authority reserves all rights, and this letter does not waive any claims.

Very truly yours,



Brian Doyle
Stadium Authority Counsel

BD:cee

I:\STADIUM AUTHORITY\Letter from SCSA Gen Counsel re Notice of Breach 03-28-19.docx

cc: Stadium Authority Board
Deanna J. Santana, Executive Director
Mohammad Walizadeh, Esq.
Al Guido, San Francisco Forty Niners President

Jonathan R. Bass
D 415.772.5726
jbass@coblenzlaw.com

April 24, 2019

Brian Doyle
Interim Stadium Counsel
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Notice of Breach (Management Agreement)

Dear Brian:

I wanted to follow up on – and supplement – my initial response letter to you of March 26, and our meeting on April 4 with my client's in-house attorney, Jihad Beauchman, and your outside counsel, Mohamad Walizadeh. Jihad and I, with the help of Robert Fried, of the firm of Atkinson, Andelson, Loya, Ruud & Romo, who is an expert in the field of public contracting and prevailing wage regulations, have been working diligently to address any problems with respect to the NEx Systems work referenced in your March 21 letter.

We believe that we have identified the most reasonable approach, and want to keep you and Mohammad current on the solutions we have identified. If you have any issues with our approach, or wish to have further information, please let me know as soon as possible.

Your letter identifies two issues, which call for different solutions.

First, under Section 2.1 of the First Amendment to the Management Agreement, information regarding Stadium Procurement Contracts entered into on behalf of the Stadium Authority in excess of \$100,000 is to be provided to the Executive Director within 30 days.¹

¹ Your letter references as well the \$250,000 limit on the Executive Director's authority to enter into contracts, pursuant to Section 17.30.010 et seq. of the Santa Clara City Code, (and the fact that her delegation of authority to ManCo is therefore subject to that same limitation). This does not present a separate and distinct alleged breach of the Management Agreement. Rather, it suggests that there has been no breach at all with respect to the NEx Systems work. If that agreement exceeded the Executive Director's delegated authority, then it is not enforceable against the Stadium Authority. Indeed, it is not a contract at all. See *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228 (Where "the contract is absolutely void as being in excess of the agency's power, the contractor acts at his peril, and he cannot recover payment (footnote continued)

Brian Doyle
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Although no contract was executed with NEx Systems, we have decided that the simplest way to address the Stadium Authority's concern in this instance is to have a written contract be executed between NEx Systems and the Stadium Manager on behalf of StadCo, rather than on behalf of the Stadium Authority, thereby eliminating any delegated authority issue. Further, we will replenish the Stadium Authority CapEx account for any funds already paid out to NEx Systems on behalf of the Stadium Authority.

The second issue raised by your letter relates to State prevailing wage requirements. We do not intend to rely solely on the classification of the NEx Systems agreement as one with the Stadium Manager on behalf of StadCo to resolve this issue. Although the elimination of the Stadium Authority as a contracting party, and the absence of any public funding, should alleviate the concern that the Stadium Authority has been made a party to a contract subject to prevailing wage requirements, we intend to treat the work as subject to those requirements. As noted above, we are working with NEx Systems, under the guidance of Mr. Fried, to ensure that the work is compliant with the prevailing wage rules, to the same extent that it would need to be if the work were being done under the auspices of the Stadium Authority. As you know, those rules address not just the rate of pay to employees, but such matters as apprentice programs. We intend to address all of those requirements, and register the project with the DIR prior to the initiation of any further work at Levi's® Stadium. Given the nature of the requirements, strict and total compliance with the prevailing wage rules cannot be finally determined until the work is completed, but we will keep you informed.

As noted above, if you have a concern with any of our plans for addressing the issues presented by your letter, please let me know.

for the work performed."") In other words, ManCo cannot entered into a contract on behalf of the Stadium Authority in excess of \$250,000, because no such contract can have been formed.

Coblentz
Patch Duffy
& Bass LLP

Brian Doyle
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Thank you very much.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Jonathan R. Bass', written over a horizontal line.

Jonathan R. Bass

JRB

cc: Jihad F. Beauchman
Robert Fried
Hannah Gordon
Mohammad Walizadeh