



## Agenda Report

22-1739

Agenda Date: 1/11/2022

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Report from the Stadium Authority Regarding Stadium Manager's Request to Execute Agreements with R. Brothers Painting Inc. for Rust Prevention Mitigation CapEx Project; Bear Electrical Solutions, Inc. for Gold Lot 4 and 5 Lighting CapEx Project and Approve Related Budget Amendment; and Ample Electric, Inc. for Mechanical and Electrical Closet Lighting CapEx Project; and Approve Budget Amendment Related to Stadium Insulation CapEx Project

#### **BOARD PILLAR**

Ensure Compliance with Measure J and Manage Levi's Stadium

#### **BACKGROUND**

On October 8, 2019, the Stadium Authority Board (Board) approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval. As result of Ordinance No. 2005, the Stadium Manager is also required to request Board approval before entering into agreements on behalf of the Stadium Authority. As of the effective date of the Ordinance (November 8, 2019), all Stadium Authority agreements for services, supplies, materials, and equipment require the approval of the Stadium Authority Board.

As the Stadium Manager, Forty Niners Stadium Management Company, LLC is responsible for maintaining "the Stadium in the Required Condition and operate the Stadium as a quality NFL and multi-purpose public sports, public assembly, exhibit and entertainment facility" as required by the Management Agreement between the Stadium Authority and ManCo.

The Stadium Manager is requesting approval for the following:

#### **Rust Prevention Mitigation CapEx Project**

1. Award a one-time agreement to R. Brothers Painting Inc., in the amount of \$17,223 to prepare and paint the existing steel structure along the 300 level concourse of Levi's Stadium;
2. Authorize Stadium Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project; and
3. Authorize Stadium Manager to execute change orders up to approximately 10% of the contract cost, or \$1,722, for a total not to exceed amount of \$18,945.

The Stadium Authority FY 2021/22 CapEx Budget includes \$94,500 for the Rust Prevention Mitigation line item.

#### **Mechanical and Electrical Closet Lighting CapEx Project**

1. Award a one-time agreement to Ample Electrical, Inc. in the amount of \$101,780 for replacement of existing light fixtures in the Levi's Stadium Electrical Rooms and Telecom Rooms with new LED light fixtures that will provide high efficiency, low maintenance light fixtures with a long-term lifecycle;
2. Authorize Stadium Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project; and
3. Authorize Stadium Manager to execute change orders up to 10% of the contract cost, or \$10,178, for a total not to exceed amount of \$111,958.

The Stadium Authority FY 2021/22 CapEx Budget includes \$157,500 for the Mechanical and Electrical Closet Lighting line item. The Stadium Manager stated in their Recommendation for Award that some of the 260 anticipated lighting fixtures would be located in Tenant Exclusive Areas, and pursuant to the Stadium Lease, StadCo as the Tenant would pay for those fixtures and the Stadium Authority would be charged for the remainder. The costs of the parties will be allocated based on the number of fixtures, which is anticipated to cost StadCo approximately \$19,573 ( $\$101,780 \times 50/260$  lighting fixtures) and Stadium Authority approximately \$82,207 ( $\$101,780 \times 210/260$  lighting fixtures).

#### Gold Lot 4 and 5 Lighting CapEx Project

1. Award a one-time agreement to Bear Electrical Solutions, Inc., in the amount of \$59,145 for removal and disposal of existing wall mounted luminaire fixtures, and furnishing and installation of new wall mounted luminaires at Levi's Stadium;
2. Authorize Stadium Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project; and
3. Authorize Stadium Manager to execute change orders up to approximately 10% of the contract cost, or \$5,914, for a total not to exceed amount of \$65,059.

The Stadium Authority FY 2021/22 CapEx Budget includes \$52,500 for the Gold Lot 4 and 5 Lighting line item. A budget amendment would be required to approve this request.

#### Budget Amendment Related to Stadium Insulation CapEx Project

1. Approve a budget amendment to increase the budget amount for the Stadium Insulation Project by \$360,000 in the FY 2021/22 CapEx Budget.

The Stadium Authority FY 2021/22 CapEx Budget includes \$157,500 for the Stadium Insulation line item. If approved, the Stadium Manager's request would increase this line item to \$517,500.

### **DISCUSSION**

Staff reviewed the Recommendations for Award, Recommendation for Budget Augmentation, supporting procurement documents, and their respective agreements with R. Brothers Painting Inc., Ample Electrical, Inc., and Bear Electrical Solutions, Inc. that were submitted (these documents are attached to corresponding report #21-1702) and exchanged questions with the Stadium Manager to get more clarification on various aspects of the requests.

The Stadium Manager's responses are attached to the corresponding report #21-1702. The following comments are to advise the Board of noteworthy items that it should be aware of while considering

the requests:

#### Rust Prevention Mitigation CapEx Project

The Stadium Authority had questions about the difference in the bid amount vs. budgeted CapEx amount; whether the project would be multi-phased; the location of the work; why the Stadium Manager did not use two existing agreements on-call electrical repairs and maintenance for this scope of work; and why the project was bid out as a construction project (due its low dollar amount).

The Stadium Manager responded to staff's questions and explained that it was a multi-phased project, and they only bid out a portion of it as a pilot project so that they could test the paint application before spending a large amount of money on a larger painting contract. Due to the Stadium Manager's explanation, it is anticipated that there will be subsequent request(s) for Board approval to award agreement(s) related to this project. The Stadium Manager has existing purchase orders with Sherwin-Williams and Kelly-Moore for paint supplies that were approved by the Board on September 28, 2021 but decided not to use them for this project.

#### Mechanical and Electrical Closet Lighting CapEx Project

The Stadium Authority had questions about the difference in the bid amount vs. budgeted CapEx amount; whether the project would be multi-phased; the location of the work; and why the Stadium Manager did not use two existing agreements on-call electrical repairs and maintenance for this scope of work.

The Stadium Manager provided responses to staff's questions which confirmed the project has reduced in scope, and as result, the requested agreement will only cover the installation of lighting in the Electrical Rooms. However, based on the Stadium Manager's allocation estimate of StadCo's reimbursement of lighting in Tenant Exclusive Areas, the Electrical Rooms will utilize 52% of the budgeted cost that was originally budgeted for both Mechanical and Electrical Rooms. The Stadium Manager explained that construction costs have gone up and the Mechanical Rooms will be handled as a later project.

The anticipated cost of installing lighting in the Mechanical Rooms is unknown as that scope of work was not included in the Stadium Manager's RFB. As result, it is unclear whether the total cost for this collective project will exceed the budgeted amount in the FY 2021/22 CapEx Budget. A future budget amendment may be necessary if/when lighting in the Mechanical Rooms proceeds.

#### Gold Lot 4 and 5 Lighting CapEx Project

The Stadium Authority had questions about the project's scope of work and whether the base bid fit within the existing CapEx project description; why the Stadium Manager did not use two existing agreements on-call electrical repairs and maintenance for this scope of work; and whether the Stadium Manager planned on implementing a new RFB for the remaining scope of the project (Gold Lot 4 and 5).

As outlined in staff's questions, the base bid's scope of work is located in the loading dock and does not appear to fit within the existing Gold Lot 4 and 5 Lighting CapEx project description:

*"Install LED lighting in Gold 4 and Gold 5 parking lots. The current light plan is underpowered and is not sufficient given the work environment during stadium event load in/out. This lighting improves safety conditions for stadium personnel and provides energy cost savings with more*

*efficient fixtures”.*

The Stadium Manager included the Gold Lot 4 and 5 lighting as an additive alternative option in the RFB but did not issue a Notice of Intended Award that included that scope of work. As part of the RFB process, the Stadium Manager received bids for the additive alternative options for the Gold Lot 4 and 5 lighting that ranged from \$44,268 to \$103,538 excluding additional mobilization and contract processing fees. If the Stadium Manager went with the lowest bidder for the additive alternative option for the Gold Lot 4 and 5 work, the project would have been within the budgeted amount.

The Stadium Manager disagreed with staff's reading of the CapEx project description and responded that the loading dock was referred to in the “stadium event load in/out” section of the description and was therefore included in the current project scope. However, the Stadium Manager stated that if staff recommended a budget amendment to expand the Gold Lot 4 and 5 Lighting project scope in the CapEx Budget that it be done at the same time as the approval of the agreement.

Staff continues to interpret the existing project description as one that doesn't cover the loading dock area and recommends a budget amendment to update the title of the Gold Lot 4 and 5 Lighting CapEx project to “Loading Dock Lighting” CapEx project; update the project description accordingly to include the loading dock area; and to increase the budget for the CapEx line item by \$12,559 to the requested amount of \$65,059. The Stadium Manager stated that it anticipates a future solicitation for the Gold Lot 4 and 4 project in the next fiscal year so it will likely be submitted as a proposed FY 2022/23 CapEx project for the Board's consideration.

Aside from the comments provided above, staff recommends that the Stadium Manager's request for delegated authority to execute any and all documents associated with, and necessary for the award, completion, and acceptance of the Rust Prevention Mitigation, Mechanical and Electrical Closet Lighting, and Gold Lot 4 and 5 Lighting (i.e., Loading Dock Lighting) CapEx projects; and change orders up to approximately 10% of the contract costs be delegated instead to the Executive Director.

Section 2.1 in the First Amendment to the Management Agreement states that the Stadium Manager only has the ability to enter into contracts with providers to the extent it has authority to enter into such Stadium Procurement contracts pursuant to the Santa Authority Procurement Policy. Currently, the Executive Director has no procurement delegated authority under the Stadium Authority Procurement Policy. As such, if the Board approves staff's recommendation to provide the Executive Director with such authority to execute any and all documents associated with, and necessary for the award, completion, and acceptance of the project; and change orders up to approximately 10% of the contract cost, the Stadium Manager would not have the same authority to do so. This approach accomplishes the expediency that the Stadium Manager seeks and is compliant with the First Amendment to the Management Agreement.

The Stadium Authority will require full supporting documentation including compliance with prevailing wage laws, if applicable, before releasing public funds upon completion of work. This requirement is consistent with the Stadium Authority Board's March 27, 2019 direction to staff to stop payment of any additional invoices for services unless there is substantial documentation of services rendered which must also be in compliance with State law and City Code.

#### Budget Amendment Related to Stadium Insulation CapEx Project

The Stadium Manager's last request was for a budget amendment for the Stadium Insulation CapEx

project, which is currently budgeted for \$157,500. The Stadium Manager explained that the project scope did not change; however, the difference in the budget amount and bid amount was due to the complexity of the access to the work site, the number of labor hours determined by the recommended contractor, and increases to construction costs in recent months. While the later reason could not have been anticipated, the access and number of labor hours should have been accounted for in the engineer's estimate. When possible, to ensure accurate budgets, it is important to develop capital improvement project budgets off of an engineer's estimate of a project's cost. In advance of its submittal of the CapEx portion for the Stadium Authority FY 2022/23 Budget, it is recommended that the Stadium Manager utilize engineering estimates to prepare their proposed budget for Stadium Manager CapEx projects.

As demonstrated by the pictures that the Stadium Manager provided in its Recommendation memo, the area does require work. It is unclear why the Stadium Manager is requesting the budget amendment now without a bid amount to base its request on. However, since staff has already reviewed the request and recommend the requested budget amendment it has been included as part of this report. The Stadium Manager had determined that the lowest bidder's proposal conflicted with the RFB terms, and that both bids were non-responsive. However, the Stadium Manager noted that they would want the work to begin in February so staff anticipates the Stadium Manager conducting another RFB process and returning to the Board for approval of the respective agreement in the near future.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

The Stadium Authority FY 2021/22 CapEx Budget includes \$94,500 for the Rust Prevention Mitigation line item. There are sufficient funds to cover the total cost of the agreement (\$17,223) and the 10% contingency (\$1,722) that the Stadium Manager is requesting (\$18,945). The Stadium Manager said this work is only for a pilot project and will be expanded to other areas of the stadium in future solicitations. The remaining funds may be used for that pending scope of work if the Stadium Manager were to submit a subsequent request in time for Board approval before the end of FY 2021/22.

The Stadium Authority FY 2021/22 CapEx Budget includes \$157,500 for the Mechanical and Electrical Closet Lighting line item. There are sufficient funds to cover the total cost of the agreement (\$101,780) and the 10% contingency (\$10,178) that the Stadium Manager is requesting (\$111,958). As noted above, the Stadium Manager said this work is only for the Electrical Rooms and the Mechanical Rooms will be handled as a later project in FY 2022/23. The final costs for the project will be divided between the Stadium Authority and StadCo based on the location of lighting fixtures. It is anticipated that the Stadium Authority's portion will cost approximately \$82,207 based on the number of lighting fixtures that need to be replaced in non-Tenant Exclusive Areas of the area of work. A budget augmentation will may be necessary for the lighting in the Mechanical Rooms when that project proceeds.

The Stadium Authority FY 2021/22 CapEx Budget includes \$52,500 for the Gold Lot 4 and 5 Lighting

line item. As discussed above, the Stadium Manager's request will exceed the existing budgeted amount and it is recommended that the Board approve a budget amendment to update the CapEx project name to Loading Dock Lighting and its corresponding project description to include the loading dock area, and increase the line item to \$65,059 to reflect the amount that the Stadium Manager is requesting approval for. There are sufficient funds in the Stadium Authority Capital Reserves to cover the \$12,559 difference.

The Stadium Authority FY 2021/22 CapEx Budget includes \$157,500 for the Stadium Insulation line item. As discussed above, the Stadium Manager is requesting a budget amendment to increase the budgeted amount to \$517,500 for this project. There are sufficient funds in the Stadium Authority Capital Reserves to cover the requested \$360,000 difference.

The Stadium Manager advertised the RFBs in the San Jose Mercury News for a total of \$2,185 for the Rust Prevention Mitigation, Mechanical and Electrical Closet Lighting, and Gold Lot 4 and 5 Lighting projects. The amount that was spent on advertising the Stadium Insulation Project RFB was not disclosed to the Stadium Authority. On July 13, 2021, the Stadium Authority Board approved up to \$20,000 for the Stadium Manager to publish legal notices in the San Jose Mercury News and Santa Clara Weekly for various solicitations, which would cover these procurement advertising costs.

The table below summarizes the budget amendments as discussed above.

	Current	Increase/ (Decrease)	Revised
<b>Stadium Authority Capital Fund</b>			
<u>Expenses</u>			
Gold Lot 4 and 5 Lighting (Rename to Loading Dock Lighting)	\$ 52,500	\$12,559	\$65,059
Stadium Insulation	\$157,500	\$360,000	\$517,500
<u>Reserves</u>			
Capital Expense Reserve	\$8,497,602	\$(372,559)	\$8,125,043

### **COORDINATION**

This report has been coordinated with the City's Purchasing Manager, Stadium Treasurer's Office, and Chief Assistant City Attorney.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov).

### **RECOMMENDATION**

1. Approve the Stadium Manager's request to execute an agreement with R. Brothers Painting Inc. to

- prepare and paint the existing steel structure along the 300 level concourse of Levi's Stadium (Rust Prevention Mitigation CapEx Project) in the amount of \$17,223; authorize the Executive Director to approve the execution of any and all documents associated with, and necessary for the award, completion, and acceptance of the project; authorize the Executive Director to approve the execution of change orders up to approximately 10% of the contract cost, or \$1,722, for a total not to exceed amount of \$18,945; and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager;
2. Approve the Stadium Manager's request to execute an agreement with Ample Electrical, Inc. for replacement of existing light fixtures in the Levi's Stadium Electrical Rooms and Telecom Rooms with new LED light fixtures (Mechanical and Electrical Closet Lighting CapEx Project) in the amount of \$101,780; authorize the Executive Director to approve the execution of any and all documents associated with, and necessary for the award, completion, and acceptance of the project; authorize the Executive Director to approve the execution of change orders up to approximately 10% of the contract cost, or \$10,178, for a total not to exceed amount of \$111,958; and authorize the Executive Director to approve and process the reimbursement of such costs related to lighting fixtures in non-Tenant Exclusive Areas upon receiving final invoices and supporting documentation from the Stadium Manager;
  3. Approve a budget amendment to update the Gold Lot 4 and 5 Lighting CapEx Project title to "Loading Dock Lighting" and corresponding project description to include loading dock area as part of the scope of work, and increase the budget for the project by \$12,559 to a total of \$65,059 from Capital Expense Reserves;
  4. Approve the Stadium Manager's request to execute an agreement with Bear Electrical Solutions, Inc. for removal and disposal of existing wall mounted luminaire fixtures, and furnishing and installation of new wall mounted luminaires in the Levi's Stadium loading dock area; (Loading Dock Lighting CapEx Project) in the amount of \$59,145; authorize the Executive Director to approve the execution of any and all documents associated with, and necessary for the award, completion, and acceptance of the project; authorize the Executive Director to approve the execution of change orders up to approximately 10% of the contract cost, or \$5,914, for a total not to exceed amount of \$65,059; and authorize the Executive Director to approve and process the reimbursement of such costs upon receiving final invoices and supporting documentation from the Stadium Manager; and
  5. Approve the Stadium Manager's request for a budget amendment to increase the budget for the Stadium Insulation CapEx project by \$360,000 to a total of \$517,500 from Capital Expense Reserves.

Prepared by: Christine Jung, Assistant to the Executive Director

Reviewed by: Deanna J. Santana, Executive Director