



## Agenda Report

22-1414

Agenda Date: 12/6/2022

### REPORT TO STADIUM AUTHORITY BOARD

#### **SUBJECT**

Report from the Stadium Authority for Action Regarding Stadium Manager's Request to Award Agreement to California United Mechanical, Inc. for the Cooling Towers CapEx Project and Related Budget Amendment

#### **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approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval.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 actions related to the Cooling Towers Capital Expense (CapEx) Project:

1. Award a one-time agreement to California United Mechanical, Inc. in the amount of \$117,350 to replace internal parts and systems for the cooling towers at Levi's Stadium;
2. Approve a budget amendment to increase the total budget amount by \$89,768, from \$46,001 to \$135,769, for this CapEx project;
3. Authorize the Stadium Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of the project; and
4. Authorize the Stadium Manager to execute change orders up to 10% of the project cost (\$11,735), for a total not to exceed construction agreement amount of \$129,085.

The Stadium Authority Fiscal Year (FY) 2022/23 CapEx Budget includes \$46,001 for the Cooling Towers line item. The proposed budget amendment will cover the cost of the one-time agreement (\$117,350), a 10% contingency for change orders (\$11,735), HKS Architects task order (\$6,450), and San Jose Mercury News publication fees (\$234).

On November 9, 2021, the Stadium Authority Board approved a Master Agreement with Task Order Forms with HKS Architects for architectural and engineering services. The Stadium Authority Board also approved purchase orders for the publication of legal notices in the San Jose Mercury News and Santa Clara Weekly for various solicitations. As such, the expenses related to HKS and San Jose Mercury News do not require further Board approval.

## **DISCUSSION**

Stadium Authority staff reviewed the Stadium Manager's Recommendation for Award memo, supporting procurement documents, and the draft agreement with United Mechanical, Inc. (these documents are attached to corresponding report #22-1413) for consistency against the Stadium Authority Procurement Policy and the City's public works bidding practices (City Charter Section 1310). The Stadium Manager's Request for Bids (RFB) received three responses and the Stadium Manager is recommending award to the lowest responsible bidder (California United Mechanical, Inc.).

The Recommendation for Award memo did not include the reason for the increase in project cost so staff requested more information from the Stadium Manager. The following reasons were provided:

- The Stadium Manager engaged an engineering consultant to perform an onsite evaluation of the cooling towers in April 2022. The project budget was a carryover project from previous fiscal years, so there was a decision to hire an industry expert to provide a recommendation based on the current condition of the equipment. The evaluation resulted in more equipment renewal and replacement costs than originally expected.
- The consultant also recommended to purchase necessary attic stock for critical equipment, which was not originally considered, but is necessary to ensure dependable contingency operations in the event of equipment failure.
- Finally, this project, like many other construction projects, has been impacted by the significant cost increase in recent years. The Association of Contractors ("AGC"), with assistance from the US Bureau of Labor Statistics ("BLS"), released a 2022 Construction Inflation Alert that forecasts the Bid Price - Producer Price Index ("PPI") actually increased 19.8% nationally from June 2021 to June 2022. The AGC report highlights the cost impacts that the Stadium Manager is experiencing across this and many other projects.
- The combination of necessary equipment renewal and replacement, unanticipated attic stock purchase and unprecedented increase in material costs, supply-chain bottlenecks and tight labor markets resulted in higher bid value than the budget amount.

Based on the documentation and provided information, staff recommends approval of the Stadium Manager's request to award a one-time agreement to United Mechanical, Inc. for the Cooling Towers CapEx project work and a related budget amendment to increase the existing line item by \$89,768.

Regarding the Stadium Manager's request for authority to execute any and all documents related to the project and issue change orders up to 10% of the construction agreement amount, staff recommends that this authority be delegated instead to the Executive Director. Currently, the Executive Director has no procurement delegated authority under the Stadium Authority Procurement Policy. Approving staff's recommendation to provide the Executive Director with such authority to approve the execution of documents related to the project and the execution of change orders up to \$11,735 accomplishes the expediency that the Stadium Manager seeks.

The Stadium Authority Counsel's Office has reviewed the requested agreement for comparison to the Stadium Authority's customary language. While there are some differences in the language, including portions covering compliance with laws such as prevailing wage and conflict of interest, the agreement submitted here for approval contains the necessary language which identifies these legal obligations to the vendor. The vendor expressly agrees to adhere to such obligations upon its execution of the agreement. Nothing in the proposed agreement changes the Stadium Authority's rights under the Management Agreement and specifically with respect to any dispute that may arise from the Stadium Manager's obligations under the Management Agreement.

In addition, per paragraph 4(b) of the Settlement Agreement, the Stadium Authority reserves all rights to confirm and dispute charges by and payments to the Stadium Manager during a fiscal year-end reconciliation/true-up, including but not limited to changes based on improper allocation, calculation, lack of support, or failure to comply with the Parties' contracts or California law. The Stadium Authority may raise related questions before the fiscal year-end reconciliation/true-up, which the Stadium Manager agrees to assess and respond to in good faith.

### **ENVIRONMENTAL REVIEW**

The actions being considered do 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**

As noted above, the Stadium Authority FY 2022/23 CapEx Budget includes \$46,001 for the Cooling Towers CapEx Project. The Stadium Manager's requests will require a budget amendment to increase the line item by \$89,768 to a total budget amount of \$135,769. The table below summarizes the budget amendment:

CapEx Project	Adopted Budget	Increase/ (Decrease)	Amended Budget
Cooling Towers CapEx Project	\$46,001	\$89,768	\$135,769
Capital Expense Reserve	\$3,128,863	(\$89,768)	\$3,039,095

### **COORDINATION**

This report has been coordinated with the City's Purchasing Manager and the Treasurer's and Stadium Authority Counsel's Offices.

### **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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Approve a budget amendment for the Cooling Towers line item in the Stadium Authority FY 2022/23 CapEx Budget to increase the budget by \$89,768 from the Capital Expense Reserve;
2. Approve the Stadium Manager's request to award a one-time agreement to California United Mechanical, Inc. to replace internal parts and systems for the cooling towers at Levi's Stadium (Cooling Towers CapEx Project) in the amount of \$117,350;
3. 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; and
4. Authorize the Executive Director to approve the execution of change orders up to 10% of the contract cost (\$11,735), for a total not to exceed construction agreement amount of \$129,085.

Prepared by: Christine Jung, Assistant to the Executive Director

Approved by: Rajeev Batra, Executive Director