



Legislation Details (With Text)

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Title: Action on Approval of Amendment No. 3 to the Design-Build Agreement with Forty Niners Stadium LLC and Turner/Devcon Joint Venture to Address ADA-Related Warranty and Remediation Work at Levi's Stadium

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Attachments: 1. Design-Build Agreement, dated as of February 8, 2012, 2. Amendment No. 1 to Design-Build Agreement, dated March 28, 2012, 3. Amendment No. 2 to Design-Build Agreement, dated June 14, 2012, 4. Proposed Amendment No. 3

Date	Ver.	Action By	Action	Result
7/13/2021	1	Council and Authorities Concurrent Meeting	Approved	

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Action on Approval of Amendment No. 3 to the Design-Build Agreement with Forty Niners Stadium LLC and Turner/Devcon Joint Venture to Address ADA-Related Warranty and Remediation Work at Levi's Stadium

COUNCIL PILLAR

Ensure Compliance with Measure J and Manage Levi's Stadium

BACKGROUND

The Design-Build Agreement (DBA, Attachment 1) was entered into in February 2012 by the Santa Clara Stadium Authority (SCSA), Forty Niners Stadium LLC (49ers) and Turner/Devcon Joint Venture (TDJV) to govern the construction, design and other services necessary for the build-out of Levi's Stadium. The DBA was amended first in March 2012 (Attachment 2) to establish the cost of the construction work and the bases therefor. The DBA was amended for a second time in June 2012 (Attachment 3) to alter the construction cost, tenant improvements, and insurance coverages.

In December 2016, SCSA and various 49ers entities, among others, were sued by plaintiffs Abdul and Priscilla Nevarez (*Nevarez v. SCSA, et al.*, 5:16-cv-07013), on behalf of a class of Stadium patrons with mobility related disabilities, for alleged violations of the Americans with Disabilities Act (ADA) upon the Stadium site. TDJV was brought in as a cross-defendant in the case. The litigation was ultimately settled with the Plaintiffs in 2019; the settlement calls for various structural barriers in and around the Stadium site to be remedied. The SCSA/49ers and TDJV have reached an agreement to settle the SCSA/49ers claims against TDJV, with the settlement requiring TDJV to contribute financially to the settlement with the plaintiffs as well as to perform some remediation work

at the Stadium site.

The DBA contains a warranty work section (Article 9, Section 9.5) that requires TDJV to correct latent defects at its own expense. The proposed Third Amendment to the DBA (Attachment 4) seeks to formalize the warranty work to be performed by TDJV pursuant to terms described in greater detail below and allow additional remediation work to be performed by TDJV under the DBA and paid for out of proceeds from the settlement and the 49ers.

DISCUSSION

The Scope of Work contemplated in the Proposed Third Amendment is summarized as follows:

- Remediate certain accessible path of travel barriers, including the remediation of certain ramps and slopes at the Stadium;
- Install accessible storage shelving in closets;
- Install drains in certain bathrooms to correct slopes outside the permitted allowance;
- Replacement of toilets with accessible toilets in relevant bathrooms/stalls;
- Trim and/or modify bathroom counter aprons to provide required knee clearance, as required;
- Remove and remount baby changing stations to provide required knee clearance, as required;
- Replace side by side dual roll toilet paper dispensers in rest rooms with new single roll dispensers located at accessible distance from toilet; and
- Selected additional remediation work contained in the Nevarez settlement and paid out of funds from the settlement or the 49ers.

Nearly all of the terms of the original DBA continue to remain in place as controlling over the warranty work proposed under the Amendment. For example, performance of the warranty work must comply with prevailing wage requirements, permits must be obtained where applicable, and they must adhere to applicable standards for use/storage of hazardous materials. The proposed Third Amendment results in three changes to the terms of the original DBA, as follows:

- First, since the original Project Labor Agreement is now expired, that clause in the original DBA will not be included in the proposed Third Amendment. However, the work must be completed in accordance with prevailing wage rules.
- Second, the Delay Liquidated Damages provision in the original DBA is also no longer applicable since the Substantial Completion Date has long since passed. The timing of the performance of the remediation work under the proposed Third Amendment is driven by the timelines contained in the settlement of the *Nevarez* litigation, as approved by the federal court.
- Third, TDJV is proposing new insurance requirements, which are set forth in Exhibit C of the Amendment. The original insurance policies are no longer available, and the scope of work under this Amendment is clearly much reduced as compared with the original scope of work. The following, which staff believes is appropriate to address the level of work being performed, is a comparison of the coverage levels between the original DBA and the proposed Amendment:

Coverage	Original DBA	Amendment
Worker's Comp/Employer's Liability	Statutory W/C; \$1m Employer's Liability	Statutory W/C; \$2m Employer's Liability

Commercial General Liability	\$2m per occurrence/\$4m aggregate	\$5m per occurrence/\$5m aggregate
Excess Liability	\$200m per occurrence/\$200m aggregate	None
Pollution Liability	\$25m per occurrence/\$25m aggregate	\$2m per occurrence/\$2m in the aggregate
Professional Liability	\$20m per claim/\$20m aggregate	\$2m per claim/\$2m aggregate
Auto Liability	\$2m per occurrence	\$2m per occurrence

The timelines built into the settlement of the *Nevarez* litigation for completion of the remediation work are aggressive. Having the work performed by TDJV as warranty and remediation work under the DBA allows the 49ers to address these defects more efficiently. In addition, the various insurance carriers involved in the litigation have approved these terms in the settlement of the SCSA/49ers cross-complaint against TDJV.

ENVIRONMENTAL REVIEW

The action being considered is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15301 “Existing Facilities” as the activity consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities mechanical equipment or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agencies determination. The action being considered is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15302 “Replacement or Reconstruction” as the activity consists of the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

FISCAL IMPACT

There is no fiscal impact to the Stadium Authority in agreeing to the proposed Third Amendment to the DBA, as the costs of the work will be absorbed by TDJV and the 49ers.

COORDINATION

This report has been coordinated with the Stadium Authority Executive Director, Counsel and Treasurer.

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>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Approve Amendment No. 3 to the Design Build Agreement by and between SCSA, 49ers, and TDJV to address ADA-related warranty and remediation work at Levi’s Stadium

Reviewed by: Brian Doyle, Stadium Authority Counsel

Approved by: Deanna J. Santana, Stadium Authority Executive Director

ATTACHMENTS

1. Design-Build Agreement, dated as of February 8, 2012
2. Amendment No. 1 to Design-Build Agreement, dated March 28, 2012
3. Amendment No. 2 to Design-Build Agreement, dated June 14, 2012
4. Proposed Amendment No. 3