



Agenda Report

21-1204

Agenda Date: 9/7/2021

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Report from the Stadium Authority Regarding Stadium Manager's Request to Approve Budget Amendment for Levi's Signage Repairs CapEx Project and Execute Amendment to Agreement with Bear Electrical Solutions, Inc. for Electrical Maintenance and Repair Services

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approved Ordinance No. 2005 amending Chapter 17.30 of the City Code (Stadium Authority Procurement Policy), which rescinded the delegation to the Executive Director to enter into agreements without prior Board approval.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 (ManCo), 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. Separately, Section 5(f) of the Naming Rights Agreement between the Stadium Authority and Naming Rights Sponsor, Levi's, provides the following:

"Except as otherwise expressly provided herein or otherwise agreed in writing between the SCSA and the Naming Rights Sponsor, the **SCSA shall be responsible of all costs and expenses associated with the initial design, construction, production, delivery of installation of signage and other physical advertising included in the Naming Rights Entitlement and for the cleaning, repairing and maintenance of all such signage;** provided, Naming Rights Sponsor shall be responsible, at its sole cost and expense, for the preparation of all conceptual drawings and designs and any other content for all signage in respect of this Agreement or the Naming Rights Entitlements. **Naming Rights Sponsor shall be entitled, at its sole cost and expense, to replace, update, change, refresh or refurbish any such initial signage at any time and from time to time** (and for any reason); provided, that the content of such signage will remain subject to the SCSA's prior written approval (not to be unreasonably withheld, conditioned or delayed)..."

As part of the Stadium Authority FY 2021/22 Budget process, the Stadium Manager had recommended a Levi's Naming Rights Signage **Replacement** Project totaling \$945,000 for the

Capital Expense (CapEx) Budget. However, based on the language under Section 5(f) of the Naming Rights Agreement, full signage replacement is the responsibility of the Naming Rights Sponsor and any effort to fund the replacement for the Sponsor constitutes a gift of public funds. Appropriately, the Stadium Authority Board did not approve the project as part of the FY 2021/22 CapEx Budget, but it was noted in the March 23, 2021 agenda report (#21-46) that transmitted the Stadium Authority FY 2021/22 Operating, Debt Service, and Capital Budget (Budget) for Board approval that the Stadium Authority and the Stadium Manager agreed to continue discussions regarding the Naming Rights Signage Project and to bring back a proposal for the Board to consider later, if necessary.

On May 17, 2021, the Stadium Authority staff requested the documents that the Stadium Manager used for the Levi's Signage project that was originally proposed for the FY 2020/21 CapEx Budget, which had a lower cost of \$682,500, so that the Stadium Authority and Stadium Manager could work together to bring back a proposal and budget request for the signage **repairs**. There was no response from the Stadium Manager for over two months, so Stadium Authority staff reached out again on July 28, 2021.

On August 4, 2021, the Stadium Manager submitted the documents that they used to develop the conceptual cost estimate for the FY 2020/21 CapEx Levi's Signage **Replacement** Project (\$682,500), along with a third-party document recommending signage **replacement** and cost estimates dated July 9, 2021, and Request for Bid documents for signage **replacement** that were previously shared in February 2021 (and, therefore, not useful).

On August 17, 2021, the Stadium Manager submitted pictures of the four Naming Rights Agreement signs along with the following requests:

1. Authorize Stadium Manager to immediately hire a signage contractor to perform interim emergency repairs on the four signs, starting with the east sign, with a goal of having all four signs satisfactorily illuminated prior to the nationally televised NFL game scheduled for the evening of September 26, 2021. The Stadium Manager stated that they made preliminary inquiries with two qualified contractors and believed the work could be completed at a cost of less than \$250,000 if the work began on or before August 25, 2021;
2. Amend the Stadium Authority FY 2021/22 CapEx Budget to include \$1.2 million for the **replacement** of all four signs. They recommended adding a contingency of 10%, for a total requested amount of \$1,320,000; and
3. Review and approve/edit the Request for Bid documents for the **replacement** of all four signs, which were previously submitted by Stadium Manager.

The Stadium Authority responded to the Stadium Manager's request to clarify that signage repairs do not fall under the narrow set of conditions outlined in the State Code that permits issuance of emergency public works contracts. Specifically, the State Code reads,

*Emergency as used in the Code, means a sudden unexpected occurrence that **poses a clear and imminent danger**, requiring immediate action to prevent or mitigate the loss of impairment of life, health, property, or essential public service.*

Stadium Manager states that the request did not intend to effectuate a violation of State law by their use of the term "emergency," but that there was an intent on their part to convey the urgency of the completion of the signage improvements. Based on the timeline presented by the Stadium Manager

to complete the work by September 26, 2021, when a competitive bid process had not been completed to bring to the Board and could only be completed by not adhering to State law. Appropriately, the Stadium Authority expressed concerns about previous maintenance and care for the signage and as result, requested that the Stadium Manager produce the following:

- Records of all and any maintenance and repairs for the Levi's signage;
- Communications with any contractor regarding the repairs or replacement of signs that Stadium Manager recommends; and
- Communications with any Levi's representatives regarding this issue.

On August 24, 2021, the Stadium Manager sent an updated request for the following:

1. Approval of a budget amendment to the Stadium Authority FY 2021/22 CapEx budget for up to \$250,000 for interim **repairs** of the four Levi's signage;
2. Approval of an amendment to the agreement with Bear Electrical Solutions, Inc. (Bear Electrical) to cover the cost of the interim repair; and
3. Expedite any necessary permits to facilitate the work as soon as possible.

Subsequently, on August 27, 2021, Levi's sent an email requesting that the four exterior signs at the stadium be **repaired** in time for the 49ers regular season home opener on September 26, 2021. The Stadium Authority responded that it shared the Naming Right Sponsor's desire to get the required repairs in place by the September 26, 2021 game and that additional documentation was required from the Stadium Manager to process the request for repairs. All referenced correspondence in the report has been included as part of Attachment 1. Additional documents regarding the Levi's Signage project have been included as part of Attachment 2.

DISCUSSION

Staff reviewed the Stadium Manager's August 24, 2021 request and found it to be consistent with Stadium Authority's early-2021 direction to the Stadium Manager because it finally was a request for repairs for the signage and properly procured. However, staff did request for the following supporting documents to confirm that the proposed repair work falls within the scope of work outlined under the Bear Electrical agreement and that prevailing wages will be paid as needed:

1. Quote from Bear Electrical for the interim Levi's signage repairs;
2. Copy of the proposed Work Order;
3. Statement to explain why the Stadium Manager requires an amendment for the Bear Electrical Agreement; and
4. Draft Amendment to the Bear Electrical Agreement.

The Stadium Manager provided the requested documents and answers, which can be found in Attachment 3. The documents and answers are in order, although it should be noted that based on the information provided in the proposed Work Order, the Contractor (Bear Electrical) needs to provide the Stadium Manager with a detailed preliminary cost estimate to complete the repairs within seven business days of mobilization. Staff recommends requiring the referenced cost estimate in the Work Order to include details such as, but not limited to, breakdown of costs related to equipment, supplies, and labor for transparency and expedited review for future reimbursement. This detail is standard.

In order to move forward, the Stadium Manager has requested for a budget amendment to the Stadium Authority FY 2021/22 CapEx Budget and an amendment to the Bear Electrical agreement.

FY 2021/22 CapEx Budget Amendment

As discussed under the Background section, the Stadium Authority Board did not approve the Stadium Manager recommended Levi's Naming Rights Signage Replacement Project as part of the FY 2021/22 CapEx Budget. There was agreement to continue discussions regarding the Naming Rights Signage Project and to bring back a proposal for the Stadium Authority Board to consider later. The request for repairs being brought forth for approval is consistent with the Stadium Authority's direction and agreement between the two parties. As such, a \$250,000 budget amendment is required to add the Levi's Signage Repairs to the Stadium Authority FY 2021/22 CapEx Budget. These funds would be offset by a corresponding decrease to Operating Reserves.

Amendment to Bear Electrical Agreement

The Stadium Authority Board previously approved two separate three-year agreements with Bear Electrical and Cupertino Electric, Inc. (Cupertino Electric), each not to exceed \$250,000 per contract year and not to exceed a total of \$750,000 for the three-year term, for electrical and mechanical maintenance and repair services for the Stadium Manager on April 20, 2021. The Bear Electrical's agreement is included as Attachment 4. The agreement's scope of work does include lighting and physical security work, including but not limited to indoor and outdoor lighting repairs and installations. If approved, the Stadium Manager's requested amendment to the Bear Electrical agreement will increase the not to exceed amount for the first year of the contract term from \$250,000 to \$500,000, and the total not to exceed amount from \$750,000 to \$1 million for the three-year agreement term. The Bear Electrical agreement is being funded from the Stadium Manager Shared Expenses Engineering line item whereas the repair work is not a Shared Expense and should be funded by the Stadium Authority. As such, the \$250,000 being added to agreement will be charged to the CapEx line item for Levi's Signage Repairs that is being proposed and must be used only for the repairs.

Based on the provided documentation and above information, staff recommends approval of the Stadium Manager's request for approval of a budget amendment to the Stadium Authority FY 2021/22 CapEx budget for up to \$250,000 for the Levi's signage repairs and approval of an amendment to the agreement with Bear Electrical to increase the not to exceed amount from \$250,000 to \$500,000 for the first year of the agreement term to cover the cost of the interim repair. The Stadium Authority will work with the City of Santa Clara and Stadium Manager to expedite any necessary permits to facilitate the work as soon as possible; however, the permits being submitted by the Stadium Manager and/or Bear Electrical must be complete, in order, and timely submitted to facilitate their expedited review: failure to do so, will naturally result in delay. The Stadium Authority will require full supporting documentation including compliance with prevailing wage laws before releasing public funds upon completion of work at the Stadium. Last, the Stadium Manager could have avoided all of these all delays if they had not made misrepresentations to the Board, earlier this year and recently, and knew how to properly implement a public works procurement project.

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 or pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

A \$250,000 budget amendment is required to add the Levi's Signage Repairs to the FY 2021/22 CapEx Budget. These funds will be offset by a decrease in Operating Reserves. The budget amendment will fund the amendment to the agreement with Bear Electrical to increase the not to exceed amount from \$250,000 to \$500,000 for the first year of the agreement term to cover the cost of the repairs.

COORDINATION

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

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.

RECOMMENDATION

1. Require that the Work Order be updated to require the cost estimate being provided by the Contractor (Bear Electrical) include details such as, but not limited to, breakdown of costs related to equipment, supplies, and labor related to the project;
2. Approve a budget amendment of \$250,000 to the Stadium Authority FY 2021/22 CapEx Budget for the Levi's Signage Repairs project; and
3. Approve the Stadium Manager's request to execute an amendment to the agreement with Bear Electrical Solutions, Inc. to increase the not to exceed amount from \$250,000 to \$500,000 for the first year of the agreement term to cover the cost of the interim repairs (for a total not to exceed amount of \$1 million over the initial three-year term), subject to budget appropriations for every contract year, 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.

Prepared by: Christine Jung, Assistant to the Executive Director

Reviewed by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. Correspondence with Stadium Manager and Levi's
2. Additional Correspondence and Documents Regarding Levi's Signage
3. Stadium Manager Documents and Responses for Repairs (Incl. Amendment to Agreement)
4. Agreement with Bear Electrical