

Meeting Date: 7/5/11

AGENDA REPORT

Agenda Item # SA-6

SA

Santa Clara

City of Santa Clara, California



DATE: June 28, 2011

TO: Executive Director for Stadium Authority Action

FROM: Administrative Analyst to the City Manager

SUBJECT: Approval of a Consulting Contract with Keyser Marston Associates, Inc. for Fiscal and Economic Consulting Services to Assist with Ongoing Negotiations with the San Francisco 49ers for an NFL Stadium

EXECUTIVE SUMMARY:

At their June 2, 2009 meeting, Council directed the City Manager to proceed with the next phase of negotiations with the San Francisco 49ers for a football stadium in the City of Santa Clara, which is negotiation of the Disposition and Development Agreement (DDA). In addition to City staff departmental expertise, the negotiating team has required specialized expertise in the areas complex financing options and real estate issues, particularly pertaining to stadiums and professional sports franchises. At the July 14, 2009 meeting, Council approved a consulting contract with Keyser Marston Associates, Inc. (KMA) for expertise in fiscal and economic analysis, complex financing scenarios, and real estate issues pertaining to the stadium project. An additional amount was set aside for consulting services specific to stadium financing and related issues, if needed. Sufficient funds were appropriated to cover consulting services through June 30, 2010, at which time it would be known whether the stadium ballot measure had passed and whether additional consulting services would be needed.

On June 8, 2010, Santa Clara voters approved Measure J, the stadium ballot measure, and completion of the DDA was anticipated for Fall 2010. In October 2010, the 49ers announced a one-year delay for the opening of the stadium, and since that time there have been significant changes to the stadium finance structure requiring detailed financial analysis. Staff has been continuing with DDA negotiations in the interim, with an anticipated completion of Fall 2011. Beyond the near term completion of the DDA, however, economic/fiscal analysis from KMA will be required as the stadium financing plan is developed. This work is scheduled through fiscal 2011/2012.

As provided in Measure J, the City and its Redevelopment Agency joined together to form a new entity, the Santa Clara Stadium Authority, and a budget was adopted on June 14, 2011 for fiscal year 2011/12. The Stadium Authority budget includes appropriations for staff and consulting costs to provide ongoing support for the development of the Stadium. Staff is recommending that the Stadium Authority enter into a contract with KMA with a not-to-exceed amount of \$400,000 to support these efforts. Funding is available in the Stadium Authority budget for this purpose. A copy of the contract has been placed in Authority offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into this contract with KMA will allow the Stadium Authority the ability to continue with the DDA negotiations into and through its final stages, employing resources that have been critical to the negotiation effort to date. KMA has provided excellent advice and outstanding support in the creation of the Term Sheet approved on June 2, 2009, and through the DDA negotiations to date.

Subject: Consulting Contract with Keyser Marston Associates, Inc. for Fiscal and Economic Consulting Services to Assist with Ongoing Negotiations with the San Francisco 49ers for an NFL Stadium

Date: June 28, 2011

Page 2

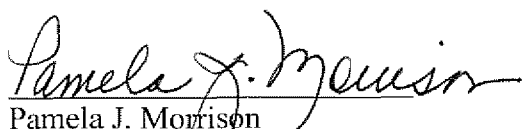
ECONOMIC/FISCAL IMPACT:

This contract has a not-to-exceed amount \$400,000 for DDA negotiations. Funds are available in the Stadium Authority Contractual Services account (870-8311-87870).

RECOMMENDATION:

That the Authority

1. Approve the consulting contract with Keyser Marston Associates, Inc. in the amount of \$400,000 for fiscal and economic analysis to assist staff in the 49ers stadium DDA negotiations.
2. Authorize the Executive Director to execute the contract with Keyser Marston Associates, Inc.


Pamela J. Morrison

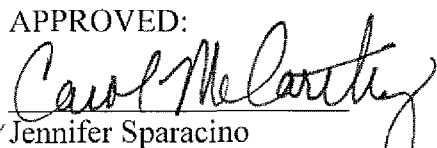
Administrative Analyst to the City Manager

Certified as to Availability of Funds:

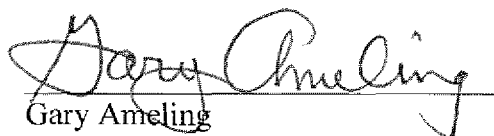
870-8311-87870 \$400,000.00

OK JCH.

APPROVED:


Jennifer Sparacino

Executive Director for Stadium Authority


Gary Ameling

Stadium Authority Treasurer

Documents Related to this Report:

1) *Professional Services Agreement between the Stadium Authority and Keyser Marston Associates, Inc.*

I:\AGENDA REPORTS\2011\07.05.11 KMA contract with SA.doc

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
KEYSER MARSTON ASSOCIATES, INC.**

PREAMBLE

This agreement for the performance of services (“Agreement”) is made and entered into on this _____ day of July, 2011, (“Effective Date”) by and between Keyser Marston Associates, Inc., a California corporation, with its principal place of business located at Golden Gateway Commons, 55 Pacific Avenue Mall, San Francisco, California 94111 (“Consultant”), and the Santa Clara Stadium Authority, a California joint powers authority with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“Authority”). Authority and Consultant may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. Authority desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled “SCOPE OF SERVICES”; and
- B. Consultant represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of Authority; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by Authority at his/her own risk and expense. Services to be provided to Authority are more fully described in Exhibit A entitled “SCOPE OF SERVICES.” All of the exhibits referenced in this Agreement are attached and are incorporated by this reference. Consultant acknowledges that the execution of this Agreement by Authority is predicated upon representations made by Consultant in that certain document entitled “49ers Stadium Negotiations Scope of Work” (“Proposal”) set forth in Exhibit A, which constitutes the basis for this Agreement.

2. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2012

3. CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED PROFESSIONAL.

- A. All reports, costs estimates, plans and other documentation which may be submitted or furnished by Consultant shall be approved and signed by a qualified licensed professional in the State of California.
- B. The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

4. QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP.

Consultant represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and Authority expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to Authority. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by Authority for similar projects.

5. ASSIGNMENT OF DUTIES.

No other person(s) will be assigned from Consultant other than those specified by A. Jerry Keyser, Chairman of the Board for Keyser Marston Associates. It is agreed by and between the Parties that should it be desirable for any other person to work under this Agreement, such person may only be added with the express written consent of Authority.

6. MONITORING OF SERVICES.

Authority may monitor the Services performed under this Agreement to determine whether Consultant's operation conforms to Authority policy and to the terms of this Agreement. Authority may also monitor the Services to be performed to determine

whether financial operations are conducted in accord with applicable city, county, state, and federal requirements. If any action of Consultant constitutes a breach, Authority may terminate this Agreement pursuant to the provisions described herein.

7. WARRANTY.

Consultant expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Consultant agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to Authority when defects are due to the negligence, errors or omissions of Consultant. If Consultant fails to promptly correct or replace materials or services, Authority may make corrections or replace materials or services and charge Consultant for the cost incurred by Authority.

8. PERFORMANCE OF SERVICES.

Consultant shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by Authority. Consultant shall be as fully responsible to Authority for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed by it. Consultant will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

9. RESPONSIBILITY OF CONSULTANT.

Consultant shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither Authority's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Consultant shall be and remain liable to Authority in accordance with applicable law for all damages to Authority caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by Authority of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Consultant shall not in any respect absolve Consultant from the responsibility Consultant has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

10. COMPENSATION AND PAYMENT.

In consideration for Consultant's complete performance of Services, Authority shall pay Consultant for all materials provided and services rendered by Consultant at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Consultant will bill Authority on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by Authority. Authority will pay Consultant within thirty (30) days of Authority's receipt of invoice.

11. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Consultant shall discontinue further services as of the effective date of termination, and Authority shall pay Consultant for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

Authority and Consultant bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of Authority. Consultant shall not hire subcontractors without express written permission from Authority.

14. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

15. INDEPENDENT CONSULTANT.

Consultant and all person(s) employed by or contracted with Consultant to furnish labor and/or materials under this Agreement are independent consultants and do not act as agent(s) or employee(s) of Authority. Consultant has full rights, however, to manage its employees in their performance of Services under this Agreement. Consultant is not authorized to bind Authority to any contracts or other obligations.

16. NO PLEDGING OF AUTHORITY'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of Authority or incur any obligation in the name of Authority. Consultant shall save and hold harmless the Authority, its Authority Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of Authority's credit by Consultant under this Agreement.

17. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of Authority, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

18. USE OF AUTHORITY NAME OR EMBLEM.

Consultant shall not use Authority's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of Authority.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of Authority but Consultant may retain and use copies thereof. Authority shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

20. RIGHT OF AUTHORITY TO INSPECT RECORDS OF CONSULTANT.

Authority, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to Authority. Any expenses not so recorded shall be disallowed by Authority.

Consultant shall submit to Authority any and all reports concerning its performance under this Agreement that may be requested by Authority in writing. Consultant agrees to assist Authority in meeting Authority's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

21. CORRECTION OF SERVICES.

Consultant agrees to correct any incomplete, inaccurate or defective Services at no further costs to Authority, when such defects are due to the negligence, errors or omissions of Consultant.

22. FAIR EMPLOYMENT.

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify Authority, its Board, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Authority shall become liable arising from Consultant's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Consultant pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Consultant shall purchase and maintain in full force and effect, at no cost to Authority insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between Authority and Consultant. No other understanding, agreements, conversations, or otherwise, with any representative of Authority prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon Authority.

27. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

28. WAIVER.

Consultant agrees that waiver by Authority of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

29. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to Authority addressed as follows:

Santa Clara Stadium Authority
Attention: Executive Director
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 241-6771

And to Consultant addressed as follows:

Name: A. Jerry Keyser
Address: Keyser Marston Associates, Inc.
55 Pacific Avenue Mall
San Francisco, CA 94111

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

32. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and Authority regarding the construction or application of this

Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN AGREEMENT WITH THE SANTA CLARA STADIUM AUTHORITY"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

[Paragraph 34 and signatures follow on Page 9]

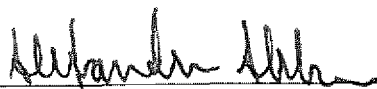
34. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

SANTA CLARA STADIUM AUTHORITY
a California joint powers authority

APPROVED AS TO FORM:


ELIZABETH H. SILVER
Interim Stadium Authority General Counsel

JENNIFER SPARACINO
Executive Director


ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
Stadium Authority Secretary

“Stadium Authority”

KEYSER MARSTON ASSOCIATES, INC.
a California corporation


A JERRY KEYSER
Chairman of the Board
Local Address: 55 Pacific Avenue Mall
San Francisco, CA 94111
Telephone: (415) 398-3050
Fax: (415) 397-5065

“Consultant”

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the Authority by the Consultant under this Agreement are more fully described in the Consultant's proposal entitled, "49ers Stadium Negotiations Scope of Work," which is attached to this Exhibit A.



KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

June 30, 2011

ADVISORS IN
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

Jennifer Sparacino
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
ROBERT J. WETMORE
REED T. KAWAHARA
DAVID DOEZEMA

Re: 49er Stadium Scope of Work

Dear Jennifer:

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
PAUL C. ANDERSON
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMÉY
DENISE BICKERSTAFF

Thank you for requesting this scope of work for real estate and financial advisory services in relation to on-going negotiations with the San Francisco 49ers for development of a new stadium in Santa Clara. This scope provides for a continuation of the services that Keyser Marston Associates (KMA) has been providing as one of several consultants comprising an advisory team on the proposed stadium.

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

This work scope includes advisory services related to various real estate and entitlement valuation issues, stadium finance, public finance, fiscal impacts/benefits, and other issues related to the 49ers proposal. Many of the issues covered in this scope have been addressed in negotiations to date, but will continue to be a focus of on-going negotiations of the Disposition Development Agreement (DDA) and several related documents.

Scope of Work

This scope provides for a continuation of KMA's role as a close advisor to the City and its newly formed Stadium Authority (SA) on all appropriate issues related to negotiation of the terms for the stadium transaction, particularly those of a financial or real estate nature. The current focus is on negotiation of a Disposition Development Agreement (DDA) document and several related documents. Following completion of the DDA, KMA expects to continue to advise the SA with respect to refinement and finalization of the stadium Finance Plan to be completed prior to closing of the transaction and construction start. KMA will continue to work in close collaboration with the City's legal counsel and all other City advisors. Services will include Real Estate and Valuation

Issues, Structuring of the Transaction, Existing Lease Issues and Encumbrances, Negotiations with 49ers, and Presentations / Discussions with City Council in both negotiation meetings and public meetings.

Schedule and Budget

We anticipate that this effort will conclude not later than June 2012.

We anticipate that the work scope described in this proposal can be performed for a budget not to exceed \$400,000.

The contract will be billed on a time and materials basis and will not exceed the maximum without previous authorization. The budget assumes no increase to our current rate schedule and that this work scope can be performed within the time period allotted. Thank you for requesting this scope.

Sincerely,

KEYSER MARSTON ASSOCIATES, INC.



A. Jerry Keyser
Chairman of the Board

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AND
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT B

FEE SCHEDULE

Consultant has provided a schedule of rates and fees which includes all billing amounts and costs (see attached).

In no event shall the amount billed to Authority by Consultant for services under this Agreement exceed Four Hundred Thousand Dollars (\$400,000.00), subject to budget appropriations.

**KEYSER MARSTON ASSOCIATES, INC.
PUBLIC SECTOR HOURLY RATES**

	<u>2011/2012</u>
A. JERRY KEYSER*	\$280.00
MANAGING PRINCIPALS*	\$280.00
SENIOR PRINCIPALS*	\$270.00
PRINCIPALS*	\$250.00
MANAGERS*	\$225.00
SENIOR ASSOCIATES	\$187.50
ASSOCIATES	\$167.50
SENIOR ANALYSTS	\$150.00
ANALYSTS	\$130.00
TECHNICAL STAFF	\$95.00
ADMINISTRATIVE STAFF	\$80.00

Directly related job expenses not included in the above rates are: auto mileage, parking, air fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

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EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the Authority, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Consultant or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the Santa Clara Stadium Authority, its Board, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than two million dollars (\$1,000,000) per occurrence/aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. Stadium Authority, City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for Authority, using Insurance Services Office (ISO) Endorsement CG 20 10 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to Authority at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to Authority at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and Authority agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by Authority, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Authority for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Authority or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Authority. It is not the intent of Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Authority for payment of premiums or other amounts with respect thereto.
3. The Authority reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Authority and as described in this Agreement. Consultant shall file with the Authority all certificates and endorsements for the required insurance policies for Authority's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to Authority, or its representative as set forth below, at or prior to execution of this Agreement. Upon Authority's request, Consultant shall submit to Authority copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to Authority pursuant to this Agreement shall be mailed to:

City of Santa Clara City Manager's Office

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or 151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951)766-2280; or

Fax: (951)766-2299

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the Authority or its insurance compliance representatives.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE SANTA CLARA STADIUM AUTHORITY**

Termination of Agreement for Certain Acts.

- A. The Authority may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Consultant¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Authority consultant or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Consultant" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The Authority may also terminate this Agreement in the event any one or more of the following occurs:
1. The Authority determines that Consultant no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If Authority determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with Authority, including, but not limited to, Consultant's failure to maintain a required State issued license, failure to obtain a Authority business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Consultant (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Consultant may appeal the Authority's action to the Authority Council by filing a written request with the Authority Clerk within ten (10) days of the notice given by Authority to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the Authority Clerk. The Consultant will have the burden of proof on the appeal. The Consultant shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Consultant becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Consultant.

⁵ Loss of personnel deemed essential by the Authority for the successful performance of the obligations of the Consultant to the Authority.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Timothy C. Kelly being first duly sworn, depose and state I am the President of Keyser Marston Associates, Inc. and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Consultant" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Consultant" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

KEYSER MARSTON ASSOCIATES, INC.

a California corporation

By: _____

Signature of Authorized Person or Representative

Name: Timothy C. Kelly

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO

On JUNE 30th 2011 before me, JOHN S. LUK, NOTARY PUBLIC
(here insert name and title of the officer)

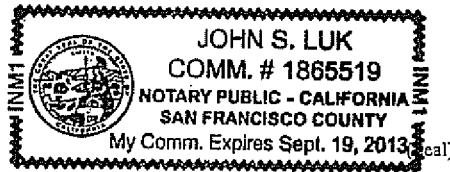
personally appeared TIMOTHY CHARLES KELLY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that (he) she/they executed the same in (his) her/their authorized capacity(ies), and that by (his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

John S. Luk
 Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT
AGREEMENT BETWEEN THE SANTA
(Title or description of attached document)
CLARA STADIUM AND KEYSER MARSDEN ASSOCIATES
(Title or description of attached document continued)
 Number of Pages 1 Document Date 6-30-2011
(SEE ATTACHED)
(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer
(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____