

Meeting Date: 7/9/11

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item # SA-4



Date: June 28, 2011

To: Executive Director for Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of a Resolution Approving an Agreement for Stadium Builders License Sales between the Santa Clara Stadium Authority and Legends Premium Sales, LLC

EXECUTIVE SUMMARY:

The Santa Clara Stadium Authority is proposing to enter into an Agreement (Agreement) with Legends Premium Sales, LLC (Legends), to market and sell Stadium Builders Licenses (SBLs).

The Stadium Authority recognizes that the sale of SBLs is expected to generate a significant portion of the funding for Stadium construction and is essential to the success of the Stadium Project. Forty Niners Stadium, LLC (Stadco) has entered into a separate contract with Legends for the marketing of Stadium suites. An agreement between the Stadium Authority and Legends for the sale of SBLs presents the opportunity for a consolidated marketing outreach and sales effort for the available seating inventory in the Stadium.

As a separate action staff is proposing that the Stadium Authority enter into an agreement with Stadco whereby Stadco will supervise Legends in its performance under the Legends SBL Agreement, coordinate the SBL marketing program with Stadco's marketing of Suites, and loan the Stadium Authority amounts due to Legends under the Legends SBL Agreement.

Details regarding the Agreement for Stadium Builders License Sales are contained in the Discussion section. A copy of the Agreement has been placed in Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The proceeds from the sale of SBLs will be an important source of financing for the development of the Stadium. In addition to selling SBLs for the Stadium Authority, Legends is marketing suites in the Stadium on behalf of Stadco. This presents the opportunity for a strong, coordinated marketing effort while allowing for cost savings through shared resources such as a single sales center.

ECONOMIC/FISCAL IMPACT:

The Stadium Authority will reimburse Legends for its actual costs incurred in the sale of SBLs, consistent with the approved SBL Budget. In addition, Legends will receive a fee of up to \$6 million, the actual amount of which will be based on performance benchmarks.

Executive Director for Stadium Authority Action

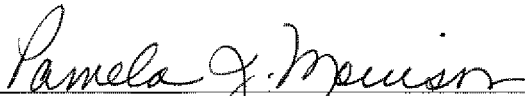
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RECOMMENDATION:

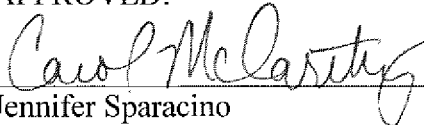
That the Authority adopt the Resolution approving an Agreement for Stadium Builders License Sales between the Santa Clara Stadium Authority and Legends Premium Sales, LLC to market and sell Stadium Builders Licenses (SBLs).



Pamela J. Morrison

Administrative Analyst to the City Manager

APPROVED:



Jennifer Sparacino

Executive Director for Stadium Authority

Documents Related to this Report:

- 1) ***Agreement for Stadium Builders License Sales between the Santa Clara Stadium Authority and Legends Premium Sales, LLC***

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving an Agreement for Stadium Builders License Sales between the Santa Clara Stadium Authority and Legends Premium Sales, LLC

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DISCUSSION:

- The Agreement for Stadium Builders License Sales is between the Stadium Authority and Legends Premium Sales, LLC ("Legends") pursuant to which the Stadium Authority will engage Legends to market and sell Stadium Builders Licenses ("SBLs").
- The term of the Agreement commences on July 15, 2011 and on expires on the February 1st of the calendar year following the year in which the Stadium opens.
- Legends will accept SBL agreements and SBL deposits from proposed purchasers. The deposits will be held in a segregated account in a bank designated by the Stadium Authority. Any withdrawals from the account will require the signature of the Stadium Authority.
- Legends will present groups of SBLs to the Stadium Authority for approval. The SBLs will only be effective upon the execution of the SBL by the Stadium Authority. Upon approval of the SBLs, Legends will transfer the related deposits to the Stadium Authority.
- The Stadium Authority will pay Legends for Legends' costs incurred relating to the sale of SBLs, including but not limited to, salaries, commissions, the cost of marketing materials and a fair share of rent at the sales center.
- The Stadium Authority will pay only the costs related to the sale of the SBLs and will not pay cost related to the sale of suites ("Suites") at the Stadium. Any costs which are attributable to the sale of both SBLs and Suites will be initially pro-rated 60% to Suites and 40% to SBLs.
- In addition to the reimbursement of Legends' direct costs for the sale of SBLs, Legends may earn a fee of up to \$6 Million. The Stadium Authority will pay the fee in increments based upon Legends attaining certain performance benchmarks. The Stadium Authority Executive Director and Legends will agree on the performance benchmarks.
- If the Agreement is terminated prior to the stated expiration of the Agreement, Legends may be eligible for termination fees.
- To enable the Stadium Authority to pay Legends' costs, the Forty Niners Stadium LLC ("Stadco") will advance funds to the Stadium Authority (pursuant to the Stadium Marketing and Loan Agreement).
- Prior to the commencement of construction, the Stadium Authority shall only be liable for payments on the Stadco advance to the extent the Stadium company has available funds as described in the Stadium Marketing and Loan Agreement.

RESOLUTION NO. ____ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY APPROVING AN AGREEMENT FOR STADIUM BUILDERS LICENSE SALES AND RELATED SERVICES RELATED TO THE CONSTRUCTION OF THE STADIUM PROJECT

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City of Santa Clara authorized the execution of a Joint Powers Agreement (“Agreement”) with the City of Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority (“Stadium Authority”);

WHEREAS, the Stadium Authority was formed to facilitate the development and operating of a stadium in the City suitable for NFL games ("Stadium Project") and to fulfill the mandates of Measure J, “The Santa Clara Stadium Taxpayer Protection and Economic Progress Act”;

WHEREAS, the Stadium Authority intends to sell , license or otherwise transfer personal seat licenses, also referred to as stadium builders licenses ("SBLs") for seats at the Stadium and to use the proceeds from the sale of SBLs for the construction of the Stadium;

WHEREAS, the Stadium Authority desires to engage Legends Premium Sales, LLC, a Delaware limited liability company ("Legends") to market and sell the SBLs;

WHEREAS, the Stadium Authority desires to enter into an Agreement for Stadium Builders License Sales and Related Services with Legends to market and sell the SBLs; and

WHEREAS, the Staff Report provides additional information upon which the findings and actions set forth in this Resolution are based.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The Stadium Authority hereby approves the Agreement for Stadium Builders License Sales and Related Services and authorizes the Executive Director to enter into and execute the Agreement for Stadium Builders License Sales and Related Services on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Executive Director, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Executive Director. The Executive Director is authorized to implement the Agreement for Stadium Builders License Sales and Related Services and take all further actions and execute all other documents which are necessary or appropriate to carry out the Agreement for Stadium Builders License Sales and Related Services.
3. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the Agreement for Stadium Builders License Sales and Related Services.
4. The Authority Secretary shall certify to the adoption of this Resolution.

[Paragraph 5 and certification follow on next page]

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2011, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. Staff Report dated June 28, 2011: Adoption of a Resolution Approving an Agreement for Stadium Builders License Sales between the Santa Clara Stadium Authority and Legends Premium Sales, LLC

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**AGREEMENT FOR STADIUM BUILDERS LICENSE SALES AND RELATED SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
LEGENDS PREMIUM SALES, LLC**

This Agreement for Stadium Builders License Sales and Related Services ("Agreement") is made as of the 15th day of July, 2011, by and between LEGENDS PREMIUM SALES, LLC, a Delaware limited liability company ("Legends"), and THE SANTA CLARA STADIUM AUTHORITY, a California joint powers authority (the "Authority"). The Authority and Legends may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Authority has been created to build, own and operate a stadium for the exhibition of professional football and other events (the "Stadium"), which will be leased for a portion of each year to Forty Niners Stadium LLC, a Delaware limited liability company ("Stadco"), an affiliate of the San Francisco Forty Niners (the "Team");
- B. The Authority possesses the sole and exclusive right to sell, license, or otherwise transfer personal seat licenses, also referred to as stadium builders licenses ("SBLs"), for seats to be located in the Stadium;
- C. The Authority intends to use proceeds from the sale of SBLs to finance the construction of the Stadium;
- D. The Authority wishes to engage Legends as its sole contractor for the marketing and sales of SBLs and related services specified herein;
- E. Legends has entered into a separate contract to provide Stadco with marketing services regarding suites ("Suites") at the Stadium (the "Stadco Suites Contract");
- F. Concurrently with its entry into this Agreement, the Stadium Authority is entering into a Stadium Marketing and Loan Agreement (the "Marketing Agreement") with Stadco, pursuant to which Stadco will supervise Legends in its performance under this Agreement, coordinate the SBL marketing program with Stadco's marketing of Suites, and loan the Authority funds required to market the SBLs.
- G. Legends represents that it has the professional qualifications, expertise, and desire to market and sell SBLs on behalf of the Authority and provide such other services specified herein.

AGREEMENT PROVISIONS

Now therefore, the Parties agree as follows:

2. TERM OF AGREEMENT.

This Agreement, and the rights and obligations established thereby, is effective as of July 15, 2011 (the "Effective Date") and expires on February 1 of the calendar year following the year in which the stadium opens, unless terminated earlier in accordance with the terms of this Agreement or applicable law (the "Sales Term"). Promptly following the completion of the Sales Term, Legends shall submit to the Authority a final report on the SBL sales program.

3. SBL PROCEEDS.

- a. Legends is authorized to accept deposits made by purchasers to secure the right to purchase SBLs and any other payments made in connection with the SBL sales, all on terms approved by the Authority. Legends shall establish a segregated account in its name (the "Deposit Account") to hold all such deposits and any other payments made in connection with the SBL sales pending final approval of the associated SBL sales contracts by the Authority pursuant to Section 4 below. No withdrawals from the Deposit Account shall be permitted without the signature of the Executive Director or her designee, unless otherwise directed by the Authority. Withdrawals or disbursements of funds from the Deposit Account shall be made only as follows: (i) to transfer deposits to the Authority when SBLs have been designated by the Authority; (ii) to transfer interest earned on deposits to the Authority as directed by the Authority; and (iii) to refund deposits, in whole or in part, to SBL purchasers if such SBLs are declined by the Authority or are otherwise terminated in accordance with the terms of the SBL agreement. The Deposit Account shall be established at a bank approved by the Authority, and Legends shall not change the bank or account number of the Deposit Account without the prior written consent of the Authority in each instance or unless directed by the Authority. Legends shall institute procedures reasonably satisfactory to the Executive Director to assure that all deposits accepted are deposited into the Deposit Account and are properly accounted for and maintained in accordance with this Agreement. Legends shall maintain an accurate accounting and records of all SBL deposits and sales, which Legends shall provide to the Authority for respective SBL sales contracts at the time Legends tenders such contracts to the Authority for final approval pursuant to Section 4 below. All costs of establishing, maintaining and securing (to Legends' and the Authority's reasonable satisfaction) the Deposit Account shall be included in the SBL Budget and reimbursed under Section 7.a.
- b. Proceeds from the sale of SBLs shall be collected solely for the benefit of the Authority and shall be used, in accordance with applicable law, to defray the Authority's obligations with respect to the development of the Stadium.

4. AUTHORITY FINAL APPROVAL RIGHT.

The Parties acknowledge that, notwithstanding Legends' execution of SBL sales contracts with individual purchasers, the Authority shall have a final right to approve all SBL sales

contracts, and reserves the right, in its sole discretion, to decline to accept any such contracts. Execution of said contracts by Legends shall not bind the Authority unless and until the Authority has finally approved the SBL sales contract(s). Upon approval by the Authority, Legends shall promptly transfer to the Authority, or otherwise at the Authority's direction, any and all deposits made by such SBL purchasers and any other payments made in connection with such SBL sales, as well as the accounting and records of all SBL deposits and sales as provided in Section 3 a.

5. RELATIONSHIP TO SUITE SALES.

All costs in connection with the Stadco Suites Contract shall be borne by Stadco. In no event shall the Authority have any liability or responsibility for the obligations of either Legends or Stadco under the Stadco Suites Contract, or for costs incurred by Legends in marketing Suites on behalf of Stadco.

6. BUDGET.

- a. Following the Effective Date of this Agreement, Legends shall promptly prepare a budget ("SBL Budget") for approval by the Executive Director, identifying projected costs associated with Legends' performance of services under this Agreement. Costs shall include salaries, commissions, benefits, costs of feasibility studies, a fair share of the costs of the Sales Center (as provided in Section 6.b), creation of marketing materials, and other items identified in the final SBL Budget. SBL sales staff shall generally be separate from Suite sales staff, such that employee compensation can be separately accounted for. To the extent that any costs incurred by Legends will benefit both the sale of SBLs and the sale of Suites, such costs shall be equitably allocated between the two, and only the costs allocable to the SBL sales shall be included in the SBL Budget. The SBL Budget shall be updated from time to time, subject to the approval of the Executive Director.
- b. Stadco has leased and improved space in the Techmart for use as a center for the marketing of Suites (the "Sales Center"), and has also authorized Legends to use the Sales Center in connection with the marketing of SBLs, provided that Legends reimburses Stadco for an equitable allocation of the costs of the Sales Center. The initial SBL Budget will be based on an allocation of the costs of the Sales Center of forty percent (40%) to SBLs and sixty percent (60%) to Suites. However, the final allocation will be subject to adjustment based on the actual usage of the facility and relative revenue generated, subject to the approval of the Executive Director.

7. COMPENSATION AND PAYMENT.

- a. Cost Reimbursement. The Authority will reimburse Legends for its actual costs incurred consistent with the approved SBL Budget pursuant to progress billings submitted on a monthly basis throughout the term of this Agreement. Legends shall compile and submit to the Authority and Stadco each month an invoice, and

shall submit to Stadco copies of all requisite receipts and documentation reasonably required of costs actually incurred by Legends in performing its services under this Agreement for the previous month. Pursuant to the Marketing Agreement, Stadco shall submit to the Authority a statement setting forth the amount Stadco determines to be due to Legends, including Stadco's certification that costs to be reimbursed to Legends were incurred consistent with the SBL Budget.

- b. Fee. In addition to reimbursement of Legend's actual costs pursuant to Section 7.a above, the Authority shall pay Legends a fee for its service under this Agreement up to a maximum of Six Million Dollars (\$6,000,000) (the "Fee"), as determined pursuant to this Section 7.b. Payment of the Fee shall be based on the attainment of certain performance benchmarks by Legends. Prior to the commencement of SBL sales, Legends and the Executive Director shall jointly establish performance benchmarks on which to base the Authority's payment of all or a portion of the Fee. Such performance benchmarks shall take into account the SBL pricing structure, prepayments and other factors and may be subject to adjustment from time to time. The Authority shall pay Legends a portion of the Fee for each performance benchmark attained by Legends. Stadco shall monitor the performance of Legends relative to Legends' attainment of each performance benchmark. Stadco shall report to the Authority each time Legends attains each performance benchmark. Based on Stadco's report to the Authority, the Authority shall pay the Fee, or any portion thereof, within thirty (30) days following Stadco's report to the Authority that Legends has achieved a level of performance that justifies payment of all or a portion of the Fee. The Authority shall not decline to accept SBL sales contracts solely for the purpose of avoiding the payment of the Fee due to Legends under this Agreement.
- c. Delay in Opening. Subject to the provisions of Section 8, if the Stadium is not open for the 2015 National Football League season, then the Authority shall, in addition to the Fee, pay to Legends a non-refundable consulting fee of \$25,000 per month for the incremental period between September 15, 2015 and the date of the first event held at the Stadium (the "Delay Fee"); provided, however, that if Stadco provides written notice to the Authority that no Suite Delay Fee has been paid or is owed under the Stadco Suites Contract, the Authority will have no obligation to pay any Delay Fee hereunder. Any Delay Fee will be due and payable on a monthly basis, with the first payment due on October 15, 2015.
- d. Limitation on Liability Prior to Commencement. Notwithstanding the foregoing provisions of this Section 7, prior to commencement of construction of the Stadium, the Authority shall be responsible for payments due Legends only from and to the extent of funds provided by Stadco for that purpose pursuant to the Marketing Agreement, and from interest earned on SBL deposits which the Authority is permitted to use consistent with applicable law and the terms of SBL sales contracts.

8. TERMINATION OF AGREEMENT.

The Parties may terminate this Agreement as follows:

- a. Stadium Does Not Proceed. If the Authority abandons its efforts to develop the Stadium because it determines that the project is infeasible, including, without limitation, failure to obtain all necessary governmental or other required approvals, failure to reach final agreements with Stadco, or because it deems available construction financing terms to be unacceptable, the Authority may terminate this Agreement upon ninety (90) days written notice. In such case, a break-up fee (the "Break-Up Fee") may be due Legends. The Break-Up Fee shall be payable upon expiration of the 90-day notice period. The amount of the Break-Up Fee shall be determined as follows, with any partial month prorated:
 - i. If notice of termination is given on or prior to September 14, 2011, no Break-Up Fee shall be payable.
 - ii. If notice of termination is given after September 14, 2011, but on or prior to September 14, 2012, the amount of the Break-Up Fee shall be \$6,000 dollars for each month from the Effective Date to the date ninety (90) days after notice of termination is given.
 - iii. If notice of termination is given after September 14, 2012, the amount of the Break-Up Fee shall be \$10,000 dollars for each month from the Effective Date to the date ninety (90) days after notice of termination is given.
- b. Voluntary Termination. The Authority may voluntarily and without cause terminate this Agreement for any other reason prior to the end of the Sales Term upon ninety (90) days written notice. In such case, a termination fee (the "Termination Fee") may be due Legends. The Termination Fee shall be payable upon expiration of the 90-day notice period. The amount of the Termination Fee shall be determined as follows, with any partial month prorated:
 - i. If notice of termination is given on or prior to September 14, 2011, the amount of the Termination Fee shall be \$6,000 for each month from the Effective Date to the date ninety (90) days after the notice of termination is given.
 - ii. If notice of termination is given after September 14, 2011, but on or prior to September 14, 2012, the amount of the Termination Fee shall be \$10,000 for each month from the Effective Date to the date ninety (90) days after the notice of termination is given.
 - iii. If notice of termination is given after September 14, 2012, but on or prior to September 14, 2013, the amount of the Termination Fee shall be \$16,000 for each month from the Effective Date to the date ninety (90) days after the notice of termination is given.

- iv. If notice of termination is given after September 14, 2013, the amount of the Termination Fee shall be (i) \$16,000 for each month from the Effective Date to the date ninety (90) days after the notice of termination is given, less (ii) the sum of all Fees, Delay Fees and Bonuses paid or payable to Legends pursuant to Section 7.b, 7.c, and 7.d; provided, however, that if a Termination Fee is otherwise payable under this Section 8.c, but Stadco advises the Authority that no comparable fee is owed upon the contemporaneous termination of the Stadco Suites Contract, the Termination Fee may be subject to reduction as agreed among the Authority, Legends and Stadco to reflect an equitable allocation of such compensation for such termination.
- c. Key Man Departure. If either Chad Estis or Al Guido cease to work for Legends at any point during the Sales Term (a "Key Man Departure"), and if Stadco exercises its right to terminate the Stadco Suites Contract on account of such Key Man Departure, then the Authority may terminate this Agreement for no fee, provided that the Authority gives Legends written notice of such termination within thirty (30) days after the Authority receives written notice from either Legends or Stadco that Stadco has terminated the Stadco Suites Contract on account of such Key Man Departure. Legends shall immediately notify the Authority in writing of Stadco's termination of the Suites Contract on account of a Key Man Departure.
- d. Following Notice of Termination. Promptly following receipt of notice of termination pursuant to Section 8.a, 8.b or 8.c, Legends shall (i) cease all efforts to market and solicit orders for the sale of SBLs, and shall accept no further deposits for the sale of SBLs, except as otherwise specifically directed by the Executive Director, and (ii) incur no further obligations for additional costs of performance hereunder, except as reasonably required to wrap up its operations and to fulfill its obligations under this Section 8.d. Legends shall promptly (i) tender any and all executed SBL sales contracts to the Authority pursuant to Section 4, (ii) disburse in accordance with the instructions of the Executive Director any and all funds held in the Deposit Account, (iii) deliver to the Authority a final report on the SBL sales program and an accounting of all deposits received, and (iv) deliver in accordance with Articles 7 and 8 a final invoice for all amounts due hereunder.

9. ASSIGNMENT AND SUBCONTRACTING OF AGREEMENT.

- a. Legends. Legends may not assign, transfer, delegate, subcontract or otherwise dispose of or encumber any of its rights or duties hereunder without the prior written consent of the Authority. If any subcontracting by Legends is approved, Legends 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 Legends is for the acts and omissions of persons directly employed by it.

- b. The Authority. The rights and duties of the Authority under this Agreement shall inure to the benefit of and be binding upon any successor to the Authority without any further action or approval by Legends, including, without limitation, its lenders or mortgagees.

10. 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.

11. INDEPENDENT CONTRACTORS.

Legends performance under this Agreement is that of an independent contractor. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship.

12. CONFIDENTIALITY.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions, contract pricing, or other information developed or received by or for Legends (other than marketing materials specifically developed and approved for distribution to the public) and all other written information submitted to Legends in connection with the performance of this Agreement shall be held confidential by Legends and shall not, without the prior written consent of the Authority, be used for any purposes other than the performance of Legends' obligations under this Agreement, nor be disclosed to an entity not connected with performance of such obligations unless required by law or the information has otherwise been previously disclosed publicly by the providing party.

In the event that Legends or any of its personnel are required to disclose any potentially confidential information, Legends shall provide the Authority with as much notice as reasonably possible of such impending disclosure.

13. USE OF AUTHORITY NAME OR EMBLEM.

The Authority authorizes Legends to use the Authority's name, insignia, or emblem in furtherance of marketing and sales of SBLs, subject to the approval of the Executive Director, which shall not be unreasonably withheld, of the specific manner in which such name, insignia, or emblem is to be used.

14. RIGHT TO INSPECT RECORDS OF LEGENDS.

The 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 the termination or expiration of this Agreement, to audit the books and records of Legends relating to the costs to be reimbursed by the Authority hereunder. Legends agrees to maintain sufficient books and records in accordance with generally accepted accounting

principles to establish the correctness of all charges submitted to the Authority. Any expenses not so recorded shall be disallowed by Authority and such amount disbursed to Legends as reimbursement for such expenses shall be promptly refunded by Legends.

15. NON-DISCRIMINATION.

Legends 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.

Furthermore, Legends shall not discriminate against any prospective purchaser of an SBL 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.

16. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Legends agrees to protect, defend, hold harmless and indemnify the Authority and its officers, employees, commissioners, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorneys' fees in providing a defense to any claim (collectively, "Claims") arising therefrom, for which the Authority may become liable to the extent such Claims arise from Legends' negligent, reckless or wrongful acts, errors, or omissions with respect to the services performed by Legends pursuant to this Agreement; provided, however, that in no event shall Legends have any responsibility under this Section 16 with respect to any Claim (i) arising out of or relating to the provisions of the SBL form contract, any marketing materials or other documents or actions expressly approved by the Authority or Stadco acting on behalf of the Authority pursuant to the Marketing Agreement, or (ii) for any bodily injury or property damage occurring in or about the Stadium during or after its construction.

17. INSURANCE REQUIREMENTS.

During the term of this Agreement, Legends shall purchase and maintain in full force and effect, at no cost to the 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 A.

18. AMENDMENTS.

This Agreement may be amended only with the written consent of the Authority and Legends.

19. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between the Authority and Legends. No other understanding, agreements, conversations, or otherwise, with any representative of the 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 the Authority.

20. SEVERABILITY.

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.

21. AUTHORITY APPROVAL.

Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the Authority's approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director (or his/her respective designee) shall constitute the approval, consent, or waiver of the Authority, respectively, without further authorization required from the governing board of the Authority; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems appropriate.

22. WAIVER.

Legends agrees that waiver by the 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.

23. NOTICES.

Any and all notices required to be given hereunder shall be sent by United States Certified Mail, postage prepaid, or by personal delivery, which may be by messenger service, commercial courier with charges prepaid for next business day delivery, or by facsimile addressed to the parties at the addresses hereinafter specified:

To the Authority:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Phone: (408) 615-2200
Attn: Executive Director

To Legends:

Legends Premium Sales, LLC
634 Frelinghuysen Ave.
Newark, NJ 07114
Attention: Mike Rawlings, CEO

With Additional Notice To:

Forty Niners Stadium LLC
4949 Centennial Blvd.
Santa Clara, CA 95054
Attention: Larry MacNeil
Phone No.: (408) 562-4986

Each notice shall be deemed received upon the earlier of receipt or three (3) days after the date of deposit with the United States Postal Service if sent by certified mail as provided above, or one (1) business day after deposit with the overnight courier specifying "next business day" delivery, or upon the date delivery is made; provided, however, that any refusal to accept delivery shall be deemed to constitute receipt.

24. 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.

25. LAW GOVERNING CONTRACT; VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

This Agreement is subject in all respects to all relevant present and future federal, state and municipal laws, regulations, rules, orders and decisions.

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.

26. DISPUTE RESOLUTION.

- a. Unless otherwise mutually agreed to by the Parties any controversies between Legends and the 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 attorneys' 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 attorneys' fees.

27. COMPLIANCE WITH ETHICAL STANDARDS.

Legends shall:

- a. Read Exhibit B, entitled "Ethical Standards for Contractors Seeking to Enter into An Agreement with the City of Santa Clara, California"; and,
- b. Execute Exhibit C, entitled "Affidavit of Compliance with Ethical Standards."

In the event of termination pursuant to Exhibit B, Legends shall be paid a Termination Fee as provided in Section 8.b for its services performed up to the date of the termination.

28. CONFLICT OF INTERESTS.

To prevent a conflict of interest, Legends certifies that to the best of its knowledge, no Authority officer, employee or authorized representative has any financial interest in the business of Legends and that no person associated with Legends has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Legends 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. Legends will advise the Authority if a conflict arises.

29. COUNTERPARTS.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

[Signatures follow on next page.]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

SANTA CLARA STADIUM AUTHORITY,
a California joint powers authority

APPROVED AS TO FORM:


ELIZABETH H. SILVER
Interim Authority Attorney

ATTEST:

JENNIFER SPARACINO
Authority Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210

ROD DIRIDON, JR.
Authority Clerk

LEGENDS PREMIUM SALES, LLC,
a Delaware limited liability company



MIKE RAWLINGS
Chief Executive Officer
634 Frelinghuysen Ave.
Newark, NJ 07114
Telephone: (862) 902-5450

**AGREEMENT FOR STADIUM BUILDERS LICENSE SALES AND RELATED SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
LEGENDS PREMIUM SALES, LLC**

EXHIBIT A

INSURANCE COVERAGE REQUIREMENTS

Without limiting Legends' indemnification of the Authority, and within 30 days of the Effective Date of this Agreement, Legends 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:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Legends; 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 Legends 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.

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 Legends 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 Legends 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 Authority, its commissioners, officers, employees, volunteers and agents.

D. 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. The Authority, Stadco and their commissioners, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Legends' work for the Authority, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Legends 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 Legends' insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Legends' work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. 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 the 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 the 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.
5. 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 D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Legends and the Authority agree as follows:

1. Legends agrees to ensure that subcontractors and any other party involved with fulfilling Legends' obligations under this Agreement who is brought onto or involved by Legends in the fulfilling of such obligations, provide the same minimum insurance coverage required of Legends, except as with respect to limits. Legends 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. Legends agrees that upon request by the Authority, all agreements with, and insurance compliance documents provided by, such subcontractors and other involved party or parties will be submitted to the Authority for review.
2. Legends 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 the Authority or Legends for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the Authority. It is not the intent of the Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the Authority for payment of premiums or other amounts with respect thereto.
3. the Authority reserves the right to withhold payments from Legends in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Within 30 days of the Effective Date of this Agreement, Legends, 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 the Authority and as described in this Agreement. Legends shall file with the Authority all certificates and endorsements for the required insurance policies for the Authority's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Legends 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 the Authority, or its representative as set forth below, at or prior to execution of this Agreement. Upon the Authority's request, Legends shall submit to the 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 the Authority pursuant to this Agreement shall be mailed to:

The Santa Clara Stadium Authority
c/o EBIX Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Legends 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 STADIUM BUILDERS LICENSE SALES AND RELATED SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
LEGENDS PREMIUM SALES, LLC**

EXHIBIT B

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

Termination of Agreement for Certain Acts.

- A. The Authority may terminate this Agreement in the event any one or more of the following occurs:
1. If Legends¹ 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 Legends 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 Exhibit B, "Legends" means Legends Premium Sales LLC and any person who controls or who has the power to control Legends Premium Sales LLC, or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of Legends Premium Sales LLC], 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.

**AGREEMENT FOR STADIUM BUILDERS LICENSE SALES AND RELATED SERVICES
BY AND BETWEEN THE
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EXHIBIT C

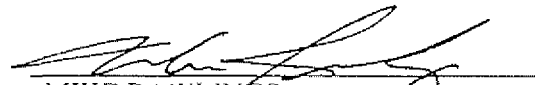
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Mike Rawlings, being first duly sworn, depose and state I am Chief Executive Officer of Legends Premium Sales, LLC and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit B to this Agreement. 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 "Legends" contained in the 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) included in the definition of "Legends" in Exhibit B to this Agreement 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.

LEGENDS PREMIUM SALES, LLC,
a Delaware limited liability company


MIKE RAWLINGS
Chief Executive Officer
634 Frelinghuysen Ave.
Newark, NJ 07114
Telephone: (862) 902-5450

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.

TEXAS INDIVIDUAL ACKNOWLEDGMENT (CIV. PRACT. & REM. CODE 121.007)

State of Texas

County of DALLAS

Before me,

Rosa A. Rios
Name of Notary Public

a Notary Public, on this day personally appeared

Mike Rawlings
Name of Signer

known to me **-OR-**

proved to me on the oath of _____

Name of Credible Witness

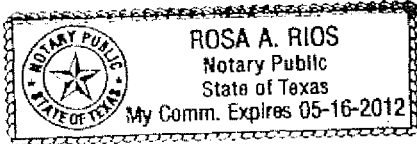
to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this

27th day of June, A.D. 2011
Day Month Year

Rosa A. Rios
Signature of Notary Public

Notary Public



OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Agreement Santa Clara Stadium Authority + Legends Premium Sales LLC

Document Date:

June 27, 2011

Number of Pages:

20

Signer(s) Other Than Named Above:

N/A

RIGHT THUMBPRINT OF SIGNER

Top of thumb here