

Meeting Date:

2/14/12

AGENDA REPORT

Agenda Item #

4B.2



City of Santa Clara, California



SA

Date: February 8, 2012

To: Executive Director for Stadium Authority Action

From: Assistant Executive Director for Stadium Authority

Subject: Approval of a Professional Services Contract with Hatheway Consulting, LLC for Project Management Services to Assist with the Design-Build Construction of the NFL Stadium in Santa Clara

EXECUTIVE SUMMARY:

On December 13, 2011, the Stadium Authority adopted a resolution to approve the Disposition and Development Agreement between the 49ers Stadium, LLC ("StadCo") and Santa Clara Stadium Authority, a major milestone towards the construction for a football stadium in the City of Santa Clara. The Stadium Site Preparation work (Make-Ready Work) contractor commenced work on January 30, 2012 and the Stadium Authority authorized the Executive Director to retain consultants to support construction. The Stadium Authority at its February 14, 2012 regular meeting will consider: (1) the approval of a Design-Build Agreement with Turner Devcon Joint Venture ("TDJV") to provide for the construction of the Stadium; and (2) the approval of a Construction Agency Agreement with StadCo whereby StadCo will provide oversight of the stadium construction. The Stadium construction will require specialized design-build and stadium construction expertise to fulfill the role of the Stadium Authority's Construction Representative.

The proposed Agreement for Professional Services with Hatheway Consulting, LLC will provide for professional project management to assist the Stadium Authority in fulfilling the Stadium Authority's Construction Representative as required in the Construction Agency Agreement. Mr. David Hatheway has 32 years of experience, specifically as the manager-in-charge for four professional stadium projects totaling over \$2 billion. This project list includes the construction of the Philadelphia Eagles NFL Stadium, the San Francisco Giants Major League Baseball Park and Portland Trail Blazers Arena. Mr. Hatheway will participate in work sessions and project meetings associated with the design phase and perform as the Stadium Authority's Construction Representative through construction, commissioning and "close-out" project activities. The proposed Agreement will not exceed \$390,000 in the term of one year and includes the ability for the Stadium Authority to extend the term for a total of three years subject to future appropriations after construction funding is obtained. A copy of the contract has been placed in Stadium Authority offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into the contract with Hatheway Consulting, LLC will provide valuable expertise in NFL stadium construction and operations which will benefit the Make-Ready Work and ultimately for the design-build construction of the Stadium. The disadvantage is that the cost of the specialized stadium expertise exceeds the typical cost of in-house construction management; however, with the current workload and staffing, these services are not available in-house.

Executive Director for Stadium Authority Action

Approval of a Professional Services Contract with Hatheway Consulting, LLC for Project Management Services to Assist with the Design-Build Construction of the NFL Stadium in Santa Clara

February 8, 2012

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ECONOMIC/FISCAL IMPACT:

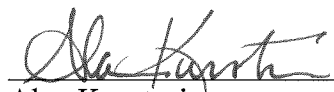
The cost for services of the one-year term will not exceed \$390,000. Funds will be made available in the overall stadium development budget. Until close of escrow, currently expected to occur by April 2012, StadCo has agreed to cover this cost as a reimbursable predevelopment cost.

RECOMMENDATION:

That the Authority

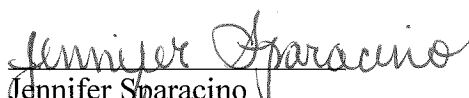
1. Approve the professional services contract with Hatheway Consulting, LLC for an amount not to exceed \$390,000 for the initial term;
2. Authorize the Executive Director to execute the contract with Hatheway Consulting, LLC; and
3. Delegate authority to the Executive Director to approve and execute two successive one year term extensions subject to future Stadium Authority appropriations.

Subject to Close of Escrow *JH OK*
875-8310-80300-4911 - \$390,000.00


Alan Kurotori
Assistant Executive Director


Gary Ameling
Stadium Authority Treasurer

APPROVED:


Jennifer Sparacino
Executive Director

Documents Related to this Report:

- 1) *Agreement for Professional Services by and between Santa Clara Stadium Authority and Hatheway Consulting, LLC.*

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
HATHEWAY CONSULTING, LLC**

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of February ____, 2012, ("Effective Date") by and between Hatheway Consulting, LLC, an Arizona limited liability company, with its principal place of business located at 33775 N. 69th Street, Scottsdale, AZ 85266 ("Consultant"), and the Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("Stadium Authority"). Stadium Authority and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Stadium Authority is a joint powers authority originally formed for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining a stadium suitable for NFL games, with a permanent seating capacity of up to 68,500 seats (with the possibility for expansion to approximately 75,000 seats for larger events such as an NFL Super Bowl), landscaping and infrastructure (the "Stadium");
- B. Stadium Authority desires to secure professional services more fully described in Exhibit A, entitled "SCOPE OF SERVICES", to provide services related to the constructing the Stadium;
- C. Consultant represents that it, and its sub-consultants, 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 Stadium Authority; and
- D. The Parties have specified herein the terms and conditions under which such services will be provided and paid.

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 perform the Services required by Stadium Authority at his/her own risk and expense. Services to be provided to Stadium 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.

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 be twelve (12) months and shall begin on the Effective Date of this Agreement and terminate on 5:00 P.M. on the day immediately preceding the first anniversary date of the Effective Date. The Stadium Authority, at its sole election, may extend the term of this Agreement for two (2) successive one year periods, with the first extension period commencing on the first anniversary date of the Effective Date and the second extension period commencing on the day immediately following the termination of the first extension period.

3. 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 Stadium 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 estimates, calculations, reports, records, budgets and other written communications ("Documents") required under Exhibit A shall be of a quality acceptable to Stadium Authority. The criteria for acceptance of the Documents shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified.

4. MONITORING OF SERVICES.

Stadium Authority may monitor the Services performed under this Agreement to determine whether Consultant's operation conforms to Stadium Authority policy and to the terms of this Agreement and whether financial operations are conducted in accord with applicable Stadium Authority, city, county, state, and federal requirements.

5. PERFORMANCE OF SERVICES.

Consultant shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by Stadium Authority. Consultant shall be fully responsible to Stadium Authority for the acts and omissions of its sub-consultants, 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.

6. 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 Stadium 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 Stadium Authority in accordance with applicable law for all damages to Stadium Authority caused by Consultant's negligent performance of any of the Services as further set forth in Section 19 of this Agreement.

Any acceptance by Stadium Authority of the Documents 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.

7. COMPENSATION AND PAYMENT.

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

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

8. SUSPENSION OF WORK

If Stadium Authority determines that the work on the Stadium will be substantially delayed or suspended, Stadium Authority may suspend Consultant's work under this Agreement for the period of time of the delay or suspension by delivering to Consultant a notice of suspension ("Notice of Suspension"). Consultant shall suspend work under this Agreement effective as of the date of Consultant's receipt of the Notice of Suspension.

9. 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 and the date of such termination. The 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 Stadium Authority shall pay Consultant for all Services satisfactorily performed up to such date.

10. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

Stadium 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 Stadium Authority. Consultant shall not hire sub-consultants without express written permission from Stadium Authority.

11. 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.

12. INDEPENDENT CONSULTANT.

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

13. NO PLEDGING OF STADIUM AUTHORITY'S CREDIT.

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

14. 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 Stadium 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.

15. USE OF STADIUM AUTHORITY NAME OR EMBLEM.

Consultant shall not use Stadium 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 Stadium Authority.

16. 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 Stadium Authority but Consultant may retain and use copies thereof. Stadium 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.

17. RIGHT OF STADIUM AUTHORITY TO INSPECT RECORDS OF CONSULTANT.

Stadium 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 the 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 accounting principles reasonably acceptable to the Stadium Authority to establish the correctness of all charges submitted to Stadium Authority. Any expenses not so recorded shall be disallowed by Stadium Authority.

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

18. 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.

19. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify Stadium Authority, its Stadium Authority Council, 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 Stadium 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.

To the extent permitted by law, Stadium Authority shall indemnify, defend and hold harmless the Consultant, from and against all liability, loss, cost or expense (including reasonable attorney's fees) by reason of liability imposed upon the Consultant, arising out of or related to Consultant's services performed in good faith within the scope of Consultant's engagement, whether caused by or contributed to by the Consultant, any third parties, or any other party indemnified herein, provided, however, such indemnity shall not apply to intentional, willful or negligent acts or omissions by Consultant.

20. 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 Stadium 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.

21. AMENDMENTS.

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

22. INTEGRATED DOCUMENT.

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

23. 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.

24. WAIVER.

Consultant agrees that waiver by Stadium 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.

25. NOTICES.

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

Santa Clara Stadium Authority
Attention: Executive Director
1500 Warburton Avenue
Santa Clara, California 95050

And to Consultant addressed as follows:

Hatheway Consulting, LLC
Attention: David Hatheway
33775 N. 69th Street,
Scottsdale, AZ 85266

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.

26. 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.

27. 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.

28. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and Stadium 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.

29. COMPLIANCE WITH ETHICAL STANDARDS.

Consultant shall:

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

(Paragraph 30 and signatures follow on Page 9)

30. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Consultant certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Consultant and that no person associated with Consultant has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Consultant 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 joint powers authority

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

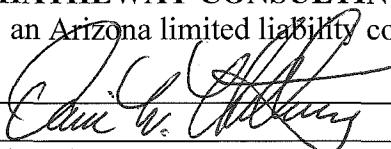
ATTEST:

ROD DIRIDON, JR.
City Clerk

JENNIFER SPARACINO
Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

HATHEWAY CONSULTING, LLC
an Arizona limited liability company

By: _____


Name: David Hatheway

Title: Principal

Local Address: 33775 N. 69th Street
Scottsdale, AZ 85266

Telephone: (480) 414-8880

“CONSULTANT”

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
HATHEWAY CONSULTING, LLC**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the Stadium Authority by the Consultant under this Agreement are more fully described as follows:

Hatheway Consulting, LLC will fulfill the role of Owner's Representative for the Stadium Authority. The role of Owner's Representative will require far ranging activities but the core of this advisory assignment is to review, monitor and use commercially reasonable efforts to protect the interests of the Stadium Authority, and more specifically, the Stadium Authority's ownership position. This is an important and visible assignment, which Consultant's principal, David W. Hatheway, has successfully accomplished for multiple past employers and one where Mr. Hatheway has specific expert knowledge in the field of US Professional Stadium development and construction.

The activities required for this assignment include:

1. Coordinating with Stadium Authority staff and StadCo in overseeing the "Make-Ready Work" being constructed at the Stadium site prior to commencement of construction of the Stadium.
2. Participating in Owner meetings with StadCo, Turner/Devcon JV, HNTB, the Lender's representative, Stadium Authority officials and others as the meeting situations dictate.
3. Participating in working sessions with project participants (Stadium Authority staff, StadCo, Turner/Devcon JV, HNTB, Lender's representative consultant, others to be defined).
4. Participating in the development of any applicable City development agreements connected to the stadium project or its site.
5. Being available for telephone conference calls concerning project issues.
6. Reviewing and commenting on documentation prepared by the development team including:
 - a) meeting minutes,
 - b) programming,

- c) design drawings,
- d) cost estimates,
- e) potential change order proposals,
- f) project change orders,
- g) potential design consultancy additional service requests,
- h) design team additional service requests,
- i) monthly pay applications,
- j) correspondence and communication with lender's monitoring consultant,
- k) correspondence and communication with Owner's insurance representatives,
- l) the Owner's Controlled Insurance Program (OCIP),
- m) coordination and activity related to the City of Santa Clara's permitting process,
- n) researching and commenting on related lifecycle cost issues,
- o) advising on building management and operational issues,
- p) actively being involved in project commissioning and,
- q) actively being involved in the project closeout process until Final Completion is achieved.

7. Consultant is required to provide the following written reports to the Stadium Authority:

- a) Monthly Project Report. This is an overview of all project issues (schedule, budget, safety, OCIP, major milestones, environmental hazards, etc.)
- b) Budget Variance Report. This report will be submitted as needed but not less than once a month. The report will discuss the status of all contemplated preliminary estimates, potential change orders (PCOs), change orders (COs), design team additional service requests (ASRs), and proposed uses of the project contingency. This report will also assess any budgetary issues that could give rise to concerns between the Stadium Authority's sources of funding and the Stadium Project's final cost projections. This report will also pay particular interest to contractor or design team monetary claims that have the potential for exceeding budget line items or increasing the overall project budget.

- c) Monthly Pay Application Report. This will be a concise report describing the headline invoicing status, which may be submitted by StadCo, T/D JV, and any 3rd party contractors or consultants as part of the monthly pay application request. Coupled with the bank's separate representative's report, Consultant's report will provide a chain of validation that the submitted invoicing has been reviewed and conforms sufficiently to the accepted work (physically installed or properly stored) such that payment may be made.
 - d) Any related specialty reports as the situation may arise. Examples could include environmental hazard discoveries and resultant mitigations, assessment of energy technologies being considered to lower life cycle costs, labor relations issues, project safety assessments, analysis of project schedule, and other project related issues that may be deemed significant or lengthy in tenure for which a written report is required. Specialty reporting frequency requirements will be determined by Consultant and Stadium Authority collectively.
- 8. Provide advice on the development of the Stadium Management Agreement and Stadium operation plans.
 - 9. Providing strategic and general advice on development and implementation issues.
 - 10. Being available for consultation with the Stadium Authority Executive Director or their designees.
 - 11. Liaison activities with other Stadium Authority consultants connected with the stadium development.
 - 12. All required report writing, documentation organization and preparation. This includes assisting the Executive Director and designee with any and all stadium development supporting documentation and preparatory works that enables the Executive Director of the Stadium Authority to properly execute her duties to the Stadium Authority board of directors and the greater community.
 - 13. Other tasks as relating to the Stadium development and operation as designated by the Stadium Authority.

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HATHEWAY CONSULTING, LLC**

EXHIBIT B

FEE SCHEDULE

FEE SCHEDULE

I. Consultant and Sub-consultant Personnel

David W. Hatheway	\$190/Hr.
Employees of Consultant, other than Principal of Firm	None anticipated

- A. Hourly Billing rate is for the 2012 through 2014 calendar year period and not subject to CPI increase. To the extent the Agreement extends beyond 2014, Consultant may request a reasonable increase in the Hourly Billing rate consistent with any Cost of Living increase.
- B. Consultant shall not exceed a total of Three Hundred Seventy Thousand Dollars (\$370,000) in each twelve (12) month term of this Agreement without prior written approval by the Stadium Authority.
- C. It is understood that Consultant intends to relocate to Santa Clara to fulfill this assignment. The cost of this relocation is not an allowable reimbursement but to the extent the IRS tax code allows some of these costs to be categorized as business or personal tax deductions, the Consultant will seek that relief.
- D. The Consultant's home office is in Scottsdale, AZ. While the Consultant intends to relocate to Santa Clara for the performance of these duties there will be times when the Consultant will be returning to the home office. The Consultant contemplates that during these times there will continue to be work activity connected with this assignment and will bill for actual hours worked, regardless of physical location.
- E. Service Charge on any Sub-Consultants 10%

II. Reimbursable Expenses: Reimbursable Expenses may not exceed a total of Twenty Thousand Dollars (\$20,000) per calendar year of this Agreement. Expenses may only be incurred with prior authorization and reasonable documentation supporting such expense

shall be submitted by Consultant prior to reimbursement. Expenses may only be for Stadium related activities and shall not include any costs related to commuting from the Stadium site to Consultant's office or home.

**AGREEMENT FOR PROFESSIONAL SERVICES
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SANTA CLARA STADIUM AUTHORITY
AND
HATHEWAY CONSULTING, LLC**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the Santa Clara Stadium 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:

\$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 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 Contractor 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 two million dollars (\$2,000,000) 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 Contractor 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 members, officers, employees, volunteers and agents and the City of Santa Clara, its Council members, 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 negligent 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 one million dollars (\$1,000,000) per occurrence or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the Stadium Authority General Counsel.

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. Santa Clara Stadium Authority, its Board members, commissions, officers, employees, volunteers and agents and the City of Santa Clara, its Council members, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for the Stadium 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 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. General Aggregate. The general aggregate limits shall apply separately to Consultant's 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 Stadium 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 Stadium 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.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and Stadium Authority agree as follows:

1. Consultant agrees to ensure that subcontractors or sub-consultants (as the case may be), 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 Stadium Authority, all agreements with, and insurance compliance documents provided by, such subcontractors or sub-consultants and others engaged in the project will be submitted to Stadium 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 Stadium Authority or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Santa Clara. It is not the intent of Stadium Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Stadium Authority for payment of premiums or other amounts with respect thereto.
3. The Stadium 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 or sub-consultant (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 Stadium Authority and as described in this Agreement. Consultant shall file with the Stadium Authority all certificates and endorsements for the required insurance policies for Stadium 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 Stadium Authority, or its representative as set forth below, at or prior to execution of this Agreement. Upon Stadium Authority's request, Consultant shall submit to Stadium 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 Stadium Authority pursuant to this Agreement shall be mailed to:

Santa Clara Stadium Authority
c/o EBIX Inc.
P.O. 12010-S2
Hemet, CA 92546-8010

or 151 North Lyon Avenue
Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

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 Stadium Authority or its insurance compliance representatives.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
HATHEWAY CONSULTING, LLC**

EXHIBIT D

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

Termination of Agreement for Certain Acts.

The Stadium 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 Consultant or sub-consultant; 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) 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" means 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.
- J. The Stadium Authority may also terminate this Agreement in the event any one or more of the following occurs:
1. The Stadium 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 Stadium Authority determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with Stadium Authority, including, but not limited to, Consultant's failure to maintain a required State issued license, failure to obtain a Stadium Authority business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- K. 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 Stadium Authority's action to the Stadium Authority Board of Directors by filing a written request with the Stadium Authority Clerk within ten (10) days of the notice given by Stadium Authority to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the Stadium 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 Santa Clara for the successful performance of the obligations of the Consultant to the Santa Clara.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
HATHEWAY CONSULTING, LLC**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, David W. Hatheway, being first duly sworn, depose and state I am Principal of Hatheway Consulting, LLC 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.

HATHEWAY CONSULTING, LLC

an Arizona limited liability company

By: _____

Signature of Authorized Person or Representative

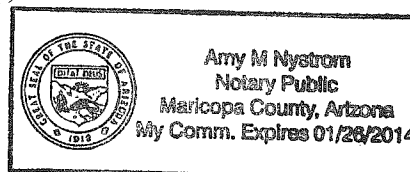
Name: David Hatheway

Title: Principal

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.

Affidavit of Ethical Standards/Exhibit E
1524\02\1091149.4
2/8/2012



STATE OF ARIZONA }
COUNTY OF MARICOPA } ss
This instrument was acknowledged before me this day of
February 9, 2012 by
In witness whereof I herewith set my hand and official seal.
_____, NOTARY PUBLIC