

Stadium Manager:
Forty Niners Stadium Management Company LLC
Procurement
4900 Marie P DeBartolo Way
Santa Clara, California 95054

Vendor:
Lutron Services Co., Inc.
7200 Sutter Road
Coopersburg, PA 180036
Annie Masenheimer
Tel: 484.350.2160
Email: Amasenheimer@Lutron.com

Purchase Order:
XXXX

Blanket Purchase Order Date: XXXXX

SHIP ALL ITEMS TO Forty Niners Stadium Management Company LLC Receiving ATTN: Andres Ott 4900 Marie P DeBartolo Way Santa Clara, California 95054	BILL TO Forty Niners Stadium Management Company LLC Accounts Payable C/O: Andres Ott 4949 Marie P DeBartolo Way Santa Clara, California 95054 Email: AP@49ers.com	ATTENTION: Andres Ott Andres.Ott@49ers-smc.com
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DESCRIPTION
Lutron Services Co., Inc. (Lutron) shall provide proprietary Technology Support Plan for the Lutron lighting system at Levi's Stadium (Stadium) as required by Stadium Manager, for a three year term, to commence on July 15, 2022 and expire on July 14, 2025, in an amount not to exceed \$46,091.00 per contract year. Total compensation, in the aggregate, shall not exceed \$138,273.00 over the three year period. The term for subsequent fiscal years shall be conditioned upon approval of the Santa Clara Stadium Authority (SCSA) budget for the applicable fiscal year that includes the amounts due under this contract. Year 1 – July 15, 2022 through July 14, 2023 - \$46,091.00 Year 2 – July 15, 2023 through July 14, 2024 - \$46,091.00 Year 3 – July 15, 2024 through July 14, 2025 - \$46,091.00 Total not-to-exceed amount of the Blanket Purchase Order shall not exceed \$138,273.00 for the three year term. Lutron shall provide support services in accordance with the Levi's Stadium Purchase Order Terms and Conditions and Attachment A – Technology Support Plan Order Form including the Equipment List and Terms and Conditions. Stadium Manager has selected the Gold Technology Support Plan. <u>Gold Plan includes:</u> 1. 100% Diagnostic Labor 2. 100% Parts Coverage 3. 2 Hours of Remote Programming per Year 4. 24/7 Technical Phone Support 5. Annual Utility Day 6. 72 Hour Response Time <u>Support Plan Covers</u> 1. On-site or remote service to troubleshoot and diagnose the lighting control system(s) ("System") manufactured by Lutron. a. All on-site or remote services will be performed by qualified Lutron Field Service Representatives. b. On-site or remote coverage hours are Lutron Business Hours (8:00am- 5:00pm Monday through Friday, local time, excluding Lutron holidays). Travel costs incurred by Lutron are included. Support at Customer's request outside normal business hours, will be billable at Lutron's then – current rates and/or minimum charges for After Hours work. 2. System replacement parts and Lutron ballasts/LED drivers. 3. Parts coverage for all Systems. a. Parts coverage for Systems greater than 10 years old is based on availability.

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4. Two (2) hours of Remote Programming on an annual basis.
5. 24/7 Technical Phone Support, excluding Lutron Holidays.

Utility Day(s) - Number of Utility Days Opted by Stadium Manager is Eight (8) and includes the following:

1. Onsite Training includes a scheduled onsite Lutron lighting control system programming and implementation training visit for facility staff. Sessions may be tailored to specific staff or facility needs, per request
2. System Optimization includes an onsite, consultative visit for identification and implementation adjustments and/or strategies to enhance energy savings
3. Preventive Maintenance includes scheduled onsite visit for asset management, system check, panel maintenance and computer maintenance
4. Additional Elective Services include timeclock reprogramming and/or system status reporting.

Service Procedures

1. To schedule a visit, call 844-588-7661 and follow prompts to be connected to Lutron Field Service Scheduling.
2. Lutron representatives will perform service in compliance with security and safety instructions provided by Customer.
3. Customer agrees that all Lutron's service must be done in compliance with Lutron's safety procedures, which may include temporarily disabling or de-energizing the System and other equipment connected to the System.
4. Lutron will respect the Customer's confidentiality and will utilize job specific information only as needed to complete the service visit.

Payments shall be made annually upon receipt of invoice from Lutron.

Location of onsite service:

Levi's Stadium
4900 Marie P. DeBartolo Way
Santa Clara, CA 95054

STADIUM MANGER

Signature: _____

Name: Jim Mercurio _____

Title: Executive Vice President and General Manager _____

Email: jim.mercurio@49ers.com _____

Date: _____

VENDOR

Signature: _____

Name: Matthew Salvo _____

Title: Director, Commercial Projects & Services _____

Email: msalvo@lutron.com _____

Date: _____

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LEVI'S STADIUM PURCHASE ORDER TERMS AND CONDITIONS

1. **CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences acceptance by the Forty Niners Stadium Management Company LLC ("Stadium Manager") of the offer from the provider of goods and services ("Vendor") which are the subject of this purchase order and constitutes a binding contract upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
2. **SCHEDULE; TIME OF PERFORMANCE:** Vendor shall supply the goods and perform the services, with the schedule and term, as specified herein. Time is of the essence.
3. **COMPENSATION; SCHEDULE OF PAYMENT:** Compensation, and method of payment, shall be as set forth herein. Vendor shall submit an invoice within thirty (30) calendar days after satisfactory completion of performance. Stadium Manager shall make payment within thirty (30) calendar days after receipt of such invoice. Vendor is responsible for all costs and expenses incident to the performance of this purchase order, including without limitation all costs, taxes, and all other costs of doing business.
4. **DISCOUNT PERIODS:** Intentionally left blank.
5. **SALES TAXES:** Vendor shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods.
6. **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS:** All goods shall be delivered "free on board destination" to the location specified herein, full freight prepaid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. Stadium Manager's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. Stadium Manager's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by Stadium Manager shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to Stadium Manager only upon Stadium Manager's acceptance of such goods.
7. **CHANGES:** Stadium Manager shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by Stadium Manager's Chief Financial Officer ("CFO") or his/her designee. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If Vendor believes that the change will cause an increase or decrease in the cost of or time for performance, then Vendor must deliver to Stadium Manager a statement showing the effect of any such changes within thirty (30) calendar days of receipt of the Stadium Manager's notice of change. An equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Changes may only be made in writing.
8. **INSURANCE REQUIREMENTS:** Vendor shall, at no cost to Stadium Manager, maintain (or cause to be maintained) the following insurance coverage with insurers having a "Best's" rating of A-VIII or better: commercial general liability insurance, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations and contractual liability with a minimum amount of one million US Dollars (USD \$1,000,000.00) for each occurrence. Vendor shall provide Stadium Manager with applicable certificates and/or endorsements before work commences.
9. **COMPLIANCE WITH THE LAW:** Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.
10. **GOVERNING LAW; VENUE:** This purchase order shall be governed and construed in accordance with the laws of the State of California. The venue of any suit filed by either Party shall be 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 Division.
11. **ASSIGNMENT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the prior written consent from Stadium Manager or his/her designee. In order to meet contractual response times vendor may utilize subcontractors as necessary to perform break/fix services.
12. **WAIVER:** Vendor agrees that Stadium Manager's waiver of any breach or violation of any provision of this purchase order, or

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acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. Stadium Manager's inspection and warranty rights are not waived by payment or any other action by Stadium Manager.

13. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor and all person(s) employed or contracted by Vendor shall act as, and be, an independent contractor and not an employee, agent, joint venturer, or partner of Stadium Manager. Vendor has full rights to manage its employees and contractors under this Agreement. Vendor shall retain the right to provide goods or perform services for others during the term of this purchase order.
14. **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by Stadium Manager, or as required by law.
15. **VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain all records evidencing or relating to performance and amounts charged to or paid by Stadium Manager for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Vendor pursuant to this purchase order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by Stadium Manager. Copies of such documents shall be provided to Stadium Manager for inspection at Levi's Stadium if requested and if practical to do so, otherwise records will be inspected at Vendor's business location.
16. **NON-DISCRIMINATION.** Vendor and all of Vendor's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
17. **CONFLICTS OF INTEREST:** Vendor certifies that no Stadium Manager officer, employee or authorized representative has any financial interest in the business of Vendor and that no person associated with Vendor has any interest, direct or indirect, which could conflict with the faithful performance of this Purchase Order. Vendor is familiar with the provisions of California Government Code section 87100, et seq., and certifies that it does not know of any facts which would violate these laws. Vendor will promptly advise Stadium Manager if a conflict arises. Vendor has read and agrees to comply with City of Santa Clara's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).
18. **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.

ATTACHMENT A

Technology Support Plan Order Form

Customer Name: **Forty Niners Stadium Management Company**

Effective Date: **July 15, 2022**

Payment Frequency: Annually: ☒ Quarterly: ☐ Monthly: ☐

Annual Rate: \$ 46,091.00

Covered Lutron Job Name(s) & Number(s) on Page 2

☐ ☐ ☐

Initial Term:

At Customer's option, multiple years may be purchased at the Annual Rate; the total duration of this price assurance not to exceed:

- ☐ 1 Year
☐ 2 Years
☒ 3 Years

Technology Support Plan Level:		✓	
	Silver	Gold	Platinum
100% Diagnostic Labor	X	X	X
100% Parts Coverage	X	X	X
2 Hours of Remote Programming per Year	X	X	X
24/7 Technical Phone Support	X	X	X
Annual Utility Day		X	X
First Available Response Time	X		
72 Hour Response Time		X	
24 Hour Response Time			X

*Plan summaries; See coverage section for details

Billing Contact:

Contacts Name:	
Street Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	
Purchase Order Number: (for reference purposes only)	

Site Contact:

Contacts Name:	
Street Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	

Custom Services

WSS Coverage: ☐

Number of Annual Utility Days: 8

The price of this contract includes a 3% discount for the 3 year agreement.

Pricing expires at the close of business September 15, 2022; any agreement signed thereafter subject to pricing adjustment.

Customer:

Signature:	
Name (Print):	
Title (Print):	

Lutron Services Co., Inc.

Signature:	
Name (Print):	Matthew Salvo
Title (Print):	Director – Commercial Projects & Services

By signing, the parties agree to be bound by the terms of this Technology Support Plan. After Lutron Services Co., Inc. ("LSC") receives Customer's signed document, LSC will send a fully executed copy to you. You will be invoiced at the start of each Term; if you have not included the first payment with submission of the signed document, you will receive an invoice within 4 weeks of the effective date.

Lutron Services Co., Inc., | Attn: Service Sales Manager | 7200 Suter Road | Coopersburg | PA | 18036

Equipment List

Lutron Job Name(s):	Levi's Stadium
Lutron Job Number(s) & System(s):	2004009 & Quantum
Equipment Location(s):	Santa Clara, CA

Terms & Conditions

1. All Support Plans **COVER**

- a. On-site or remote service to troubleshoot and diagnose the lighting control system(s) ("System") manufactured by Lutron Electronics Co., Inc. ("Lutron").
 - i. All on-site or remote services will be performed by qualified Lutron Services Company (LSC) Field Service Representatives.
 - ii. On-site or remote coverage hours are Lutron Business Hours (8:00am- 5:00pm Monday through Friday, local time, excluding Lutron holidays). Travel costs incurred by LSC are included. Support at Customer's request outside normal business hours, will be billable at LSC's then – current rates and/or minimum charges for After Hours work.
- b. System replacement parts and Lutron ballasts/LED drivers.
- c. Parts coverage for all Systems.
 - i. Parts coverage for Systems greater than 10 years old is based on availability.
- d. Two (2) hours of Remote Programming on an annual basis.
- e. 24/7 Technical Phone Support, excluding Lutron Holidays.

2. Support Plan Specific Entitlements

- a. Silver Plan:
 - i. First available response time for remote or on-site service for System troubleshooting and diagnosis.
 - ii. Zero (0) Utility Days unless otherwise specified in the Custom Services Section on Page 1. Utility Visits can cover any day of service except for Lutron Onsite or Remote Startup.
- b. Gold Plan:
 - i. Three (3) – business day response time for remote or on-site service for System troubleshooting and diagnosis.
 - ii. One (1) Utility Day unless otherwise specified in the Custom Services Section on Page 1. Utility Visits can cover any day of service except for Lutron Onsite or Remote Startup.
- c. Platinum Plan:
 - i. One (1) – business day response time for remote or on-site service for System troubleshooting and diagnosis.
 - ii. One (1) Utility Day unless otherwise specified in the Custom Services Section on Page 1. Utility Visits can cover any day of service except for Lutron Onsite or Remote Startup.
- d. Window Shade Solution:
 - i. Optional Coverage indicated in the Custom Services Section on Page 1. Gold or Platinum Plan is required. Window Shade Solution (WSS) support to be performed during the annual Utility Day. This coverage does not cover the installation/removal/replacement of window shades or shade components.
 - ii. Adds WSS Replacement Parts Coverage, excluding fabric.
 - iii. WSS Utility Day will include the following:
 1. Confirmation of shade zone configurations.
 2. Verification of shade motor limits and addresses.
 3. Visual inspection of shade hardware and fabrics.
 4. WSS troubleshooting and diagnosis.
 5. WSS operation Customer training.
- e. Utility Day(s) can include the following:
 - i. Onsite Training includes a scheduled onsite Lutron lighting control system programming and implementation training visit for facility staff. Sessions may be tailored to specific staff or facility needs, per request
 - ii. System Optimization includes an onsite, consultative visit for identification and implementation adjustments and/or strategies to enhance energy savings
 - iii. Preventive Maintenance includes scheduled onsite visit for asset management, system check, panel maintenance and computer maintenance
 - iv. Additional Elective Services include timeclock reprogramming and/or system status reporting.

3. Service Procedures

- a. To schedule a visit, call 844-588-7661 and follow prompts to be connected to LSC Field Service Scheduling.
- b. LSC representatives will perform service in compliance with security and safety instructions provided by Customer. LSC will provide a certificate of insurance upon request of Customer.
- c. Customer agrees that all LSC service must be done in compliance with LSC's safety procedures, which may include temporarily disabling or de-energizing the System and other equipment connected to the System.
- d. LSC will respect the Customer's confidentiality and will utilize job specific information only as needed to complete the service visit.

4. Support Plans **DO NOT COVER**

- a. Labor costs to remove and reinstall components, fixtures, window shades (or shade components), batteries, ballasts/LED drivers, and/or line voltage electrical equipment.
- b. Services requiring a licensed electrician or electrical contractor.
- c. Damage or malfunctions diagnosed by LSC as due to abuse, misuse, or accident, such as: use of incorrect line voltage, fuses or protection devices; failure to follow operating and maintenance instructions provided by Lutron or LSC; failure to comply with national or local electrical codes; unauthorized repairs/adjustments; vandalism or theft; fire, water damage, flood, "Acts of God", or other problems beyond LSC's control.
- d. Repairs or adjustments to Lutron System required as a result of
 - i. Malfunctions caused by non-Lutron supplied equipment.
 - ii. Software that is connected to or used with the System
 - iii. Programming changes made by anyone other than an LSC Field Service Representative. Including Field Service Engineers (FSE) or Authorized Service Center (ASC) agents.
- e. Non-Lutron components and equipment to include but not limited to:
 - i. Lamps, non-Lutron ballasts/LED drivers, sockets, fixtures, fixture wiring between ballasts and lamps, building wiring between System elements, audio-visual equipment, non-Lutron timeclocks and sensors, and local area networks.
- f. Any fees that may be charged to LSC for vendor portal registration; such fees may be passed to the Customer at LSC's sole discretion.
- g. Computers, associated equipment, and software; backup of the Customer's System database.
- h. Any batteries used in wireless devices.
- i. Customer activities related to providing a virtual private network or secured internet connection for remote access in support of remote programming and diagnosis by LSC; absence of such remote access precludes remote access and related LSC support.
- j. Window Shade Solutions.

5. Warranties

- a. **LSC makes no warranty that the System will perform uninterrupted, timely, complete or error-free.** LSC makes no warranty, either express or implied, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose.
- b. At Customers discretion, LSC will refund to the Customer the total Technology Support Plan annual payment(s) and cancel this contract if LSC is unable to resolve a covered problem within ten (10) support visits.

6. Taxes

- a. Customer shall be responsible for sales, use, and value-added taxes; such taxes shall be invoiced by LSC as a distinct lineitem.

7. Indemnification/Hold Harmless/Limitation of Liability

- a. LSC agrees to indemnify, defend, and hold harmless Customer, its affiliates, SCSA and the City of Santa Clara from and against any liability or loss (including reasonable attorneys' fees and other costs of defense) resulting from judgments or claims for a) personal injury, including death, and/or
- b) damage/destruction of tangible property arising out of or incident to this Agreement (a) and b) collectively "Losses"), but only to the extent that such Losses are proximately caused by the negligence or willful misconduct of LSC.
- b. This indemnification obligation of LSC shall be construed so as to extend to all reasonable legal, defense and investigation costs provided Customer promptly notifies LSC (Attn: General Counsel) that a claim or demand is being made. LSC will have the exclusive rights to defend, control, settle and compromise any claim, provided however, that LSC will consult with Customer regarding any settlement or compromise that includes substantive terms beyond a monetary settlement. Further, if LSC assumes the defense of a claim and Customer desires to retain its own counsel with respect to such claim, Customer may do so provided such counsel is retained at Customer's sole cost and expense.
- c. In no event shall any party hereto be liable for incidental, consequential (including lost profits), special, punitive or exemplary damages in connection with the services rendered hereto even if notice was given of the possibility of such damages and even if such damages were reasonably foreseeable.
- d. Except as otherwise provided herein and excluding LSC's indemnification obligations, Customer's exclusive remedy and LSC's entire, collective liability in contract, tort (including negligence) or otherwise, under the agreement between the parties will be the payment of actual damages not to exceed one million dollars.

8. Term; Termination

- a. Customer may cancel coverage by providing 30 days' written notice to LSC and LSC will provide a pro-rata refund of any prepaid fees.
- b. LSC may terminate this Agreement by providing 30 days advance written notice to Customer; in the event of LSC's termination, LSC shall provide a pro-rata refund to Customer.
- c. Following the Initial Term, the service period may be renewed annually (Renewal Term) upon written notice from Customer to LSC, unless either party provides written notice to the contrary at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. LSC reserves the right to modify the Annual Rate in any Renewal Term. Systems that are no longer actively sold by Lutron are not eligible for automatic renewal and will therefore terminate at the end of the Initial Term.

9. Compliance with Trade Laws

- a. Customer represents and warrants that neither Customer, nor any parent, subsidiary, affiliate, or associated company of Customer, is
 - i. Included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List and Foreign Sanctions Evaders List administered by the US Department of Treasury's Office of Foreign Assets Control; Denied Parties List, Unverified List or Entity List maintained by the US Department of Commerce's Bureau of Industry and Security; or the List of Statutorily Debarred Parties maintained by the US Department of State's Directorate of Defense Trade Controls
 - ii. Located in a jurisdiction that is subject to U.S. territorial sanctions, including at the time of this agreement Cuba, Iran, North Korea, Sudan, Syria, or the Crimea region of the Ukraine.
- b. Customer confirms it will not sell, export, re-export, transfer or re-transfer any Products or any related technology or services that are sold or otherwise provided hereunder by LSC or its distributors, resellers, or agents, in any manner contrary to applicable export control and economic sanctions laws of the United States and/or other jurisdictions.

10. Non-Solicitation

- a. While this Agreement is in effect, and for twelve (12) months after its expiration or termination, Customer agrees that it shall not directly or indirectly solicit for employment, any employee of LSC with whom Customer has had contact in connection with performance of this Agreement. The foregoing shall not apply to
 - i. Individuals hired as a result of the use of a general solicitation (such as an advertisement, in newspapers, or on radio or television) not specifically directed to the employees of LSC;
 - ii. LSC employees who independently and on their own initiative pursue employment opportunities with Customer.

11. Miscellaneous

- a. This Agreement is the complete agreement between Customer and LSC regarding the services provided hereunder and replaces any prior oral or written communications between Customer and LSC regarding such services. Any terms and conditions included in any portal LSC is asked or required to utilize are of no effect as the terms contained herein shall solely govern the relationship of the parties. None of LSC's employees or agents may orally vary the terms and conditions of this Agreement. LSC's failure to exercise, delay in exercising, or single or partial exercise of any right, power, or privilege under this Agreement shall not operate to waive or preclude LSC's right to exercise such rights, power, or privileges. If any part of this Agreement is held to be invalid or unenforceable, it will not affect the validity or enforceability of the rest of the Agreement. Without further action of the parties, that part will be reformed to the minimum extent necessary to make it valid and enforceable. Any modification of this Agreement must be signed in writing by authorized representatives of Customer and LSC.