

**From:** [Mercurio, Jim](#)  
**To:** [Christine Jung](#)  
**Cc:** [Deanna Santana](#); [Kenn Lee](#); [Sujata Reuter](#); [Mercurio, Jim](#)  
**Subject:** RE: Recommendation for Award for Miscellaneous Goods and Services  
**Date:** Sunday, January 30, 2022 9:27:34 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[RFQ 10101 eSourcing Platform Services RFQ.PDF](#)

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Hi Christine:

Here are the answers to your questions:

- Can the Stadium Manager describe its current usage of BonFire's services, and whether the services outlined in the requested agreement differ from the existing services?
  - **The scope of services in the Bonfire agreement is similar to the services Bonfire has previously provided. The scope is set forth in the attached RFQ dated 12/13/2021.**
- Did the Stadium Manager reach out to any other companies to notify them of the e-Sourcing platform subscription RFQ?
  - **Yes. Periscope Holdings, Bonfire Interactive, Biddingo.**

Attached please find the RFQ.

Thanks,

JIM

**JIM MERCURIO**

Executive Vice President & General Manager  
**Forty Niners Stadium Management Company**  
T 408.562-4944 | M 650 642-4909  
Levi's® Stadium  
4900 Marie P. DeBartolo Way  
Santa Clara, CA 95054



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**#FTTB**  
**[49ers.com](#)**

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**From:** Christine Jung <CJung@SantaClaraCA.gov>  
**Sent:** Thursday, January 27, 2022 2:49 PM  
**To:** Mercurio, Jim <jim.mercurio@49ers.com>  
**Cc:** Deanna Santana <DSantana@SantaClaraCA.gov>; Kenn Lee <KLee@SantaClaraCA.gov>; Sujata Reuter <SReuter@SantaClaraCA.gov>  
**Subject:** RE: Recommendation for Award for Miscellaneous Goods and Services

Hi Jim,

We reviewed the Stadium Manager's request and have a few questions regarding the e-Sourcing platform subscription item:

- Can the Stadium Manager describe its current usage of BonFire's services, and whether the services outlined in the requested agreement differ from the existing services?
- Did the Stadium Manager reach out to any other companies to notify them of the e-Sourcing platform subscription RFQ?

Kindly provide the Stadium Manager's responses by next Thursday, February 3. The request and corresponding reports will be included in the February 22 agenda.

**Thank you,**  
**Christine Jung | Assistant to the Executive Director**  
1500 Warburton Avenue | Santa Clara, CA 95050  
D: 408.615.2218 | [www.santaclaraca.gov/scsa](http://www.santaclaraca.gov/scsa)

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**From:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>  
**Sent:** Tuesday, January 11, 2022 4:00 PM  
**To:** Deanna Santana <[DSantana@SantaClaraCA.gov](mailto:DSantana@SantaClaraCA.gov)>; Christine Jung <[CJung@SantaClaraCA.gov](mailto:CJung@SantaClaraCA.gov)>; Ruth Shikada <[RShikada@SantaClaraCA.gov](mailto:RShikada@SantaClaraCA.gov)>; Kenn Lee <[KLee@SantaClaraCA.gov](mailto:KLee@SantaClaraCA.gov)>  
**Cc:** Mercurio, Jim <[jim.mercurio@49ers.com](mailto:jim.mercurio@49ers.com)>  
**Subject:** Recommendation for Award for Miscellaneous Goods and Services

Hi Deanna,

The recommendation for award for miscellaneous goods and services can be downloaded here:

[REDACTED]

Password: [REDACTED]

Please review and forward to the Board for approval.

Once approved, we will execute the agreement and purchase order and forward a copy to you.

Thanks,

JIM

**JIM MERCURIO**

Executive Vice President & General Manager

**Forty Niners Stadium Management Company**

T 408.562-4944 | M 650 642-4909

Levi's® Stadium

4900 Marie P. DeBartolo Way

Santa Clara, CA 95054



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**#FTTB**

**[49ers.com](http://49ers.com)**

**Forty Niners Stadium Management Company, LLC**  
**Request for Quotation (RFQ) for Acquisition of Services**



**RFQ Title: eSourcing Platform Subscription Services**

**RFQ No: 10101**

**RFQ Issue Date: December 13, 2021**

**Due Date/Time: December 20, 2021**

**Email Questions and Quotations to: [Proc@49ers-smc.com](mailto:Proc@49ers-smc.com)**

The Forty Niners Stadium Management Company, LLC ("Stadium Manager") is requesting quotations from prospective vendors ("Offeror") for the services as specified in this Request for Quotation ("RFQ"). The following are the requirements and procedures Offerors are required to follow in submitting a quote to Stadium Manager.

**A. General Provisions:**

All quotations are subject to the provisions of this RFQ, including all attachment(s) and addenda thereto, if any.

Offeror is responsible for reviewing all RFQ documents. Failure to do so will not be grounds for relief of your obligation to honor your quotation if a subsequent order is awarded to your firm in reliance upon your quotation.

Your intent to be bound by the RFQ is evidenced by your submission of a quotation. All quotations sent shall constitute firm offers that shall be irrevocable for 90 calendar days (or such longer period as Offeror and Stadium Manager may agree to) from the deadline for submission of quotations. Stadium Manager may accept one or more quotations received in response to this RFQ. Acceptance by Stadium Manager of one or more quotations submitted in response to this RFQ shall not constitute termination or revocation of the remainder of the quotations submitted.

Offerors may not make changes to their quotations after the date and time set for receipt of quotations. Quotations that contain mistakes may be withdrawn or modified by written notice to Stadium Manager provided (i) any written withdrawal notice is received by Stadium Manager before the date and time for receipt of quotations; and (ii) any written modification notice is received by Stadium Manager before the date and time for receipt of quotations and is clearly identified as a modification, and is executed and submitted in the same form and manner as the original quotation.

Acceptance by Stadium Manager of one or more quotations shall create a binding contract between Stadium Manager and Offeror(s) whose quotation is accepted. Each Offeror acknowledges that it has received consideration for keeping the quotation open and irrevocable for 90 calendar days (or such longer period as Offeror and Stadium Manager may agree to) in the form of Stadium Manager's agreement to evaluate the quotation(s) submitted in response to this RFQ. Offerors acknowledge the sufficiency of such consideration.

This RFQ does not obligate Stadium Manager to award a contract or to be responsible for any Offeror's expenses in preparing a quotation in response to this RFQ. Stadium Manager shall not be responsible for any Offeror cost or charge until a valid written contract is awarded by the Stadium Manager.

**B. Instructions for Submitting Quotation; Quotation Form/ Rate Sheet:**

If this box is checked, Offeror is instructed to submit a completed Quotation Form as its quotation.

Quotations must be e-mailed as directed on the Quotation Form attached hereto as Attachment B and incorporated herein by this reference. Email submissions should have the RFQ number in the subject line. Quotations must be submitted on Stadium Manager forms for consideration.

The Quotation Form must be signed by an authorized agent of Offeror with authority to represent, bind, and execute contracts on behalf of the Offeror.

If this box is checked, Offeror is instructed to provide cost as its quotation for the services to be procured under this RFQ.

The Offeror's cost shall include fully burdened time and materials rates. Rate sheets must be submitted via e-mail to

[Proc@49ers-smc.com](mailto:Proc@49ers-smc.com). Email submissions should have the RFQ number in the subject line.

C. Specifications:

Specifications for the services, if any, are set forth in Attachment A. Quotations that do not meet the specifications may be deemed non-responsive by Stadium Manager in its sole discretion.

D. Brand Name or Equal:

Brand names and model numbers in the solicitation document are for reference. Unless otherwise indicated on the Quotation Form, quotations for equal items will be considered in this solicitation, provided the quotation clearly describes the article offered and is equal in quality and performance to the brand name and/or model number specified in the RFQ.

When equal items (i.e., equal to brand names and/or models in the RFQ) are offered in response to the RFQ, a detailed description of specifications of the proposed equal substitute, feature by feature, must be furnished in the response in an attachment, and the description must clearly demonstrate how specifications of the proposed equal substitute match the brand names and/or models listed by Stadium Manager in the RFQ. Submission of descriptive literature (including, without limitation, marketing material) alone does not meet this requirement.

Determination of whether an item is an equal to items specified by brand name and/or model and/or otherwise meets Stadium Manager's specifications shall be solely made by Stadium Manager, and Stadium Manager's determination shall be conclusive.

E. Pricing:

Provide pricing for each item requested separately to the extent called for in the RFQ. If cost is requested, provide all costs applicable to perform the services.

F. Reservations:

Stadium Manager reserves the right to take the following action(s) at any time, for its own convenience, and at its sole discretion:

1. Reject any and all quotations submitted when deemed to be in Stadium Manager's best interest.
2. Cancel the RFQ and issue a new RFQ at any time thereafter.
3. Extend any or all deadlines specified in the RFQ, including deadlines for accepting responses.
4. Require Offeror to submit breakdown of cost or pricing data provided in quotations.
5. Make such investigations as deemed necessary to determine if an Offeror's quotation is responsive and the Offeror responsible.
6. To waive any informality, irregularity, defect or technicality in quotations received when deemed to be in the best interest of Stadium Manager.
7. Disqualify any Offeror because of any real or apparent conflict of interest or evidence of collusion that is disclosed by the quotation or other data available.
8. Reject the quotation of any Offeror that is in breach of or in default under any other contract with Stadium Manager.
9. Stadium Manager may accept all or part of any quotation, or reject any or all quotations.
10. Estimated quantities are for solicitation purposes only, and are not to be interpreted as a guarantee to purchase any amount.
11. Contracts may be awarded to multiple Offerors if Stadium Manager determines it would be in its best interest.
12. At its sole discretion, Stadium Manager may issue a partial award.
13. Award if made by Stadium Manager shall be made to the Offeror(s) that submit quotations which are most advantageous to the Stadium Manager taking into consideration at least the following factors: cost,

quality of the quotation, capabilities and expertise of the Offeror, and adherence to applicable Stadium manager policies and directives.

G. Clarification/Interpretations:

Any and all questions regarding this document must be addressed to the purchaser named on the Quotation Form. Any and all material revisions to this document by Stadium Manager shall be made by written addendum. Verbal clarifications are not binding on Stadium Manager.

H. Environmentally Preferable Products and Services:

1. Where applicable, Offerors are encouraged to offer Energy Star, Green Seal, EcoLogo, or EPEAT certified products. Stadium Manager also encourages Offerors to offer products that are produced or delivered with minimal use of virgin materials and maximum use of recycled materials and reduce waste, energy usage, water utilization, and toxins in the manufacture and use of products.
2. Offerors are encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. Stadium Manager also encourages Offerors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this RFQ.

I. Compliance with Law:

Offerors shall take cognizance of and be responsible for compliance with all applicable laws, regulations, ordinance, and rules whether now existing or in existence at the time of performance under any awarded contract. Such laws include the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. If applicable, Offeror shall ensure it and its agents and subcontractor(s) of every tier comply with such Prevailing Wage Laws, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them, the employment of apprentices, hours of labor, debarment of contractors and subcontractors, and contractor and subcontractor registration with the California Department of Industrial Relations. It shall be the Offeror's sole responsibility to evaluate and include the cost of complying with all applicable laws, regulations, ordinances, and rules, including the aforementioned labor compliance requirements, in its quotation.

**ATTACHMENT A**  
**SCOPE/SPECIFICATIONS**

Stadium Manager is seeking quotations from qualified firms to provide Software as a Service (SaaS) subscription services for an eSourcing platform for Levi's Stadium located at 4900 Marie P DeBartolo Way, Santa Clara, CA 95054. The project includes software subscription services, implementation (if applicable), training and support services for a three-year period. Since the term extends beyond a single fiscal year, the term for subsequent fiscal years shall be conditioned upon approval of the Santa Clara Stadium Authority budget for the applicable fiscal year that includes the amounts under the agreement.

The anticipated number of seat licenses required by Stadium Manager is three. Stadium Manager shall have the flexibility to adjust the number of seats to scale the usage and adoption during the term of the agreement.

The proposed system must be a ready to use that is commercially available in the marketplace with the following functionality:

1. Able to develop and publish solicitations, and receive electronic sealed bids and proposals.
2. Facilitate outreach and communicate with prospective bidders.
3. Promote the participation of small business enterprises.
4. Enable Stadium Manager to reach a broad pool of prospective bidders and proposers.
5. Invite suppliers to view, download and respond to solicitations.
6. Access to commodity codes for different business industries at no additional cost. Examples are NIGP or UNSPSC codes.
7. Unlimited projects, evaluators, and suppliers.
8. Ability to review and approve solicitations.
9. Reporting capabilities including the capability of downloading various reports for data analysis.

**Solicitation Process Management**

1. Hold virtual pre-bid and pre-proposal meetings.
2. Provide transparent virtual bid openings.
3. Receive electronic sealed bids and proposals by a deadline.
4. Modify the deadline and extend solicitations.
5. Evaluate and interpret bids and proposals.
6. Ability to issue addenda and manage solicitations.
7. Identify businesses by industry types.
8. Ability to use a solicitation numbering system unique to Stadium Manager.

**Supplier Management**

1. Features to track bidder/proposal activity by supplier.
2. Track suppliers who have expressed interest in doing business with Stadium Manager.
3. Search suppliers.

**Sharing**

1. Create, manage and maintain a library of boilerplate/standard documents to be used as templates.
2. Maintain an archive of solicitations that can be shared and replicated as needed for rebidding.
3. Features for sharing registered suppliers across the organization.

**Training and Technical Support**

1. Assist with configuration and onboarding.
2. Provide training on how to use the system.
3. Provide ongoing support to Stadium Manager users.

**Suppliers**

1. Supplier registration with no charge to suppliers for doing business with Stadium Manager.

2. Supplier training and technical support.
3. Supplier notification of new solicitations and changes to solicitations.
4. Provide assistance and support to bidders/proposers to accurately submit a response.
5. Ability for bidders to register and attend pre-bid and pre-proposal meetings.
6. Ability to submit questions.
7. Notifications of upcoming deadlines to submit bids and proposals.
8. Tools to submit sealed bids and proposals by the solicitation deadline.

**Technical**

1. Data protection and data backup/redundancy
2. Provide the maximum upload size
3. Data export of customer data
4. Service availability



**ATTACHMENT B**  
**QUOTATION RESPONSE**

1. Provide a summary of relevant experience in hosting an eSourcing platform that meets the objectives outlined in Attachment A.
2. Provide the Software License Agreement for review and consideration.
3. Provide names, contact information, and public facing URL addresses for three active clients currently using the eSourcing platform.
4. Provide the cost structure for services rendered using the table below:

#	Description	Cost in US Dollars
1	Software Subscription Services Enterprise or Per License User for up to 3 seats - Year 1	\$
2	Software Subscription Services Enterprise or Per License Use for up to 3 seats - Year 2	\$
3	Software Subscription Services Enterprise or Per License User for up to 3 seats - Year 3	\$
4	Implementation Cost (if applicable)	\$
5	Training and On Going Support	\$
6	Additional Costs (Itemize)	\$
7	<b>Total Cost</b>	\$

**ATTACHMENT C**  
**SAMPLE AGREEMENT**

**Please see separate document provided with the RFQ.**

**SERVICE AGREEMENT  
BETWEEN  
FORTY NINERS STADIUM MANAGEMENT COMPANY LLC  
AND  
\*INSERT CONTRACTOR'S NAME**

**PREAMBLE**

This Service Agreement (the "Agreement") is entered into between Forty Niners Stadium Management Company LLC, a Delaware limited liability company ("Stadium Manager"), and \*insert Contractor's name, a[n] choose one: \_\_\_\_\_ (enter State name) corporation/partnership/individual, (Contractor). Stadium Manager and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

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

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between Stadium Manager and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

**2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on \*\_\_\_\_\_, 20\_\_\_\_ and terminate on \*\_\_\_\_\_, 20\_\_\_\_. Since the term extends beyond a single fiscal year, the term for subsequent fiscal years shall be conditioned upon approval of the Santa Clara Stadium Authority budget for the applicable fiscal year that includes the amounts due under the agreement.

**3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

**4. WARRANTY**

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

**5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and Stadium Manager expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor 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.

**6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, Stadium Manager shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is \*spell out dollar amount (\$\*insert numerical dollar amount), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies,

materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

- A. Termination for Convenience. Stadium Manager shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, Stadium Manager may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to Stadium Manager all Stadium Manager information or material that Contractor has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

Stadium Manager and Contractor 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 Manager. Contractor shall not hire subcontractors without express written permission from Stadium Manager.

Contractor shall be as fully responsible to Stadium Manager for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

## **9. 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.

## **10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of Stadium Manager. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

## **11. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of Stadium Manager, 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 Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

## **12. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of Stadium Manager but Contractor may retain and use copies thereof. Stadium Manager shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than as intended herein.

## **13. RIGHT OF STADIUM MANAGER TO INSPECT RECORDS OF CONTRACTOR**

Stadium Manager, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to Stadium Manager. Any expenses not so recorded shall be disallowed by Stadium Manager. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the Stadium Manager.

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

#### **14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify the Indemnified Parties (defined below) from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by the Indemnified Parties connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of the Indemnified Parties; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full Indemnified Parties' employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against any of the Indemnified Parties (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless Indemnified Parties for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.
- D. Indemnified Parties shall mean Stadium Manager, the Santa Clara Stadium Authority, the City of Santa Clara, their affiliates, and each of their respective officers, directors, managers, members, partners, owners and employees, each tenant and event promoter of Levi's Stadium, and any mortgagee, bond trustee or other financial institution from time to time holding a line or indenture upon an interest in Levi's Stadium.

#### **15. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to Stadium Manager, insurance policies as set forth in Exhibit C.

**16. WAIVER**

Contractor agrees that waiver by Stadium Manager 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. Neither Stadium Manager’s review, acceptance nor payments for any of the Services required under this Agreement shall be constructed 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.

**17. NOTICES**

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

Attention: Jim Mercurio, EVP & General Manager  
Address: Forty Niners Stadium Management Company LLC  
4900 Marie DeBartolo Way  
Santa Clara, CA 95054

With a copy to: Legal Affairs  
Forty Niners Stadium Management Company LLC  
4949 Marie P. DeBartolo Way  
Santa Clara, CA 95054

And to Contractor addressed as follows:

\*Name of Contractor  
\*Address of Contractor  
and by e-mail at \* \_\_\_\_\_@XXX

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

**18. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has



read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

**19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, none of the Indemnified Parties has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise Stadium Manager if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor 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.

**21. NO USE OF STADIUM MANAGER NAME OR EMBLEM**

Contractor shall have no right to use, reproduce, or display the trademarks, symbols, trade names or other intellectual property of the Stadium Manager, Levi's Stadium®, the San Francisco 49ers, or their respective affiliates, or Stadium tenants or their affiliates or other event performers directly or indirectly, in connection with any production, promotion, client list, service or publication, without the prior written approval of Stadium Manager.

**22. GOVERNING LAW 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.

**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. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the Effective Date.

**STADIUM MANAGER:**

**FORTY NINERS STADIUM MANAGEMENT COMPANY LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: Jim Mercurio

Title: Executive Vice President and General Manager

**CONTRACTOR:**

**[ENTITY NAME]**, a **[entity type]**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**SCOPE OF SERVICES**

The Services to be performed for the Stadium Manager by the Contractor under this Agreement are set forth below.

**\*Insert Services to be performed**

**EXHIBIT B  
SCHEDULE OF FEES**

## EXHIBIT C INSURANCE REQUIREMENTS

At all times during the term hereof, Contractor shall keep and maintain in full force and effect the following types of insurance coverage and/or bonds:

1. Commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death and damage to property occurring in or about the property in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
2. Automobile liability in the amount of One Million Dollars (\$1,000,000) with respect to owned, hired and non-owned vehicles.
3. Workers compensation insurance, as required by applicable law.
4. Employer's liability in the amount of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, by disease, and One Million Dollars (\$1,000,000) policy aggregate by disease.
5. Liability insurance covering claims arising out of errors and omissions by vendors rendering professional services, in the amount of One Million Dollars (\$1,000,000) each occurrence including contractual liability coverage, with all coverage retroactive to the earlier of the date of agreement or commencement of Contractor's services.
6. Umbrella or excess liability insurance in the amount of Two Million Dollars (\$2,000,000) providing excess coverage over general liability, auto liability, and employer's liability specified above.

The above stated limits may be achieved by a combination of primary and excess/umbrella coverage. Any deductible or self-insured retention amounts are the sole responsibility of the Contractor. Contractor is responsible for insuring any equipment brought to Levi's Stadium. Stadium Manager shall have no liability for such equipment.

All insurance policies and bonds required to be maintained by Contractor shall be issued by insurers or sureties (as the case may be) reasonably satisfactory to client, authorized to do business in the state of California and having an AM Best rating and financial size category of A-/VII or better. All policies of the vendor shall be (i) primary and non-contributing with respect to any policies carried by client; (ii) with respect to liability insurance only, a provision including Stadium Manager, Santa Clara Stadium Authority, Forty Niners SC Stadium Company LLC and Forty Niners Football Company LLC as additional insureds; (iii) a waiver by the insurer of any right to subrogate against Stadium Manager (iv) a severability of interest or endorsement; (v) a provision that the insurer will not cancel or change the coverage provided by such without giving the Stadium Manager thirty (30) days' prior written notice; and (vi) general liability be an "occurrence form" policy. Any policy of insurance required to be carried by Contractor that names additional

insureds contained herein shall not be subject to a deductible or self-insured retention, it being the intent of the parties that such insurance shall fully and completely insure such additional insured entities for all loss or expense; if any such policy has a deductible or self-insured retention clause applicable to these operations, Contractor shall provide evidence that insurance carrier shall pay without regard to such deductible or self-insured retention.