

**AGREEMENT FOR SERVICES  
BETWEEN THE  
SANTA CLARA STADIUM AUTHORITY,  
AND  
HAGEN, STREIFF, NEWTON, & OSHIRO ACCOUNTANTS, P.C.**

**PREAMBLE**

This Agreement is entered into between the Santa Clara Stadium Authority (Authority), a joint exercise of powers entity, created through Government Code sections 6500 *et seq.*, and Hagen, Streiff, Newton, & Oshiro Accountants, P.C. , a California corporation, (Contractor). Authority and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. Authority desires to secure 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 Authority; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between Authority 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 July 1, 2018 and terminate on June 30, 2019.

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

Contractor shall perform those litigation consultation 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 Authority when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, Authority may make corrections or replace materials or services and charge Contractor for the cost incurred by Authority.

## **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 Authority 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, Authority 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 one hundred thousand dollars (\$100,000.00), 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. Authority 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, Authority 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 Authority all Authority information or material that Contractor has in its possession.

## **8. ASSIGNMENT AND SUBCONTRACTING**

Authority 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 Authority. Contractor shall not hire subcontractors without express written permission from Authority.

Contractor shall be as fully responsible to Authority for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as 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 Authority. 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 in Contractor's role as a retained litigation consultant and shall not, without the prior written consent of Authority, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services, except as required by law. 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 Authority but Contractor may retain and use copies thereof. Authority shall not be limited in any way or at any time in its use of said material. However, Contractor 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.

## **13. RIGHT OF AUTHORITY TO INSPECT RECORDS OF CONTRACTOR**

Authority, 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 Authority. Any expenses not so recorded shall be disallowed by Authority. 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 Authority.

Contractor shall submit to Authority any and all reports concerning its performance under this Agreement that may be requested by Authority in writing. Contractor agrees to assist Authority in meeting Authority'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 and the Authority agree to indemnify, defend and hold the other party and its affiliates and their respective commissions, officers, directors, employees, volunteers and

agents harmless 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 or Authority's employees or persons contracting with Contractor or Authority to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by Contractor or Authority 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 Contractor or the Authority; the obligation to defend is not similarly limited.

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full Authority and Authority's 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 Authority (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 Authority for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

## **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 Authority, insurance policies as set forth in Exhibit C.

## **16. WAIVER**

Contractor agrees that waiver by Authority of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither Authority'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 Authority addressed as follows:

Santa Clara Stadium Authority  
Attention: Treasurer  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [Finance@santaclaraca.gov](mailto:Finance@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Contractor addressed as follows:

Hagen, Streiff, Newton, & Oshiro Accountants, P.C.  
1330 Broadway, Suite 430  
Oakland, CA 94612  
and by e-mail at [TGillihan@hsno.com](mailto:TGillihan@hsno.com)

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 Authority 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 Authority's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

**19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no Authority officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise Authority 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 AUTHORITY NAME OR EMBLEM**

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

**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.

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

### **SANTA CLARA STADIUM AUTHORITY**

a Joint Exercise of Powers Entity, created through Government Code sections 6500 *et seq.*

Approved as to Form/

Dated: 9/14/2018

  
BRIAN DOYLE  
Stadium Authority Counsel

  
DEANNA J. SANTANA  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"AUTHORITY"

### **HAGEN, STREIFF, NEWTON, & OSHIRO ACCOUNTANTS, P.C. (HSNO)**

a California corporation

Dated: 9/17/2018

By (Signature):  CPA

Name: Timothy A. Gillihan, CPA/ABV

Title: Partner

Principal Place of  
Business Address: 1330 Broadway, Suite 430, Oakland, CA 94612

Email Address: TGillihan@hsno.com

Telephone: (510) 740-0387

Fax: (510) 740-0392

"CONTRACTOR"



## **EXHIBIT A**

### **SCOPE OF SERVICES**

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

The scope of this engagement will be to act as a retained litigation consultant and perform a review of the financial statements and supporting documents provided by the San Francisco Forty-Niners and provide the Authority with an identification of, and opinion on, the financial statement issues the Authority has. At the Authority's request, Contractor will provide a written report covering procedures and findings. The Contractor's report, including schedules and attachments thereto, as well as any working paper documentation of any kind created as a result of Contractor's provision of Services, shall not be used or distributed for any other purpose, without prior written consent, except as required by law.

Mr. Timothy Gillihan, CPA/ABV is the project leader for this engagement. Contractor has attached a copy of the CV for Mr. Gillihan to this Agreement. If a court later determines that Mr. Gillihan is not qualified to offer testimony for any reason, that determination will not be deemed a breach of this Agreement. Consequently, the Authority will remain liable for the payment of fees and expenses incurred through the date of such determination. If due to circumstances outside Contractor's control, Mr. Gillihan is not able to testify at deposition or trial, Contractor will consult with Authority regarding the substitution of an HSNO employee for Mr. Gillihan.

Contractor understands that any work performed pursuant to an expert witness engagement, as well as information disclosed to Contractor pursuant to the preceding paragraph, will be subject to the rules of discovery as appropriate for expert witnesses.

All workpapers or other documents used by Contractor during the course of this engagement will be maintained in segregated files. It is not Contractor's practice to retain superseded workpapers, notes, or data files that have been updated as Contractor performs the engagement. At the close of this engagement, Contractor will require Authority instruction for the disposition of documents that have accumulated.

Contractor's services will be provided in accordance with the Statement on Standards for Consulting Services promulgated by the American Institute of Certified Public Accountants and, as such, do not constitute a rendering by HSNO or its employees of any legal advice, nor do they include the compilation, review or audit of financial statements. Because Contractor's Services are limited in nature and scope, Contractor cannot be relied upon to discover all documents and other information or provide all analyses which may be of importance in this matter. The Authority will not hold Contractor responsible for any loss or liability that may result from the non-discovery of any matters that might influence this matter.

HSNO shall be responsible only for the Services described in this Agreement. Furthermore, any changes in scope must be set forth in writing and agreed to by all parties to this Agreement.

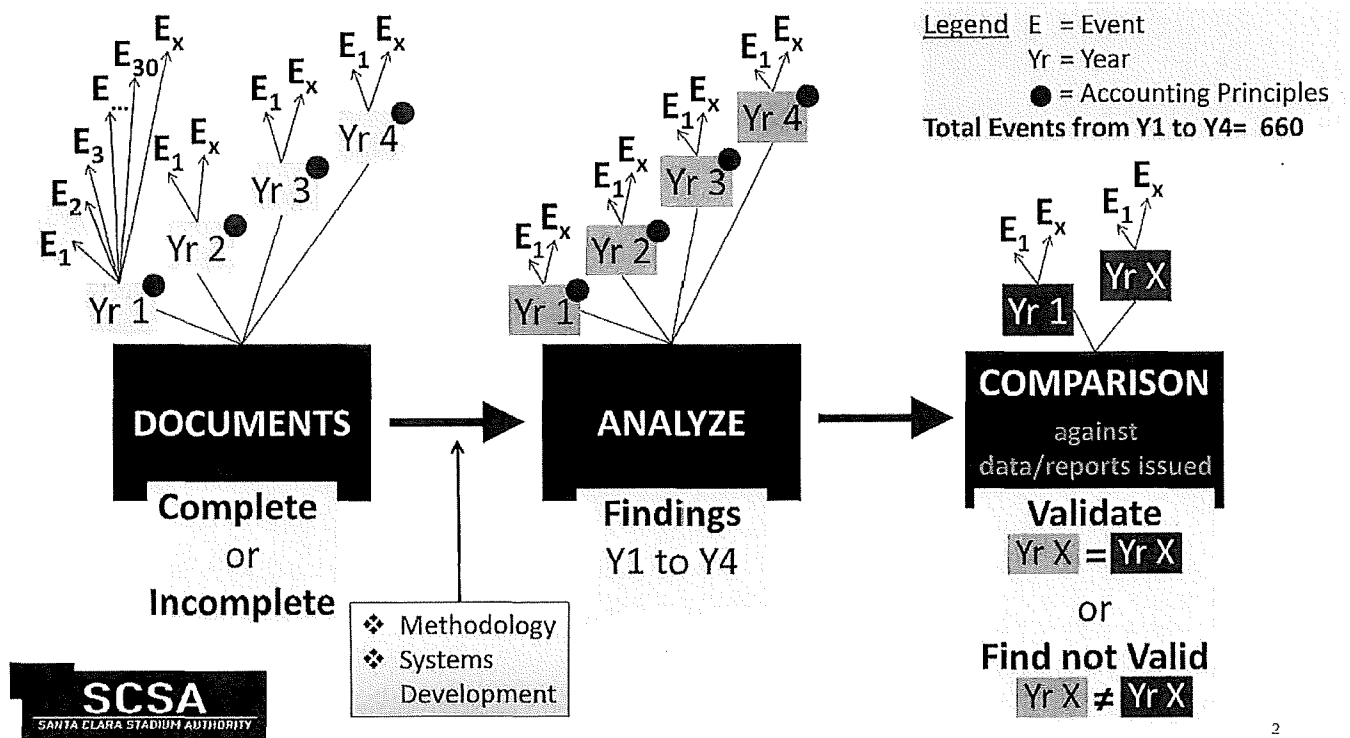
Contractor has undertaken a reasonable review of records to determine professional relationships with the persons or entities Authority identified. Contractor is not aware of any conflicts of interest or relationships that would, in Contractor's sole discretion, preclude Contractor from performing the above work for the Authority. Contractor is not restricted from working on other engagements, including unrelated engagements, involving the parties in this matter; however, all confidential information gained in this matter will be kept confidential.

Contractor understands that all communications between the Authority and HSNO regarding this engagement, as well as any materials related thereto, may be protected by applicable legal privileges and, therefore, will be treated as confidential. Consequently, Contractor agrees, except as required by applicable law, regulation, court or governmental order or process, or demand of accounting oversight body, not to disclose any communications, or any of the information Contractor receives or develops in the course of performing Services, to any third party except those parties the Authority may designate.

If access to any of the materials in Contractor's possession relating to this Agreement is sought by a third party, Contractor will promptly notify the Authority of such action, tender to the Authority Contractor's defense in connection with the response to such a request and cooperate with the Authority concerning the response thereto. In the event that Contractor is subpoenaed as the result of any work performed for the Authority in connection with this engagement, Contractor will bill for the time involved in responding to such subpoena(s).

For reference, an Attachment to Exhibit A – Scope of Services is on Page 3 of this section.

# EXHIBIT A SCOPE OF SERVICES - ATTACHMENT



## **EXHIBIT B SCHEDULE OF FEES**

Contractor will bill Authority on a monthly basis for Services rendered by Contractor during the preceding month on an invoice and in a format approved by Authority and subject to verification and approval by Authority. Authority will pay Contractor within thirty (30) days of Authority's receipt of an approved invoice.

Mr. Timothy Gillihan, CPA/ABV, project leader, is billed at the Partner rate. Below is the billing rate sheet for him and other staff.

A retainer of \$5,000 is required prior to starting work on this engagement. The retainer will apply for work performed on an ongoing basis. If the retainer is insufficient to cover all work performed, Contractor will submit a request for an additional retainer prior to continuing work on this engagement. The amount of such additional retainer, if any, will be determined based on our sole judgment of the amount of work required to continue the engagement in a timely and cost-effective manner. If there is a balance in Authority's account after applying the retainer against work performed, Contractor will return that to Authority at the completion of the engagement.

Contractor will obtain approval on any changes in the hourly fee schedule before performing any additional work. It has been the practice of HSNO to adjust rates on an annual basis to reflect current market conditions for services. The rates provided with this engagement letter will be held through the end of calendar year 2018. Any increase in hourly rates shall not affect to total not to exceed figure.

Payment of Contractor fees is not contingent on the outcome of this matter. Contractor will require full payment of Authority's account before they express any opinion, issue any report or provide any testimony. Contractor may stop work or terminate this engagement at any time in the event of non-payment. Because of the nature of this type of engagement, Contractor may invest a considerable amount of time before generating a report or other deliverable. Contractor may stop work for a number of reasons, including but not limited to, your request or settlement of this matter. In the event Contractor stops work, Authority agrees to pay the fees and expenses for all Services performed through the date work is stopped, whether or not Contractor has produced any deliverables.

Contractor will also bill Authority on a monthly basis for actual expenses incurred, if any. Contractor will apply the outstanding retainer balance against the current invoiced amounts.

Schedule of Litigation Fees (Per Hour) FYE February 2019

DEPOSITION OR TRIAL TESTIMONY PER HOUR

Senior Partner	\$495
Partner / Senior Manager	\$395
Manager	\$335

CONSULTATION RATES PER HOUR

Senior Partner	\$350 - \$425
Partner	\$290 - \$360
Senior Manager	\$245 - \$295
Manager	\$210 - \$240
Senior Accountant	\$175 - \$205
Accountant	\$140 - \$195
Admin./Clerical	\$90 - \$120

In no event shall the amount billed to Authority by Contractor for services under this Agreement exceed One Hundred Thousand Dollars (\$100,000.00), subject to budget appropriations.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**  
**FOR PROFESSIONAL SERVICES**

Without limiting the Consultant's indemnification of the Santa Clara Stadium Authority ("Stadium Authority"), and prior to commencing any of the Services required under this Agreement, the Consultant shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the Stadium Authority, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the Stadium Authority so that any other coverage held by the Stadium Authority shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

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

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury

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

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

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

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for 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 Stadium Authority, its governing board, subordinate boards, 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's Office.

E. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. The Santa Clara Stadium Authority, its governing board, subordinate boards, officers, employees, volunteers and agents ("Indemnified Parties") 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 Indemnified Parties may possess, including any self-insurance or self-insured retention they may have. Any other insurance that the Indemnified Parties may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to the 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 the 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.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.



F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and the Stadium Authority agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by the Stadium Authority, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to the 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 the 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 the Stadium Authority. It is not the intent of the Stadium Authority to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the 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 (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to the 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 the 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, and be delivered to the Stadium Authority through its representative as set forth below, at or prior to execution of

this Agreement. Upon the Stadium Authority's request, Consultant shall submit to the 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 the Stadium Authority pursuant to this Agreement shall be mailed to:

Santa Clara Stadium Authority  
c/o Ebix, Inc.

P.O. Box 100085 – S2  
Duluth, GA 30096

or 1 Ebix Way  
John's Creek, GA 30097

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.

S:\Attorney\INSURANCE\STADIUM AUTHORITY\EXHIBIT C-06 Professional Service Contract.doc

**AMENDMENT NO. 1  
TO THE AGREEMENT FOR SERVICES  
BETWEEN THE  
SANTA CLARA STADIUM AUTHORITY  
AND  
HAGEN, STREIFF, NEWTON, & OSHIRO ACCOUNTANTS, P.C.**

**PREAMBLE**

This agreement ("Amendment No. 1") is entered into between the Santa Clara Stadium Authority (Authority), a joint exercise of powers entity, created through Government Code sections 6500 *et seq.*, and Hagen, Streiff, Newton, & Oshiro Accountants, P.C., a California corporation, (Contractor). Authority and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the Santa Clara Stadium Authority and Hagen, Streiff, Newton, & Oshiro Accountants, P.C., dated September 20, 2018 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide litigation consultant and perform a review of the financial statements and supporting documents provided by the San Francisco Forty-Niners and provide the Authority with an identification of, and opinion on, the financial statements issues the Authority has, and the Parties now wish to amend the Original Agreement to extend the term of the Original Agreement to December 31, 2020 and increase the not to exceed amount by \$100,000 to \$200,000.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AMENDMENT TERMS AND CONDITIONS**

That Section 2 of the Original Agreement, entitled "Term of Agreement" is hereby amended to read as follows:

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2020.

That Section 6 of the Original Agreement, entitled "Compensation and Payment" is hereby amended to read as follows:

In consideration for Contractor's complete performance of Services, Authority 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 two hundred thousand dollars (\$200,000.00), 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.

That Exhibit A of the Original Agreement, entitled, "Scope of Services" is hereby amended to read as follows:

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

The scope of this engagement will be to act as a retained litigation consultant and perform an analysis of the Non-NFL Event Revenues and Expenses, the Construction Fund expense and cost allocation, other stadium related business transactions or contracts identified by the Authority, and supporting documents provided by the San Francisco Forty-Niners and the Santa Clara Stadium Authority and provide the Authority with an identification of, and opinion on, the financial statement issues the Authority has. At the Authority's request, Contractor will provide a written report covering procedures and findings. The Contractor's report, including schedules and attachments thereto, as well as any working paper documentation of any kind created as a result of Contractor's provision of Services, shall not be used or distributed for any other purpose, without prior written consent, except as required by law.

Mr. Timothy Gillihan, CPA/ABV is the project leader for this engagement. Contractor has attached a copy of the CV for Mr. Gillihan to this Agreement. If a court later determines that Mr. Gillihan is not qualified to offer testimony for any reason, that determination will not be deemed a breach of this Agreement. Consequently, the Authority will remain liable for the payment of fees and expenses incurred through the date of such determination. If due to circumstances outside Contractor's control, Mr. Gillihan is not able to testify at deposition or trial, Contractor will consult with

Authority regarding the substitution of an HSNO employee for Mr. Gillihan.

Contractor understands that any work performed pursuant to an expert witness engagement, as well as information disclosed to Contract pursuant to the preceding paragraph, will be subject to the rules of discovery as appropriate for expert witnesses.

All workpapers or other documents used by Contractor during the course of this engagement will be maintained in segregated files. It is not Contractor's practice to retain superseded workpapers, notes, or data files that have been updated as Contractor performs the engagement. At the close of this engagement, Contractor will require Authority instruction for the disposition of documents that have accumulated.

Contractor's services will be provided in accordance with the Statement on Standards for Consulting Services promulgated by the American Institute of Certified Public Accountants and, as such, do not constitute a rendering by HSNO or its employees of any legal advice, nor do they include the compilation, review or audit of financial statements. Because Contractor's Services are limited in nature and scope, Contractor cannot be relied upon to discover all documents and other information or provide all analyses which may be of importance in this matter. The Authority will not hold Contractor responsible for any loss or liability that may result from the non-discovery of any matters that might influence this matter.

HSNO shall be responsible only for the Services described in this Agreement. Furthermore, any changes in scope must be set forth in writing and agreed to by all parties to this Agreement.

Contractor has undertaken a reasonable review of records to determine professional relationships with the persons or entities Authority identified. Contractor is not aware of any conflicts of interest or relationships that would, in Contractor's sole discretion, preclude Contractor from performing the above work for the Authority. Contractor is not restricted from working on other engagements, including unrelated engagements, involving the parties in this matter; however, all confidential information gained in this matter will be kept confidential.

Contractor understands that all communications between the Authority and HSNO regarding this engagement, as well as any materials related thereto, may be protected by applicable legal privileges and, therefore, will be treated as confidential. Consequently, Contractor agrees, except as required by applicable

law, regulation, court or governmental order or process, or demand of accounting oversight body, not to disclose any communications, or any of the information Contractor receives or develops in the course of performing Services, to any third party except those parties the Authority may designate.

If access to any of the materials in Contractor's possession relating to this Agreement is sought by a third party, Contractor will promptly notify the Authority of such action, tender to the Authority Contractor's defense in connection with the response to such a request and cooperate with the Authority concerning the response thereto. In the event that Contractor is subpoenaed as the result of any work performed for the Authority in connection with this engagement, Contractor will bill for the time involved in responding to such subpoena(s).

That the "Schedule of Litigation Fees" at Exhibit B of the Original Agreement, under the "Schedule of Fees" is hereby amended to read as follows:

Schedule of Litigation Fees (Per Hour) FYE February 2020

DEPOSITION OR TRIAL TESTIMONY PER HOUR

Senior Partner	\$500
Partner / Senior Manager	\$400
Manager	\$350

CONSULTANTION RATES PER HOUR

Senior Partner	\$350 - \$475
Partner	\$300 - \$360
Senior Manager	\$250 - \$295
Manager	\$210 - \$245
Senior Accountant	\$185 - \$205
Accountant	\$140 - \$180
Admin./Clerical	\$90 - \$120

In no event shall the amount billed to Authority by Contractor for services under this Agreement exceed Two Hundred Thousand Dollars (\$200,000), subject to budget appropriations.

**2. TERMS**

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

### 3. 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.

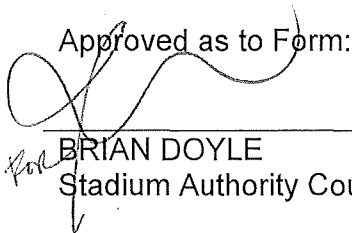
The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

#### **SANTA CLARA STADIUM AUTHORITY**

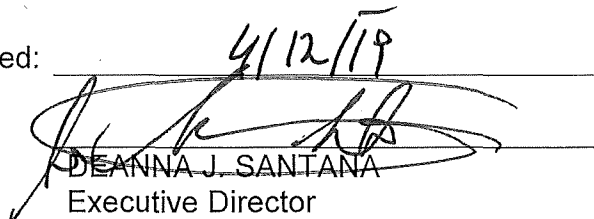
a Joint Exercise of Powers Entity, created through Government Code sections 6500 *et seq.*

APPROVED AS TO FORM:

Approved as to Form:

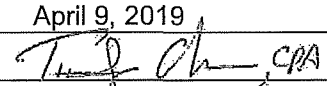
  
BRIAN DOYLE  
Stadium Authority Counsel

Dated:

4/12/19  
  
DEANNA J. SANTANA  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"AUTHORITY"

#### **HAGEN, STREIFF, NEWTON, & OSHIRO ACCOUNTANTS, P.C. (HSNO)** a California corporation

Dated: April 9, 2019  
By (Signature):  CPA  
Name: Timothy A. Gillihan, CPA/ABV  
Title: Partner  
Principal Place of  
Business Address: 1330 Broadway, Suite 430, Oakland, CA 94612  
Email Address: TGillihan@hsno.com  
Telephone: (510) 740-0387  
Fax: (510) 740-0392

"CONTRACTOR"